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WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

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Conference Room, Suite 700
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Washington, DC 20002

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0644; Directorate Identifier 2009–NM–204–AD; Amendment 39–16466; AD 2010–21–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–600R Series Airplanes (Collectively Called A300–600 Series Airplanes)

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

ACTION: Final rule.

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

> Within the framework of the A300–600 aircraft Service Life Extension programme (42,500 FC [flight cycles]), it has been concluded that a reinforcement of the junction of frame bases at FR48, FR49 and FR51 to FR53 is necessary to enable the aircraft to reach the Extended Service Goal (ESG).
>
> * * * [Failure of the frame base], if not corrected, could affect the structural integrity of the fuselage.
>
> * * * * *

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

DATES: This AD becomes effective November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2010.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 1, 2010 (75 FR 38061). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Within the framework of the A300–600 aircraft Service Life Extension programme (42,500 FC [flight cycles]), it has been concluded that a reinforcement of the junction of frame bases at FR48, FR49 and FR51 to FR53 is necessary to enable the aircraft to reach the Extended Service Goal (ESG).
>
> * * * [Failure of the frame base], if not corrected, could affect the structural integrity of the fuselage.
>
> For the reasons described above, this AD requires the reinforcement of the affected junction of frame bases.

Required actions include doing a dimensional measurement of the holes, and doing corrective actions if necessary; doing an eddy current inspection of the holes for cracking, and doing corrective actions if necessary; and doing cold expansion of the holes and installing fasteners. Corrective actions include contacting Airbus for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM.

Change to Compliance Time Specified in Paragraph (h) of This AD

We have revised paragraph (h) of this AD by adding the compliance time "within 100 flight cycles after the effective date of this AD" to the sentence ending with "accomplish those instructions." We have evaluated the data and determined that adding this compliance time will not adversely affect safety.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 122 products of U.S. registry. We also estimate that it will take about 81 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $12,300 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,340,570, or $19,185 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–06 Airbus: Amendment 39–16466. Docket No. FAA–2010–0644; Directorate Identifier 2009–NM–204–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A300 F4–605R and F4–622R airplanes; certificated in any category; on which modification 12699 has not been completed.

Subject

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

Reason

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

Within the framework of the A300–600 aircraft Service Life Extension programme (42,500 FC [flight cycles]), it has been concluded that a reinforcement of the junction of frame bases at FR48, FR49 and FR51 to FR53 is necessary to enable the aircraft to reach the Extended Service Goal (ESG).

* * * [Failure of the frame base], if not corrected, could affect the structural integrity of the fuselage.

* * * * *

Compliance

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

Actions

(g) Except for airplanes identified in paragraph (h) of this AD: At the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, reinforce the junctions of frame bases FR48, FR49, FR51, FR52 and FR53, which includes doing a dimensional measurement of the holes, doing an eddy current inspection of the holes for cracking, doing a cold expansion of the holes, installing fasteners, and doing applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6161, Revision 02, dated October 16, 2009. If cracking is found, before further flight, contact Airbus for repair instructions and do the repair.

(1) For airplanes on which Airbus Modification No. 03986 has been accomplished as of the effective date of this AD: Before the accumulation of 37,600 total flight cycles.

(2) For airplanes on which Airbus Modification No. 03986 has not been accomplished as of the effective date of this AD: Before the accumulation of 28,900 total flight cycles.

(h) For airplanes modified prior to the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6161, dated February 13, 2009; or Revision 01, dated June 24, 2009: Within 10 days after the effective date of this AD, prior to doing any cold working process, determine if an eddy current inspection for cracking has been done, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6161, Revision 02, dated October 16, 2009. If the eddy current inspection has not been done, or it cannot be proven that it has been done, contact Airbus for instructions and accomplish those instructions within 100 flight cycles after the effective date of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated

agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0188, dated August 26, 2009; and Airbus Mandatory Service Bulletin A300–53–6161, Revision 02, dated October 16, 2009; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A300–53–6161, Revision 02, including Appendix 01, dated October 16, 2009 to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25017 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0552; Directorate Identifier 2009–NM–095–AD; Amendment 39–16464; AD 2010–21–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–200B, and 747–200F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs), which apply to certain Model 747–100, 747–200B, and 747–200F series airplanes. The existing ADs currently require inspections to detect fatigue-related skin cracks and corrosion of the skin panel lap joints in the fuselage upper lobe, and repair if necessary. One of the existing ADs, AD 94–12–09, also requires modification of certain lap joints and inspection of modified lap joints. The other AD, AD 90–15–06, requires repetitive detailed external visual inspections of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion, and related investigative and corrective actions. This AD reduces the maximum interval of the post-modification inspections, and adds post-repair inspection requirements for certain airplanes. This AD results from reports of cracking on modified airplanes. We are issuing this AD to detect and correct fatigue cracking and corrosion in the fuselage upper lobe skin lap joints, which could lead to rapid decompression of the airplane and inability of the structure to carry fail-safe loads.

DATES: This AD becomes effective November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 12, 2010.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 90–15–06, Amendment 39–6653 (55 FR 28600, July 12, 1990), and AD 94–12–09, Amendment 39–8937 (59 FR 30285, June 13, 1994). The existing ADs apply to certain Model 747–100, 747–200B, and 747–200F series airplanes. That NPRM was published in the **Federal Register** on June 22, 2010 (75 FR 35356). That NPRM proposed to continue to require inspections to detect fatigue-related skin cracks and corrosion of the skin panel lap joints in the fuselage upper lobe, and repair if necessary; modification of certain lap joints and inspection of modified lap joints; and repetitive detailed external visual inspections of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion, and related investigative and corrective actions. That NPRM also proposed to reduce the maximum interval of the post-modification inspections, and adds post-repair inspection requirements for certain airplanes.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM.

Request to Correct Typographical Error in Paragraph (l) of the NPRM

Boeing requests that we revise paragraph (l) of the NPRM to change the numeral "1" to the letter "l" to correctly identify the paragraph references.

We agree and have corrected the typographical error accordingly.

Conclusion

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

Costs of Compliance

There are about 23 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 94–12–09).	208	$85	$0	$17,680 per inspection cycle.	7	$123,760 per inspection cycle.
Modification (required by AD 94–12–09).	8,160	85	0	$693,600	7	$4,855,200.
Post-Modification Inspection (required by AD 94–12–09).	56	85	0	$4,760 per inspection cycle	7	$33,320 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–6653 (55 FR 28600, July 12, 1990) and Amendment 39–8937 (59 FR 30285, June 13, 1994) and by adding the following new airworthiness directive (AD):

2010–21–04 The Boeing Company: Amendment 39–16464. Docket No. FAA–2010–0552; Directorate Identifier 2009–NM–095–AD.

Effective Date

(a) This AD becomes effective November 12, 2010.

Affected ADs

(b) This AD supersedes AD 90–15–06, Amendment 39–6653; and AD 94–12–09, Amendment 39–8937.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–200B, and 747–200F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of fatigue cracking on modified airplanes. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking and corrosion in the fuselage upper lobe skin panel lap joints, which could lead to the rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

Compliance

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

Restatement of Requirements of AD 94–12–09, With Revised Service Information

Inspection

(g) Within 1,000 flight cycles after July 13, 1994 (the effective date of AD 94–12–09), and thereafter at the intervals specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, perform inspections at the upper lobe skin panel lap joints in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(1) Perform a detailed external visual inspection to detect cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may

be used. Repeat that inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the skin at the upper row of fasteners of the skin panel lap joints forward of body station (BS) 1000 in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(3) Perform a HFEC inspection to detect cracks in the skin at the upper row of fastener holes of the skin panel lap joints aft of BS 1480 to 2360 in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

Repeat that inspection thereafter at intervals not to exceed 6,000 flight cycles until the modification required by paragraph (k) of this AD is accomplished.

(h) If any crack is found during any inspection required by paragraph (g) or (l) of this AD, or if any corrosion is found for which material loss exceeds 10 percent of the material thickness, accomplish paragraphs (h)(1) and (h)(2) of this AD in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(1) Prior to further flight, repair any crack or corrosion found, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(2) Within 18 months after accomplishing the repair, accomplish the "full" modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; for the remainder of any skin panel lap joint in which a crack is found, or in which corrosion is found that exceeds 10 percent of the material thickness, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(i) If no crack is found during any inspection required by paragraph (g) of this AD, but corrosion is found for which the material loss does not exceed 10 percent of the material thickness: Accomplish the actions specified in paragraphs (i)(1) and (i)(2) of this AD for the entire affected skin panel lap joint, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(1) Within 500 flight cycles after accomplishing the inspection during which the corrosion was found, and thereafter at intervals not to exceed 500 flight cycles until the "full" modification required by paragraph (i)(2) of this AD is accomplished: Perform a HFEC inspection to detect cracks of the corroded skin panel lap joint, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(2) Within 36 months after accomplishing the inspection during which the corrosion was found: Accomplish the "full" modification, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used.

(j) The inspections required by paragraph (g) of this AD shall be performed by removing the paint and using an approved chemical stripper; or by ensuring that each fastener head is clearly visible.

(k) Except as provided in paragraph (m) of this AD, prior to the accumulation of 20,000 total flight cycles, or within the next 1,000 flight cycles after July 13, 1994, whichever occurs later: Accomplish the modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; as a "full" modification of the skin panel lap joints at the locations specified in paragraphs (k)(1) and (k)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. After the effective date of this AD, only Revision 3 may be used. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (g) of this AD.

(1) For airplane line numbers 001 through 058, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 520 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(2) For airplane line numbers 59 through 200, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 740 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(l) For all airplanes: Perform an external HFEC inspection to detect skin cracks of any modified skin panel lap joints at the times specified in paragraphs (l)(1), (l)(2), and (l)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009. As of the effective date of this AD, only Revision 3 may be used. Repeat that inspection thereafter at intervals not to exceed 3,000 flight cycles, except as required by paragraph (n) of this AD.

(1) For skin panel lap joints on which the "full" modification has been accomplished: Within 10,000 flight cycles after accomplishment of that modification.

(2) For skin panel lap joints on which the "optional" (partial) modification has been accomplished: Within 7,000 flight cycles after accomplishment of that modification.

(3) For skin panel lap joints having deep countersink fasteners located at Section 42 on which the "full" modification, as described in Boeing Service Bulletin 747–53–2307, dated December 21, 1989, has been accomplished: Within 5,000 flight cycles after accomplishment of that modification.

(m) In lieu of the "full" modification required by paragraph (k) of this AD, the "optional" (partial) modification described in Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993; or Revision 3, dated April 16, 2009; may be accomplished for skin panels that have an outer thickness of 0.090 inches or less, and that do not have any cracks, corrosion, or an existing structural repair on the skin panel lap joint. After the effective date of this AD, only Revision 3 may be used. The "optional" (partial) modification shall not be accomplished at deep countersink fastener locations. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (g) of this AD.

New Requirements of This AD

Post-Modification Inspection at Reduced Intervals

(n) Repeat the inspection required by paragraph (l) of this AD at the earlier of the times specified in paragraphs (n)(1) and (n)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 1,000 flight cycles.

(1) Within 3,000 flight cycles after the last inspection done in accordance with paragraph (l) of this AD.

(2) Within 1,000 flight cycles after the last inspection done in accordance with paragraph (l) of this AD or 500 flight cycles after the effective date of this AD, whichever occurs later.

Post-Repair Inspection for External Doubler Repair

(o) For all airplanes: Do an internal surface HFEC inspection for cracking of the skin at any external doubler repairs greater than 40 inches in length (in the horizontal direction) within 1,000 flight cycles after the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009. Thereafter, perform that inspection at intervals not to exceed 3,000 flight cycles.

(p) If any cracking is found during any inspection required by paragraph (o) of this AD, repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time

for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(4) AMOCs approved previously in accordance with AD 90–15–06, Amendment 39–6653; and AD 94–12–09, Amendment 39–8937; are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(r) You must use Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use Boeing Service Bulletin 747–53–2307, Revision 3, dated April 16, 2009, to perform those actions, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25019 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0610; Directorate Identifier 2009–SW–47–AD; Amendment 39–16455; AD 2010–20–20]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2, AS–365N3, SA–366G1, EC 155B, EC155B1, SA–365C, SA–365C1, SA–365C2, SA–360C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) helicopters. That AD requires repetitively inspecting the main gearbox (MGB) planet gear carrier for a crack and replacing any MGB that has a cracked planet gear carrier before further flight. This action requires the same inspections required by the existing AD, but shortens the initial inspection interval. This AD is prompted by the discovery of another crack in a MGB planet gear carrier and additional analysis that indicates that the initial inspection interval must be shortened. The actions specified by this AD are intended to detect a crack in the web of the planet gear carrier, which could lead to a MGB seizure and subsequent loss of control of the helicopter.

DATES: Effective November 12, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 2010.

ADDRESSES: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., ASW–111, Fort Worth, Texas 76137; *telephone:* (817) 222–5130; *fax:* 817–222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 2005–03–09, Amendment 39–13965 (70 FR 7382, February 14, 2005), for the specified Eurocopter France (Eurocopter) model helicopters was published in the **Federal Register** on June 28, 2010 (75 FR 36581). The action proposed to require shortening the initial inspection required by AD 2005–03–09 from 265 hours time-in-service (TIS) to 35 hours TIS and retaining the 50-hour TIS recurring inspections. That proposal was prompted by the finding of an additional crack in the MGB planet gear carrier of a Eurocopter Model EC 155 helicopter. That crack was caused by a progressive fatigue failure caused by scoring in the blend radius between the pin and the web. An additional analysis indicates that the initial inspection must be shortened. Therefore, this AD shortens the initial inspection from 265 hours time-in-service (TIS) to 35 hours TIS. The recurring 50 hour-TIS inspections would remain the same.

The European Aviation Safety Agency (EASA), which is the Technical Agent for France, has issued EASA Emergency Airworthiness Directive No. 2007–0288–E, dated November 15, 2007. EASA states that cracks were discovered in the web of the MGB planet gear carrier. "The two affected MGB units had been removed for overhaul/repair, subsequent to the detection of metal chips at the magnetic plugs." Investigation of the first case showed a failure of the head of a screw that secures the sun gear bearing. The screw head was caught by the planet gear/fixed ring gear/sun gear drive train. The second case was discovered by the manufacturer and did not seem to be associated with any other failure. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

Eurocopter France has issued the following Emergency Alert Service Bulletins:

- No. 05A007, Revision 2, for the Model EC155 helicopters;
- No. 05.00.48, Revision 3, for the Model AS365 helicopters;

• No. 05.26, Revision 2, for the Model SA360 and SA365 helicopters; and

• No. 05.33, Revision 2, for the SA366 helicopters.

Each Emergency Alert Service Bulletin (EASB) at the stated revision level is dated November 16, 2009 and describes the discovery of a progressive fatigue failure of the planet gear carrier. The EASBs specify inspecting the MGB planet gear carrier for a crack and removing the MGB and contacting the manufacturer before the next flight if a crack is found.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the MCAI AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs. This AD requires inspecting the MGB planet gear carrier for a crack and replacing the MGB before further flight if a crack is found. The actions must be accomplished by following the specified portions of the EASBs described previously.

Differences Between This Proposed AD and the MCAI AD

The MCAI AD references the service information rather than stating compliance times as we have done in this AD. Unlike the MCAI AD, we have structured our compliance times based on a 250-hour TIS threshold. Also, this AD does not require you to report cracks in the planet gear carrier to the manufacturer.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Costs of Compliance

We estimate that this AD will affect 145 helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per helicopter for each borescope inspection and 12 work-hours for each visual inspection. Replacing the MGB, if necessary, will take about 16 work-hours. The average labor rate is $85 per work-hour. Required parts will cost about $66,780 per MGB. Based on these figures, we estimate the cost of this AD on U.S. operators is $3,486,760, assuming that a borescope inspection is done on the entire fleet 12 times a year, that no visual inspections are done, and that 49 MGBs are replaced.

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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13965 (70 FR 7382, February 14, 2005), and by adding a new airworthiness directive (AD), Amendment 39–16455, to read as follows:

2010–20–20 Eurocopter France: Amendment 39–16455; Docket No. FAA–2010–0610; Directorate Identifier 2009–SW–47–AD. Supersedes AD 2005–03–09; Amendment 39–13965; Docket No. FAA–2005–20294; Directorate Identifier 2004–SW–39–AD.

Applicability: Model EC 155B, EC155B1, SA–360C, SA–365C, SA–365C1, SA–365C2, SA–365N, SA–365N1, AS–365N2, AS 365 N3, and SA–366G1 helicopters, certificated in any category.

Compliance: Required as indicated.

For a main gearbox (MGB) that has:	Inspect:
(1) Less than 250 hours time-in-service (TIS) since new or last overhaul.	On or before the MGB reaches 35 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 50 hours TIS.
(2) 250 or more hours TIS since new or last overhaul.	Within 15 hours TIS, unless accomplished previously, and thereafter at intervals not to exceed 50 hours TIS.

To detect a crack in the web of the planet gear carrier, which could lead to a MGB seizure and subsequent loss of control of the helicopter, accomplish the following:

(a) Either borescope inspect the web of the MGB planet gear carrier for a crack in accordance with the Operational Procedure, paragraphs 2.B.2. through 2.B.2.a.1, of Eurocopter Emergency Alert Service Bulletin (EASB) No. 05A007, Revision 2; No. 05.00.48, Revision 3; No. 05.26, Revision 2; or No. 05.33, Revision 2; as applicable to

your model helicopter, or visually inspect the MGB planet gear carrier in accordance with the Operational Procedure, paragraphs 2.B.3. through paragraph 2.B.3.a.1, of the EASB applicable to your model helicopter. Each EASB at the stated revision level is dated November 16, 2009.

(b) If a crack is found in the planet gear carrier, replace the MGB with an airworthy MGB before further flight.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, *Attn:* Gary Roach, Aviation Safety Engineer, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

(e) The inspections shall be done in accordance with the specified portions of Eurocopter Emergency Alert Service Bulletin No. 05A007, Revision 2, No. 05.00.48, Revision 3, No. 05.26, Revision 2, or No. 05.33, Revision 2. Each service bulletin at the stated revision level is dated November 16, 2009. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(f) This amendment becomes effective on November 12, 2010.

Note: The subject of this AD is addressed in European Aviation Safety Agency AD No. 2007–0288–E, dated November 15, 2007.

Issued in Fort Worth, Texas, on September 22, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–24725 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0474; Directorate Identifier 2009–NM–056–AD; Amendment 39–16465; AD 2010–21–05]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model 4101 Airplanes

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

ACTION: Final rule.

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

During ground manoeuvring, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [e.g., cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade.

* * * EASA [European Aviation Safety Agency] AD 2007–0268 [which corresponds to FAA AD 2008–13–02, amendment 39–15565] was issued to require the installation of a Propeller Warning Placard and implementation of a corresponding Aircraft Flight Manual (AFM) limitation instructing the flight crew to taxi with the condition lever at FLIGHT in order to minimise the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System * * *.

* * * * *

A released propeller blade could result in engine failure and loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of July 24, 2008 (73 FR 34847, June 19, 2008).

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 10, 2010 (75 FR 25785), and proposed to supersede AD 2008–13–02, amendment 39–15565 (73 FR 34847), June 19, 2008. That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2008–13–02, inadvertent high RPMs taxiing operations have been reported to have caused stress to the propeller blades, which can result in dangerous blade cracks. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0038, dated February 18, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During ground manoeuvring, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [e.g., cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade.

To correct this unsafe condition, EASA AD 2007–0268 [which corresponds to FAA AD 2008–13–02, amendment 39–15565] was issued to require the installation of a Propeller Warning Placard and implementation of a corresponding Aircraft Flight Manual (AFM) limitation, instructing the flight crew to taxi with the condition lever at FLIGHT in order to minimise the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System, the embodiment of which will allow taxiing with the condition lever at TAXI, through the introduction of a revised Flight Manual Limitation.

For the reasons described above, this EASA AD retains the requirements of EASA AD 2007–0268, which is superseded, and requires the installation of a Propeller Speed Warning System.

A released propeller blade could result in engine failure and loss of control of the airplane. You may obtain

further information by examining the MCAI in the AD docket.

Comments

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

Clarification of Paragraph (h)(2) of This AD

The revision to the BAE Jetstream Series 4100 Flight Manual (FM) includes information on introducing a propeller speed warning system on airplanes that have Modification JM41674. We have also removed the reference to the alternative methods of compliance (AMOC) paragraph and have specified the appropriate source of approval procedures to accomplish the requirements of paragraph (h)(2) of this AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 3 products of U.S. registry.

The actions that are required by AD 2008–13–02 and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $25 per product. Based on these figures, the estimated cost of the currently required actions is $195 per product.

We estimate that it will take about 20 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,800 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $14,085, or $4,695 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15565 (73 FR 34847, June 19, 2008) and adding the following new AD:

2010–21–05 BAE Systems (Operations) Limited: Amendment 39–16465. Docket No. FAA–2010–0474; Directorate Identifier 2009–NM–056–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 12, 2010.

Affected ADs

(b) This AD supersedes AD 2008–13–02, amendment 39–15565.

Applicability

(c) This AD applies to all BAE SYSTEMS (Operations) Limited Model 4101 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 61: Propellers/Propulsors.

Reason

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

During ground manoeuvring, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [*e.g.,* cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade.

To correct this unsafe condition, EASA [European Aviation Safety Agency] AD 2007–0268 [which corresponds to FAA AD 2008–13–02, amendment 39–15565] was issued to require the installation of a Propeller Warning Placard and implementation of a corresponding Aircraft Flight Manual (AFM) limitation, instructing the flight crew to taxi

with the condition lever at FLIGHT in order to minimise the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System, embodiment of which will allow taxiing with the condition lever at TAXI, through the introduction of a revised Flight Manual Limitation.

For the reasons described above, this EASA AD retains the requirements of EASA AD 2007–0268, which is superseded, and requires the installation of a Propeller Speed Warning System.

A released propeller blade could result in engine failure and loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD–2008–13–02

Actions

(g) Within 90 days after July 24, 2008 (the effective date of AD 2008–13–02), unless already done, do the following actions.

(1) Replace the existing Propeller Limitations Placard in the cockpit with a new placard, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–11–027, dated March 29, 2007.

(2) Revise the BAE Jetstream Series 4100 Flight Manual (FM) to include the information in BAE Jetstream Series 4100 General Amendment G12, approved January 2007; and BAE Jetstream Series 4100 Advance Amendment Bulletin 13, approved April 4, 2007. General Amendment G12 describes a rolling take-off technique and the reduced possibility of landing with ice contaminating the wings, and adds a Gross Height/Pressure Altitude Conversion Chart. Advance Amendment Bulletin 13 introduces procedures for placing the propeller condition levers in the Flight position during all ground maneuvering. Operate the airplane according to the procedures in General Amendment G12 and Advance Amendment Bulletin 13.

Note 1: This may be done by inserting copies of General Amendment G12 and Advance Amendment Bulletin 13 into the FM. When General Amendment G12 and Advance Amendment Bulletin 13 have been included in general revisions of the FM, the general revisions may be inserted in the FM, provided the relevant information in the general revision is identical to that in General Amendment G12 and Advance Amendment Bulletin 13.

New Requirements of This AD

Actions

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

(1) Within 6 months after the effective date of this AD, install a Propeller Speed Warning System (Modification JM41674), in accordance with Section 2 of BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Issue 7, dated August 17, 2009. Before further flight after modification, do the actions required in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Remove the placard that was installed as required by paragraph (g)(1) of this AD.

(ii) Remove BAE Jetstream Series 4100 Advance Amendment Bulletin 13, approved April 4, 2007, from the FM.

(2) Within 6 months after the effective date of this AD, revise the BAE Jetstream Series 4100 FM to include information on introducing a propeller speed warning system, on airplanes that have Modification JM41674, using a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

Note 2: Guidance on revising the BAE Jetstream Series 4100 FM, as required by paragraph (h)(2) of this AD, can be found in BAE Jetstream Series 4100 Particular Amendment 111, approved December 2008.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0038, dated February 18, 2009; and the service information identified in Table 1 of this AD; for related information.

TABLE 1—SERVICE INFORMATION

Service information	Date
BAE Jetstream Series 4100 Advance Amendment Bulletin 13 to the Jetstream Series 4100 Flight Manual	April 4, 2007.
BAE Jetstream Series 4100 General Amendment G12 to the Jetstream Series 4100 Flight Manual	January 2007.
BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7	August 17, 2009.
BAE Systems (Operations) Limited Service Bulletin J41–11–027	March 29, 2007.

Material Incorporated by Reference

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

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Service information	Date
BAE Jetstream Series 4100 Advance Amendment Bulletin 13 to the Jetstream Series 4100 Flight Manual	April 4, 2007.
BAE Jetstream Series 4100 General Amendment G12 to the Jetstream Series 4100 Flight Manual	January 2007.
BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7	August 17, 2009.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

Service information	Date
BAE Systems (Operations) Limited Service Bulletin J41–11–027	March 29, 2007.

BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Issue number	Date shown on page(s)
Section 2, Installer Instructions	15–50	7	August 17, 2009.

(Section 1 of this document (pages 1–14) is not included.)

(1) The Director of the Federal Register approved the incorporation by reference of BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7, dated August 17, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 3 of this AD on July 24, 2008 (73 FR 34847, June 19, 2008).

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service information	Date
BAE Jetstream Series 4100 Advance Amendment Bulletin 13 to the Jetstream Series 4100 Flight Manual	April 4, 2007.
BAE Jetstream Series 4100 General Amendment G12 to the Jetstream Series 4100 Flight Manual	January 2007.
BAE Systems (Operations) Limited Service Bulletin J41–11–027	March 29, 2007.

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25018 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0950; Directorate Identifier 2009–NM–194–AD; Amendment 39–16460; AD 2009–19–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, and 747SR Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2009–19–06 that was sent previously by individual notices to the known U.S. owners and operators of affected airplanes identified above. This AD requires installing certain equipment on the flight deck door. This AD was prompted by reports that the current design of the flight deck door is defective. We are issuing this AD to prevent failure of this equipment, which could jeopardize flight safety.

DATES: This AD becomes effective October 12, 2010 to all persons except those persons to whom it was made immediately effective by AD 2009–19–06, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 12, 2010.

We must receive comments on this AD by November 22, 2010.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail

me.boecom@boeing.com; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On September 9, 2009, we issued AD 2009–19–06, which applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, and 747SR series airplanes.

Background

We have received a report indicating that the current design of the flight deck door is defective. This condition, if not corrected, could jeopardize flight safety.

Relevant Service Information

We reviewed Boeing Service Bulletin 747–52–2293, dated September 4, 2009. The service bulletin describes procedures for installing certain equipment associated with the flight deck door.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued AD 2009–19–06 to prevent failure of the flight deck door, which could jeopardize flight safety. The AD requires accomplishing the actions specified in the service information previously described.

We have determined that notice and opportunity for prior public comment on AD 2009–19–06 were contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on September 9, 2009, to the known U.S. owners and operators of certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, and 747SR series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0950; Directorate Identifier 2009–NM–194–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2009–19–06 The Boeing Company: Amendment 39–16460. Docket No. FAA–2010–0950; Directorate Identifier 2009–NM–194–AD.

Effective Date

(a) This AD becomes effective October 12, 2010, to all persons except those persons to whom it was made immediately effective by AD 2009–19–06, issued on September 9, 2009, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, and 747SR series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–52–2293, dated September 4, 2009.

Subject

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

Unsafe Condition

(e) This AD was prompted by reports that the current design of the flight deck door is

defective. We are issuing this AD to prevent failure of this equipment, which could jeopardize flight safety.

Compliance

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

Door Equipment Installation

(g) Within 30 days after the effective date of this AD, install certain equipment associated with the flight deck door, in accordance with Boeing Service Bulletin 747–52–2293, dated September 4, 2009.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6433; fax (425) 917–6590. Or e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically refer to this AD.

Incorporation by Reference

(i) You must use Boeing Service Bulletin 747–52–2293, dated September 4, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25194 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0643; Directorate Identifier 2010–NM–030–AD; Amendment 39–16462; AD 2010–21–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8 Airplanes

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

ACTION: Final rule.

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

The landing gear alternate extension system in the cockpit is accessible through an access panel located on the cockpit floor. There have been reports of failure of the access panel latch assembly as a consequence of repeated closure of the access panel involving the use of excessive force. Failure of the latch assembly can result in the access panel being jammed in the closed position, and require mechanical prying to open.

An undetected or uncorrected latch failure condition in the access panel can prevent immediate access to the landing gear alternate extension system by the flight crew during an emergency. * * *

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

DATES: This AD becomes effective November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 12, 2010.

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 1, 2010 (75 FR 38064). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The landing gear alternate extension system in the cockpit is accessible through an access panel located on the cockpit floor. There have been reports of failure of the access panel latch assembly as a consequence of repeated closure of the access panel involving the use of excessive force. Failure of the latch assembly can result in the access panel being jammed in the closed position, and require mechanical prying to open.

An undetected or uncorrected latch failure condition in the access panel can prevent immediate access to the landing gear alternate extension system by the flight crew during an emergency. This Directive requires the replacement of the existing latch assembly with a stronger modified latch assembly.

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

Relevant Service Information

Bombardier, Inc. issued Service Bulletin 8–32–166, Revision B, dated March 2, 2010. We cited Bombardier Service Bulletin 8–32–166, Revision A, dated January 29, 2009, in the NPRM. Bombardier Service Bulletin 8–32–166, Revision B, dated March 2, 2010, updates the References section and adds a Note to the Accomplishment Instructions section. We have changed paragraph (g) of this AD to specify Revision B of that service bulletin, and added Bombardier Service Bulletin 8–32–166, Revision A, dated January 29, 2009, to paragraph (h) of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received. Air Line Pilots Association, International, supports the NPRM. Hawaii Island Air, Piedmont Airlines, and Mesa Airlines request that we revise the NPRM to refer to Bombardier Service Bulletin 8–32–166, Revision B, dated March 2, 2010, as described previously.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 198 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $815 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $211,860, or $1,070 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator.

"Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–02 Bombardier, Inc.: Amendment 39–16462. Docket No. FAA–2010–0643; Directorate Identifier 2010–NM–030–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 12, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 658 inclusive.

(2) Bombardier, Inc. Model DHC–8–400, –401, –402 airplanes, serial numbers 4001, 4003, 4004, 4006, and 4008 through 4187 inclusive.

Subject

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

Reason

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

The landing gear alternate extension system in the cockpit is accessible through an access panel located on the cockpit floor. There have been reports of failure of the access panel latch assembly as a consequence of repeated closure of the access panel involving the use of excessive force. Failure of the latch assembly can result in the access panel being jammed in the closed position, and require mechanical prying to open.

An undetected or uncorrected latch failure condition in the access panel can prevent immediate access to the landing gear alternate extension system by the flight crew during an emergency. * * *

Compliance

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

Actions

(g) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever comes first: Replace the latch assembly of the access panel for the alternate extension system for the landing gear with a modified latch assembly, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–32–166, Revision B, dated March 2, 2010 (for Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes); or Bombardier Service Bulletin 84–32–57, Revision A, dated June 15, 2009 (for Model DHC–8–400 series airplanes).

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with the service information identified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1—PREVIOUS SERVICE INFORMATION

Bombardier Service Bulletin—	Revision—	Dated—
8–32–166	Original	April 14, 2008.
8–32–166	A	January 29, 2009.
84–32–57	Original	April 30, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2009–46, dated December 14, 2009; Bombardier Service Bulletin 8–32–166, Revision B, dated March 2, 2010; and Bombardier Service Bulletin 84–32–57, Revision A, dated June 15, 2009; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Service Bulletin 84–32–57, Revision A, dated June 15, 2009; or Bombardier Service Bulletin 8–32–166, Revision B, dated March 2, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25016 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0639; Directorate Identifier 2009–NM–232–AD; Amendment 39–16463; AD 2010–21–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all of the McDonnell Douglas Corporation airplanes identified above. The existing AD currently requires revising the maintenance program to incorporate new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This new AD adds requirements to revise the maintenance program to incorporate specific Critical Design Configuration Control Limitations (CDCCL) information and install fuel tank float switch in-line fuses. This new AD also adds two Airworthiness Limitations inspections (ALIs). This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective November 12, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 12, 2010.

On May 27, 2008 (73 FR 21523, April 22, 2008), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

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

Examining the AD Docket

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

1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2008–09–04, Amendment 39–15484 (73 FR 21523, April 22, 2008). The existing AD applies to all Model DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–50 series airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–60 series airplanes; Model DC–8–60F series airplanes; Model DC–8–70 series airplanes; and Model DC–8–70F series airplanes. That NPRM was published in the **Federal Register** on June 25, 2010 (75 FR 36298). That NPRM proposed to continue to require revising the maintenance program. That NPRM also proposed to add requirements to revise the maintenance program to incorporate specific Critical Design Configuration Control Limitations (CDCCL) information and install fuel tank float switch in-line fuses. That NPRM also proposed to add two Airworthiness Limitations inspections (ALIs).

Relevant Service Information

We reviewed Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision D, dated June 9, 2010. This service information does not add any additional work. We have revised paragraphs (j), (m), and (n) of this AD to refer to this report.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Change to Paragraph Reference

We revised paragraph (l) of this AD to correct a typographical error that appeared in the NPRM. In paragraph (l) of the NPRM, we inadvertently referred to "paragraph (k)" instead of "paragraph (j)" of the AD. Paragraph (l) of this final rule correctly references paragraph (j) of this AD.

Explanation of Additional Change to NPRM

We also clarified the airplanes affected by paragraph (k) of this AD by referring to the airplanes identified in Boeing Service Bulletin DC8–28–090, dated October 9, 2009. Airplanes not listed in the effectivity of Boeing Service Bulletin DC8–28–090, dated October 9, 2009, are not required to do the installation required by paragraph (k) of this AD.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes mentioned previously.

Costs of Compliance

There are about 125 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Revising the Maintenance Program (required by AD 2008–09–04).	1	$85	$0	$85	125	$10,625.
Revising the Airworthiness Limitation Section (new action).	1	85	0	$85	125	$10,625.
Installing fuses (new action)	Up to 35 hours	85	0	Up to $2,975	125	Up to $371,875.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–15484 (73 FR 21523, April 22, 2008) and by adding the following new airworthiness directive (AD):

2010–21–03 McDonnell Douglas Corporation: Amendment 39–16463. Docket No. FAA–2010–0639; Directorate Identifier 2009–NM–232–AD.

Effective Date

(a) This AD becomes effective November 12, 2010.

Affected ADs

(b) This AD supersedes AD 2008–09–04, Amendment 39–15484.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; and Model DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category.

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

Subject

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

Unsafe Condition

(e) This AD results from a design review of the fuel tank systems. The Federal Aviation Administration is issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–09–04, With Revised Compliance Method

Revise the Maintenance Program

(g) Before December 16, 2008, revise the maintenance program to incorporate the information specified in Appendixes B, C, and D of the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006.

No Reporting Requirement

(h) Although the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006, specifies to submit certain information to the manufacturer, this AD does not require that action.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(i) Except as provided by paragraph (m) of this AD, after accomplishing the applicable actions specified in paragraph (g) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (o) of this AD.

New Requirements of This AD

Revise the Maintenance Program

(j) Within 30 days after the effective date of this AD, revise the maintenance program to incorporate the information required by paragraphs (j)(1), (j)(2), and (j)(3) of this AD.

(1) CDCCL 20–10, "DC–8 Float Switch Circuit" in Appendix B of Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision C, dated January 5, 2010; or Revision D, dated June 9, 2010.

(2) ALI 30–1 "DC–8 Pneumatic System Decay Check" in Appendix C of Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision C, dated January 5, 2010; or Revision D, dated June 9, 2010.

(3) ALI 28–1, "DC–8 Alternate and Center Auxiliary Tank Fuel Pump Control Systems Check," in Appendix C of Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision C, dated January 5, 2010; or Revision D, dated June 9, 2010.

Install the In-Line Fuses

(k) For airplanes identified in Boeing Service Bulletin DC8–28–090, dated October 9, 2009: Within 60 months after the effective date of this AD, install the fuel tank float switch in-line fuses in the leading edges of the front spars of the left and right wings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC8–28–090, dated October 9, 2009.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(l) After accomplishing the actions specified in paragraph (j) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (o) of this AD.

(m) Revising the maintenance program to incorporate the information specified in Appendixes B, C, and D of the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision B, dated July 23, 2009; Revision C, dated January 5, 2010; or Revision D, dated June 9, 2010; is acceptable for compliance with the actions specified in paragraph (g) of this AD.

No Reporting Requirement

(n) Although the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision B, dated July 23, 2009; Revision C, dated January 5, 2010; and Revision D, dated June 9, 2010; specify to submit certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(p) You must use the applicable service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	A	August 8, 2006.
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	B	July 23, 2009.
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	C	January 5, 2010.
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	D	June 9, 2010.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE—Continued

Document	Revision	Date
Boeing Service Bulletin DC8–28–090	Original	October 9, 2009.

Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision B, dated July 23, 2009, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on Page(s)
Report Title Page	None shown	B	July 23, 2009.
Index of Page Changes	ii, iii	B	None shown.*
Table of Contents	iv, v	B	None shown.*
Discussion	1	New	None shown.*
Appendix A	A1–A4	New	None shown.*
Appendix B	B1, B3, B4, B6–B12	New	None shown.*
	B2, B5, B13–B24	B	None shown.*
Appendix C	C1–C5	New	None shown.*
	C6–C10	B	None shown.*
Appendix D	D1	New	None shown.*

Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision C, dated January 5, 2010, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on page(s)
Report Title Page	None shown	C	January 5, 2010.
Index of Page Changes	ii, iii	C	None shown.*
Table of Contents	iv, v	C	None shown.*
Discussion	1	C	None shown.*
Appendix A	A1–A3	New	None shown.*
	A4–A25	C	None shown.*
Appendix B	B1, B3, B4, B6–B12	New	None shown.*
	B2, B5, B13–B24	B	None shown.*
Appendix C	C1–C5	New	None shown.*
	C6–C10	B	None shown.*
	C11–C14	C	None shown.*
Appendix D	D1	New	None shown.*

Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision D, dated June 9, 2010, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on page(s)
Report Title Page	None shown	D	June 9, 2010.
Attachment A	None shown	None shown	June 22, 2010.
Index of Page Changes	ii	B	None shown.*
	iii	C	None shown.*
Table of Contents	iv, v	C	None shown.*
Discussion	1	C	None shown.*
Appendix A	A1–A3	New	None shown.*
	A4–A25	C	None shown.*
Appendix B	B1, B3, B6, B7, B9, B12	New	None shown.*
	B2, B13–B24	B	None shown.*
	B4, B5, B8, B10, B11	D	None shown.*
Appendix C	C1–C5	New	None shown.*
	C6–C10	B	None shown.*
	C11–C14	C	None shown.*
Appendix D	D1	New	None shown.*

(* The revision date of these documents is shown only on the title page of these documents.)

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

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	B	July 23, 2009.
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	C	January 5, 2010.
Boeing DC–8 Special Compliance Item Report, MDC–02K9030	D	June 9, 2010.
Boeing Service Bulletin DC8–28–090	Original	October 9, 2009.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006, on May 27, 2008 (73 FR 21523, April 22, 2008).

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

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

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

Issued in Renton, Washington, on September 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25021 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0808; Airspace Docket No. 10–AWP–14]

RIN 2120–AA66

Amendment of Class E Airspace; Kwajalein Island, Marshall Islands, RMI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action removes the reference to the Kwajalein Tactacial Air Navigation (TACAN) System from the legal description of the Class E airspace areas for Kwajalein Island, Bucholz AAF, Marshall Islands, RMI. The U.S. Army notified the FAA that the Kwajalein TACAN was decommissioned. This action corrects the legal descriptions for the Class E airspace areas in the vicinity of the Marshall Islands.

DATES: Effective date 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by removing the reference to the Kwajalein TACAN, as it has been decommissioned, from the legal description of Class E airspace designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth at Kwajalein Island, Bucholz AAF, Marshall Islands, RMI. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations are published in paragraphs 6004 and 6005 of FAA Order 7400.9U signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Kwajalein Island, Marshall Island, RMI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a., FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9U Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP RM E4 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RMI
(Lat. 08°43′00″ N., long. 167°44′00″ E.)
Kwajalein RBN
(Lat. 08°43′15″ N., long. 167°43′39″ E.)

That airspace extending upward from the surface within 2.2 miles each side of the Bucholz AAF 249° bearing, extending from the 4.3-mile radius of Bucholz AAF to 5.2 miles west of the Bucholz AAF, and within 3 miles each side of the 077° bearing from the Kwajalein RBN, extending from the 4.3-mile radius to 9.6 miles east of the RBN. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Pacific Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP RM E5 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RM
(Lat. 08°43′00″ N., long. 167°44′00″ E.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Bucholz AAF. That airspace extending upward from 1,200 feet above the surface within a 100-mile radius of Bucholz AAF.

Issued in Washington, DC, September 29, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–25220 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC25

Privacy Act; Implementation

AGENCY: Office of Foreign Assets Control, Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury is amending its regulations due to the consolidation of the existing Office of Foreign Assets Control (OFAC)-related systems of records by revising the number and title of the Privacy Act system of records for which an exemption has been claimed.

DATES: *Effective Date:* November 8, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Disclosure Services, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, *tel.:* 202–622–2510 (not a toll free number), or Chief Counsel (Foreign Assets Control), Office of General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, *tel.:* 202–622–2410 (not a toll free number).

SUPPLEMENTARY INFORMATION: Currently, one OFAC-related Privacy Act systems of records, DO .114—Foreign Assets Control Enforcement Records, is exempt from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system contains investigatory material compiled for law enforcement purposes. The purpose of the final rule is to revise the number and title of the system of records for which an exemption has been claimed pursuant to 5 U.S.C. 552a(k)(2) as found in paragraph (g)(1)(i) of § 1.36 to read DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions to reflect the proposed revision and consolidation of systems of records, as further discussed below. No new exemptions are being proposed by this document and the revision does not affect the scope of the records for which the exemption pursuant to 5 U.S.C. 552a(k)(2) is claimed.

The action amends § 1.36 by revising the title of the system of records listed in Paragraph (g)(1)(i) from "DO .114—Foreign Assets Control Enforcement Records" to "DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions."

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public and do not result in any change to the scope of the records for which the exemption from provisions of the Privacy Act is claimed pursuant to 5 U.S.C. 552a(k)(2). These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

A proposed notice to consolidate three OFAC-related systems of records under the Privacy Act will be published separately in a future issue of the **Federal Register**. The proposed notice to alter the three systems of records will consolidate the records into the following system of records: Treasury/DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions. This realignment will permit more precise expression of the data elements and will permit the published notices to serve more effectively as guides for the public in understanding how these individually identifiable records are collected, maintained, disclosed, and used.

Pursuant to Executive Order 12866, it has been determined that this final rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

List of Subjects in 31 CFR Part 1

Privacy.

■ Part 1, subpart C of title 31 of the Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a, as amended.

■ 2. In § 1.36, paragraph (g)(1)(i) is amended in the table by removing the entry "DO .114—Foreign Assets Control Enforcement Records" and adding in its place "DO .120—Records Related to Office of Foreign Assets Control Economic Sanctions" to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	System name
* * * * * * *	
DO .120	Records Related to Office of Foreign Assets Control Economic Sanctions.
* * * * * * *	

* * * * *

Dated: July 16, 2010.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2010–25134 Filed 10–6–10; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN68

Compensation for Certain Disabilities Due to Undiagnosed Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; technical amendments.

SUMMARY: This document amends a Department of Veterans Affairs (VA) ratings and evaluations regulation to remove a provision reserving to the Secretary the authority for certain determinations and to make a non-substantive clarifying change.

DATES: *Effective Date:* October 7, 2010.

Applicability Date: The amendments to 38 CFR 3.317 apply to claims pending before VA on the effective date of this rule, as well as to claims filed with or remanded to VA after that date.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA has determined that technical revisions to 38 CFR 3.317 are needed to remove a potential source of confusion and to more efficiently implement the intent of Congress as expressed in 38 U.S.C. 1117.

38 U.S.C. 1117 provides for the payment of disability compensation to Persian Gulf War veterans with a qualifying chronic disability that became manifest during service in Southwest Asia during the Persian Gulf War, or became manifest to a degree of ten percent or more during the presumptive period established by the Secretary. Section 1117(a)(2) defines a "qualifying chronic disability" as a chronic disability resulting from any of the following (or any combination of the following): "(A) An undiagnosed illness, (B) A medically unexplained chronic multisymptom illness (such as chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome) that is defined by a cluster of signs or symptoms, [or] (C) Any diagnosed illness that the Secretary determines * * * warrants a presumption of service connection."

It is evident from Congress' use of the phrase "such as" in section 1117(a)(2)(B) that Congress intended "chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome" to be examples of medically unexplained chronic multisymptom illnesses, rather than an exclusive list.

VA has implemented this statute in a regulation at 38 CFR 3.317(a)(2), which provides a substantially similar definition of the term "qualifying chronic disability," but also specifies the process for determining whether conditions other than chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome will be found to be "medically unexplained chronic multisymptom illnesses." The regulation states, in 38 CFR 3.317(a)(2)(i)(B), that a qualifying chronic disability will include those three specified illnesses and "[a]ny other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness." Paragraph (a)(2)(ii) of § 3.317 provides a detailed explanation regarding the types of illnesses that can be considered to be medically unexplained chronic multisymptom illnesses. The practical effect of the procedures established in the current regulation is to reserve to the Secretary the authority to determine whether illnesses other than chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome will be found to be "medically unexplained chronic multisymptom illnesses" for purposes of applying 38 U.S.C. 1117. Accordingly, currently VA adjudicators or other officials cannot make that determination in individual cases without a specific determination by the Secretary.

VA is revising this procedure for two reasons. First, we believe it is unnecessary to reserve this authority to the Secretary, because the regulation sets forth clear and detailed standards to guide the determination as to what constitutes a medically unexplained chronic multisymptom illness. We believe the regulatory language provides sufficient guidance to enable medical professionals to render medical opinions on this issue and to enable VA adjudicators to decide this issue when it arises in individual cases. Second, we believe the current procedures may create confusion or may dissuade claimants from filing claims based on medically unexplained illnesses other than those currently listed in the regulation.

To make it clear that chronic fatigue syndrome, fibromyalgia, and irritable bowel syndrome are only examples of medically unexplained chronic multipsymptom illnesses, we are revising the language of § 3.317(a)(2)(i)(B). Specifically, we are revising § 3.317(a)(2)(i)(B) by: Removing "The following" at the beginning of the sentence and replacing it with "A"; changing the plural word "illnesses" to the singular "illness" and the verb "are" to "is"; and adding "such as" at the end of the sentence. The revised section will read: "(B) A medically unexplained chronic multisymptom illness that is defined by a cluster of signs or symptoms, such as: (1) Chronic fatigue syndrome; (2) Fibromyalgia; (3) Irritable bowel syndrome." This change eliminates language that could imply that the list is exhaustive.

In addition, we are removing § 3.317(a)(2)(i)(B)(4) in order to omit the current regulatory language reserving to the Secretary the authority to determine

whether additional illnesses are "medically unexplained chronic multisymptom illnesses." This change will have the effect of delegating to VA adjudicators the authority to determine on a case-by-case basis whether additional diseases meet the criteria of paragraph (a)(2)(ii) in the same manner as they make other determinations necessary in deciding claims. Under 38 CFR 3.100(a), VA adjudicators generally have delegated authority to make all findings and determinations necessary to a decision on a claim. This rulemaking will result in determinations of medically unexplained chronic multi-symptom illness being made in accordance with that general delegation of authority.

If a veteran has an illness other than chronic fatigue syndrome, fibromyalgia, or irritable bowel syndrome, it is solely a medical determination whether that illness qualifies under revised § 3.317(a)(2)(i)(B) as a "medically unexplained chronic multisymptom illness." In adjudicating claims under § 3.317(a)(2)(i)(B), VA will continue to apply the term "medically unexplained chronic multisymptom illness" as currently defined in § 3.317(a)(2)(ii): "A diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities." This existing definition is based on the Congressional Joint Explanatory Statement that accompanied the introduction of medically unexplained chronic multisymptom illnesses into 38 U.S.C. 1117. *See* Explanatory Statement on House Amendment to Senate Amendments to H.R. 1291 [enacted as the Veterans Education and Benefits Expansion Act of 2001], 147 Cong. Rec. S13,235, S13,238 (Dec. 13, 2001)(Joint Explanatory Statement).

Finally, § 3.317(a)(2)(ii) exempts "[c]hronic multisymptom illnesses of partially understood etiology and pathophysiology" from being considered medically unexplained chronic multisymptom illnesses. To further clarify this exclusion, we have added the specific examples "diabetes" and "multiple sclerosis." This clarification does not alter any existing rights under the current regulation, but merely provides examples to better illustrate the current regulation. The two listed examples, diabetes and multiple sclerosis, were cited by Congress in the legislative history of the authorizing legislation as examples of conditions that would not be within the scope of the statutory term "medically unexplained chronic multipsymptom illnesses." See Joint Explanatory Statement, 147 Cong. Rec. at S13,238. When VA issued the rule currently in § 3.317(a)(2)(ii), we similarly explained that diabetes and multiple sclerosis were examples of conditions that would not meet the statutory and regulatory definition of "medically unexplained chronic multipsymptom illnesses." 68 FR 34539, 34540 (June 10, 2003). We believe that including this information in the text of the regulation will be helpful to readers.

Administrative Procedure Act

Because this amendment merely reflects a matter of agency procedure and makes other non-substantive changes, this rulemaking is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect only individual VA beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action 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 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 the Executive Order.

The economic, interagency, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on August 19, 2010 for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 30, 2010.

William F. Russo,

Director, Regulations Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.317 by:

■ a. Revising the section heading.

■ b. Revising paragraph (a)(2)(i)(B).

■ c. In paragraph (a)(2)(ii), removing "and pathophysiology" and adding, in its place, "and pathophysiology, such as diabetes and multiple sclerosis,".

The revisions read as follows:

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a) * * *

(2) * * *

(i) * * *

(B) A medically unexplained chronic multisymptom illness that is defined by a cluster of signs or symptoms, such as:

(*1*) Chronic fatigue syndrome;

(*2*) Fibromyalgia;

(*3*) Irritable bowel syndrome.

* * * * *

[FR Doc. 2010–25100 Filed 10–6–10; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 75, No. 194
Thursday, October 7, 2010

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AL67

Programs for Specific Positions and Examinations (Miscellaneous)

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to eliminate the licensure requirements for incumbent administrative law judges who are covered under the Administrative Law Judge Program.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Angela Bailey, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6566, 1900 E Street, NW., Washington, DC 20415–9700; e-mail at *employ@opm.gov;* or fax at (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Watson by telephone at (202) 606–0830; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by e-mail at *linda.watson@opm.gov.*

SUPPLEMENTARY INFORMATION: On March 20, 2007, OPM published a final rule at 72 FR 12947, to revise the Administrative Law Judge Program. These revisions included a requirement for incumbent administrative law judges (ALJs) to "possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution." That regulation (currently at 5 CFR 930.204(b)(1)) goes on to state, "Judicial status is acceptable in lieu of 'active' status in States that prohibit sitting judges from maintaining 'active' status to practice law. Being in 'good standing' is also acceptable in lieu of 'active' status in States where the licensing authority considers 'good standing' as having a current license to practice law." *See 72 FR at 12955.*

At the time the final rule was published, OPM noted that under the Administrative Procedure Act, ALJs preside in formal proceedings requiring a decision on the record after an opportunity for a hearing, and consequently, ALJs must be held to a high standard of conduct so that the integrity and independence of the administrative judiciary is preserved. The requirement was intended to ensure that ALJs, like attorneys, remain subject to a code of professional responsibility. However, on July 18, 2008, OPM published an interim rule, at 73 FR 41235, suspending the professional license requirement as it applies to incumbent ALJs, to prevent any adverse impact on incumbents, because we had "reconsidered comments received during the notice and comment period * * * about the burdens imposed by the active licensure requirement, as it applies to incumbents, the potential differences between the ethical requirements that pertain to an advocate and those requirements that pertain to someone asked to adjudicate cases impartially, and the variations in what States require as to lawyers serving as ALJs."

OPM is considering whether the licensure requirement for incumbents should be eliminated from the final rule. In addition to the reasons stated above, OPM recognizes that once an applicant is appointed as an ALJ, he or she becomes subject both to supervision appropriate to the position and to the standards of ethical conduct for employees of the Executive Branch, codified by the Office of Government Ethics at part 2635 of this title. Moreover, an ALJ who exhibits conduct that rises to the level of "good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by the Board," 5 U.S.C. 7521, may be subject to an adverse action pursuant to statute. 5 CFR 930.211(c) enumerates other actions that may be taken in appropriate circumstances.

In conclusion, OPM believes that the standards of ethical conduct that apply to ALJs as Federal employees, and agencies' existing authority to supervise ALJs and take actions against them in appropriate circumstances, are sufficient to ensure that ALJs are held to a high standard of conduct. Accordingly, OPM is proposing to permanently eliminate the requirement in § 930.204(b), that an incumbent ALJ must maintain a particular sort of license or status with respect to the practice of law, as unnecessary. OPM is soliciting comments, once again, on this narrow issue.

However, OPM is proposing no amendment to part 930, as it concerns *applicants.* OPM remains convinced that active licensure at the time of application and appointment is vital as an indicator that the applicant presenting himself or herself for assessment and possible appointment has been subject to rigorous ethical requirements right up to the time of appointment.

OPM will consider comments on this proposed rule and comments on the interim rule published at 73 FR 41235 when issuing a final rule.

Executive Order 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies and employees.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Computer technology, Government employees, Motor vehicles.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to amend 5 CFR part 930 as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Administrative Law Judge Program

1. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a), 1302(a), 1305, 3105, 3301, 3304, 3323(b), 3344, 4301(2)(D), 5372, 7521, and E.O. 10577, 3 CFR, 1954–1958 Comp., p. 219.

2. Amend § 930.204 by revising paragraph (b) to read as follows:

§ 930.204 Appointments and conditions of employment.

* * * * *

(b) *Licensure.* At the time of application and any new appointment, the individual must possess a professional license to practice law and be authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution. Judicial status is acceptable in lieu of "active" status in States that prohibit sitting judges from maintaining "active" status to practice law. Being in "good standing" is also acceptable in lieu of "active" status in States where the licensing authority considers "good standing" as having a current license to practice law.

* * * * *

[FR Doc. 2010–25316 Filed 10–6–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0957; Directorate Identifier 2010–NM–062–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 767 airplanes. The existing AD currently requires, for certain airplanes, reworking the bonding jumper assemblies on the drain tube assemblies of the slat track housing of the wings. For certain other airplanes, the existing AD requires repetitive inspections of the drain tube assemblies of the slat track housing of the wings to find discrepancies, corrective actions if necessary, and terminating action for the repetitive inspections. This proposed AD would also require replacing the drain tube assemblies. For certain airplanes, this proposed AD would also require installing an additional electrostatic bond path for the number 5 and 8 inboard slat track drain tube assemblies. For certain other airplanes, this proposed AD would also require reworking the bonding jumper assembly. This proposed AD would also revise the applicability to include additional airplanes. This proposed AD results from reports of fuel leaks from certain drain locations of the slat track housing near the engine exhaust nozzles of the wings, which could result in a fire when the airplane is stationary, or taxiing at low speed; reports of a bonding jumper assembly of certain drain tubes that did not meet bonding specifications and could result in electrostatic discharge and an in-tank ignition source; and reports of fuel leaks onto the main landing gear (MLG) as a result of a cracked drain tube at the number 5 or 8 slat track housing, which could let fuel drain from the main fuel tanks into the dry bay area of the wings and onto hot MLG brakes and result in a fire.

DATES: We must receive comments on this proposed AD by November 22, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2384; fax 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0957; Directorate Identifier 2010–NM–062–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On July 12, 2001, we issued AD 2001–14–19, amendment 39–12330 (66 FR 38350, July 24, 2001), for certain Boeing Model 767 airplanes. That AD requires, for certain airplanes, reworking the bonding jumper assemblies on the drain tube assemblies of the slat track housing of the wings. For certain other airplanes, that AD requires repetitive inspections of the drain tube assemblies of the slat track housing of the wings to find discrepancies, corrective actions if necessary, and terminating action for the repetitive inspections. That AD was

prompted by reports of fuel leaks from certain drain locations of the slat track housing near the engine exhaust nozzles of the wings, which could result in a fire when the airplane is stationary or during low speed taxiing. That AD was also prompted by the discovery that the bonding jumper assembly of certain drain tube assemblies installed during production did not meet the current bonding specifications and could result in electrostatic discharge and an in-tank ignition source.

Actions Since Existing AD Was Issued

Since we issued AD 2001–14–19, we have received reports of fuel leaks onto the MLG of several airplanes due to a cracked drain tube at the number 8 slat track housing. No fires have been reported. The cracking was found on a rerouted drain tube with a flexible part. (Installing this drain tube is described in Boeing Service Bulletin 767–57A0060, and is required by AD 2001–14–19.) An investigation by Boeing revealed that the drain tubes with flexible parts cracked as a result of a high intensity engine vibration—higher than the tube's design permitted. In one case, maintenance personnel observed fuel leakage from the pylon area after the airplane had landed.

Relevant Service Information

AD 2001–14–19 refers to Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998 (for Model 767–200, –300, and –300F series airplanes), as the appropriate source of service information for the repetitive inspections and terminating action. Boeing has issued Service Bulletin 767–57A0060, Revision 2, dated January 31, 2002, to include minor procedural changes. No additional work is necessary if the actions specified in Boeing Service Bulletin 767–57A0060, dated January 30, 1997; or Revision 1, dated December 31, 1998; were done.

AD 2001–14–19 refers to Boeing Service Bulletin 767–57–0068, dated September 16, 1999 (for Model 767–300 and –300F series airplanes), as the appropriate source of service information for reworking the bonding jumper assemblies. Boeing has issued Boeing Service Bulletin 767–57–0068, Revision 1, dated May 9, 2002, which corrects an error involving the original bonding jumper "A" installation sequence. Because of this error, this service bulletin specifies that additional work, including new rework procedures, is necessary.

We also have reviewed Boeing Service Bulletins 767–57A0094 (for Model 767–200, –300, and –300F series airplanes) and 767–57A0095 (for Model 767–400ER series airplanes), both Revision 2, both dated December 17, 2009. These service bulletins describe procedures for replacing drain tube assemblies that have flexible parts; the replacement assemblies have new aluminum drain tubes without flexible parts.

Boeing Service Bulletin 767–57A0094, Revision 2, dated December 17, 2009, specifies the prior or concurrent accomplishment, for certain airplanes, of Boeing Service Bulletins 767–57A0060, Revision 2, dated January 31, 2002; and 767–57–0068, Revision 1, dated May 9, 2002.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2001–14–19 and retain the requirements of that AD. This proposed AD would also require accomplishing the new actions specified in the service information described previously, except as described below.

Difference Between Service Bulletin and Proposed AD

Boeing Service Bulletin 767–57–0068, Revision 1, dated May 9, 2002, specifies that the compliance time to rework the bonding jumper assembly (required by paragraph (l) of this NPRM) is 48 months after that date. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. We also considered that this work, if not previously accomplished as an AMOC to AD 2001–14–19, must be done concurrently with the new requirements of this proposed AD.

Changes to Existing AD

This proposed AD would revise the applicability of AD 2001–14–19 by adding line numbers 758 through 921, which were produced since that AD was issued. Those airplanes had received a production change equivalent to the actions required by the existing AD, and are now subject to the identified unsafe condition.

This proposed AD would retain the requirements of AD 2001–14–19. Since that AD was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2001–14–19	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g)
paragraph (b)	paragraph (h)
paragraph (c)	paragraph (i)

Costs of Compliance

There are about 808 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $85 per hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2001–14–19)	1	$0	$85 per inspection cycle.	255	$21,675 per inspection cycle.
Drain tube replacement (required by AD 2001–14–19).	12	5,236	$6,256	255	$1,595,280.
Bonding jumper assembly rework (required by AD 2001–14–19).	4	322	$662	47	$31,114.
Drain tube replacement (new proposed action).	Between 7 and 11, depending on configuration.	1,117	Between $1,712 and $2,052.	356	Between $609,472 and $730,512.

ESTIMATED COSTS—Continued

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Installation of electrostatic bond path (new proposed action).	4	322	$662	47	$31,114.

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12330 (66 FR 38350, July 24, 2001) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0957; Directorate Identifier 2010–NM–062–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 22, 2010.

Affected ADs

(b) This AD supersedes AD 2001–14–19, Amendment 39–12330.

Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 767–200, –300, and –300F series airplanes, as identified in Boeing Service Bulletin 767–57A0094, Revision 2, dated December 17, 2009.

(2) Model 767–400ER series airplanes, as identified in Boeing Service Bulletin 767–57A0095, Revision 2, dated December 17, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from reports of fuel leaks from certain drain locations of the slat track housing near the engine exhaust nozzles of the wings, which could result in a fire when the airplane is stationary, or taxiing at low speed; reports of a bonding jumper assembly of certain drain tubes that did not meet bonding specifications and could result in electrostatic discharge and an in-tank ignition source; and reports of fuel leaks onto the main landing gear (MLG) as a result of a cracked drain tube at the number 5 or 8 slat track housing, which could let fuel drain from the main fuel tanks into the dry bay area of the wings and onto hot MLG brakes and result in a fire.

Compliance

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

Restatement of Requirements of AD 2001–14–19, AMENDMENT 39–12330, With Revised Service Information

Repetitive Inspections/Corrective Action

(g) For airplanes identified in Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998: Within 500 flight hours after August 28, 2001 (the effective date of AD 2001–14–19), do a general visual inspection of the drain tube assemblies of the slat track housings of the wings to find discrepancies (loose fittings, cracked tubes, fuel leaks), per Part I of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998; or Revision 2, dated January 31, 2002. After the effective date of this AD, only Revision 2 may be used.

(1) If any discrepancies are found, before further flight, rework the drain tube assembly per Part II of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998; or Revision 2, dated January 31, 2002. After the effective date of this AD, only Revision 2 may be used. Repeat the inspection at intervals not to exceed 500 flight hours until accomplishment of the requirements in paragraph (h) of this AD.

(2) If no discrepancies are found, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until accomplishment of the requirements in paragraph (h) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to find obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Terminating Action for Repetitive Inspections

(h) For airplanes specified in paragraph (g) of this AD: Within 6,000 flight hours or 24

months after August 28, 2001, whichever occurs first, replace the drain tube assemblies of the slat track housings of the wings (including general visual inspection and repair) per Part III of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998; or Revision 2, dated January 31, 2002. After the effective date of this AD, only Revision 2 may be used. Any applicable repair must be accomplished prior to further flight. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (g) of this AD.

Rework of Bonding Jumper Assemblies

(i) For airplanes identified in Boeing Service Bulletin 767–57–0068, dated September 16, 1999: Within 5,000 flight cycles or 22 months after August 28, 2001, whichever occurs first, rework the bonding jumper assembly of the drain tube assemblies of the slat track housing of the wings (including general visual inspection and repair) per the Accomplishment Instructions of Boeing Service Bulletin 767–57–0068, dated September 16, 1999; or Revision 1, dated May 9, 2002. After the effective date of this AD, only Revision 1 may be used. Any applicable repair must be accomplished prior to further flight.

New Requirements of this AD

Drain Tube Replacement

(j) Within 24 months after the effective date of this AD, replace affected drain tube assemblies of the number 5 and number 8 inboard slat track housing, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0094 (for Model 767–200, –300, and –300F series airplanes) or 767–57A0095 (for Model 767–400ER series airplanes), both Revision 2, both dated December 17, 2009.

Concurrent Requirements

(k) For airplanes in Groups 1, 2, and 3, as identified in Boeing Service Bulletin 767–57A0094, Revision 2, dated December 17, 2009: The actions specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, as applicable, must be done before or concurrently with the requirements of paragraph (j) of this AD.

(1) For Groups 1 and 2: The requirements of paragraph (h) of this AD.

(2) For Group 2 airplanes: Installation of an additional electrostatic bond path for the number 5 and 8 inboard slat track drain tube assemblies, in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0060, Revision 1, dated December 31, 1998; or Revision 2, dated January 31, 2002.

(3) For Group 3 airplanes: The requirements of paragraph (i) of this AD.

(l) For airplanes identified in paragraph (i) of this AD, on which the actions required by paragraph (i) of this AD were done before the effective date of this AD in accordance with Boeing Service Bulletin 767–57–0068, dated September 16, 1999: Prior to or concurrently with the requirements of paragraph (j) of this AD, rework the bonding jumper assembly for the number 5 and 8 inboard slat track housing drain tube installation, in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57–0068, Revision 1, dated May 9, 2002.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Actions done before the effective date of this AD in accordance with an applicable service bulletin identified in Table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraph (j) of this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Affected airplanes	Service Bulletin	Revision level	Date
Model 767–200, –300, and –300F series airplanes.	Boeing Service Bulletin 767–57A0094	Original	June 2, 2005.
		1	December 19, 2006.
Model 767–400ER series airplanes	Boeing Service Bulletin 767–57A0095	Original	June 2, 2005.
		1	December 19, 2006.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2384; fax 425–917–6590. Information may be e-mailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically refer to this AD.

(3) AMOCs approved previously in accordance with AD 2001–14–19, Amendment 39–12330, are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on October 1, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25255 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1011; Directorate Identifier 2010–CE–047–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.

With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.

For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.

These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by

EASA. Failure to comply with these MCAI constitutes an unsafe condition.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 22, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1011; Directorate Identifier 2010–CE–047–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 8, 2005, we issued AD 2005–17–01, Amendment 39–14221 (70 FR 47716; August 15, 2005). This AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2005–17–01, Pilatus has updated their maintenance programs with new requirements and limitations. The AMM revisions proposed in this AD action include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03. We are also proposing to remove those repetitive inspections from AD 2009–18–03.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2010–0176, dated August 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.
>
> With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.
>
> For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.
>
> These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by EASA. Failure to comply with these MCAI constitutes an unsafe condition.
>
> For the reasons described above, this AD requires the implementation and the compliance with these new maintenance requirements and/or airworthiness limitations documents.

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

Relevant Service Information

Pilatus Aircraft Limited has issued Pilatus PC–6 Aircraft Maintenance Manual (AMM) Chapter 04–00–00, Revision 12, Document 01975, dated May 14, 2010, for Models PC–6 B2–H2 and B2–H4 airplanes, and Pilatus PC–6 Airworthiness Limitations Section (ALS) document No. 02334, revision 1, dated May 14, 2010, for all other Model PC–6 airplanes. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,250, or $85 per product.

In addition, we estimate that any necessary follow-on actions based on maintenance requirements for the wing strut fittings and the spherical bearings following the Aircraft Maintenance Manual and the Airworthiness Limitations Section would take about 40 work-hours and require parts costing $12,000, for a cost of $15,400 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14221 (70 FR 47716; August 15, 2005), and adding the following new AD:

Pilatus Aircraft Ltd.: Docket No. FAA–2010–1011; Directorate Identifier 2010–CE–047–AD.

Comments Due Date

(a) We must receive comments by November 22, 2010.

Affected ADs

(b) This AD supersedes AD 2005–17–01, Amendment 39–14221.

Applicability

(c) This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all manufacturer serial number (MSN), and MSN 2001 through 2092, certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 5: Time Limits.

Reason

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

The current Aircraft Maintenance Manual (AMM) of PC–6 B2–H2 and B2–H4 models does not include a Chapter 04 in the Airworthiness Limitations Section (ALS). For PC–6 models other than B2–H2 and B2–H4, no ALS at all is included in the AMM.

With the latest Revision 12 of the AMM, a new Chapter 04 has been introduced in the AMM for PC–6 B2–H2 and B2–H4 models.

For PC–6 models other than B2–H2 and B2–H4, a new ALS document has been implemented as well.

These documents include the Mandatory Continuing Airworthiness Information (MCAI) which are maintenance requirements and/or airworthiness limitations developed by Pilatus Aircraft Ltd and approved by EASA. Failure to comply with these MCAI constitutes an unsafe condition.

For the reasons described above, this MCAI requires the implementation and the compliance with these new maintenance requirements and/or airworthiness limitations documents.

Actions and Compliance

(f) Unless already done, before further flight after the effective date of this AD, incorporate the maintenance requirements as specified in Pilatus PC–6 AMM Chapter 04–00–00, Revision 12, Document Number 01975, dated May 14, 2010; and incorporate the Pilatus PC–6 ALS Document Number 02334, Revision 1, dated May 14, 2010, into your FAA-accepted maintenance program.

Note 1: The AMM revisions proposed in this AD action include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03. We are also proposing to remove those repetitive inspections from AD 2009–18–03, through a revision in another NPRM, Docket No. FAA–2009–0622.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD No.: 2010–0176, dated August 20, 2010; and Pilatus PC–6 AMM Chapter 04–00–00, Revision 12, Document Number 01975, Revision 12, dated May 14, 2010; or in the Pilatus PC–6 ALS Document Number 02334, Revision 1, dated May 14, 2010, for related information.

Issued in Kansas City, Missouri, on September 30, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25288 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would revise an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

DATES: We must receive comments on this proposed AD by November 22, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 18, 2009, we issued AD 2009–18–03, Amendment 39–15999 (74 FR 43636; August 27, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2009–18–03, Pilatus has updated their maintenance programs with new requirements and limitations. Another proposed AD action, Docket No. FAA–2010–1011, will require the incorporation of the updated maintenance requirements into the airworthiness limitations section of the instructions for continued airworthiness. Those updated maintenance requirements will include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2007–0241R4, dated August 31, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to

obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

The aim of this new revision is to only mandate the initial inspection requirement and consequently to limit its applicability to aeroplanes which are not already in compliance with EASA AD 2007–0241R3. All aeroplanes which are in compliance with EASA AD 2007–0241R3 have to follow the repetitive inspection requirements as described in Pilatus PC–6 AMM Chapter 04–00–00, Document Number 01975, Revision 12 and the Airworthiness Limitations (ALS) Document Number 02334 Revision 1 mandated by EASA AD 2010–0176. Therefore the repetitive inspection requirements corresponding paragraphs have been deleted in this new EASA AD revision. The paragraph numbers of EASA AD 2007–0241R numbering has been maintained for referencing needs.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $29,750, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 30 work-hours and require parts costing $5,000, for a cost of $7,550 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15999 (74 FR 43636; August 27, 2009), and adding the following new AD:

Pilatus Aircraft Ltd.: Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD.

Comments Due Date

(a) We must receive comments by November 22, 2010.

Affected ADs

(b) This AD revises AD 2009–18–03, Amendment 39–15999.

Applicability

(c) This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all manufacturer serial number (MSN), and MSN 2001 through 2092, certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the "Mild Corrosion Severity Zone". In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD referred to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which have included the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, in the latest revision of the PC–6 AMM, the replacement procedures for the fittings were included.

Additionally, EASA AD 2007–0241R3 introduced the possibility to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1100 FH interval is deleted so that only calendar defined intervals of inspections remained applicable.

The aim of this new revision is to only mandate the initial inspection requirement and consequently to limit its applicability to aeroplanes which are not already in compliance with EASA AD 2007–0241R3. All aeroplanes which are in compliance with EASA AD 2007–0241R3 have to follow the repetitive inspection requirements as described in Pilatus PC–6 AMM Chapter 04–00–00, Document Number 01975, Revision 12 and the Airworthiness Limitations (ALS) Document Number 02334 Revision 1 mandated by EASA AD 2010–0176. Therefore the repetitive inspection requirements corresponding paragraphs have been deleted in this new EASA AD revision. The paragraph numbers of EASA AD 2007–0241R numbering has been maintained for referencing needs.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

Actions and Compliance

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

(1) *For airplanes that have not had both wing strut fittings replaced within the last 100 hours time-in-service (TIS) before September 26, 2007 (the effective date of AD 2007–19–14), or have not been inspected using an eddy current inspection method following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007, within the last 100 hours TIS before September 26, 2007 (the effective date of AD 2007–19–14):* Before further flight after either September 26, 2007 (the effective date of AD 2007–19–14), or October 1, 2009 (the effective date of AD 2009–18–03), visually inspect the upper wing strut fittings and examine the spherical bearings following the Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(2) *For all airplanes:* Within 25 hours TIS after September 26, 2007 (the effective date of AD 2007–19–14), or within 30 days after September 26, 2007 (the effective date of AD 2007–19–14), whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(3) You may also take "unless already done" credit for any inspection specified in paragraphs (f)(1) or (f)(2) of this AD if done before October 1, 2009 (the effective date retained from AD 2009–18–03) following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, dated August 30, 2007; or Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007.

(4) *For all airplanes:* If during any inspection required by paragraphs (f)(1) or (f)(2) of this AD you find cracks in the upper wing strut fitting or the spherical bearing is not in conformity, before further flight, replace the cracked upper wing strut fitting and/or the nonconforming spherical bearing following Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008.

Note 1: Another proposed AD action, Docket No. FAA–2010–1011, proposes to require the incorporation of the updated maintenance requirements into the airworthiness limitations section of the instructions for continued airworthiness. Those updated maintenance requirements include the repetitive inspections for the wing strut fittings and the spherical bearings currently included in AD 2009–18–03.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD No.: 2007–0241R4, dated August 31, 2010; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008;

Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, dated August 30, 2007; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008, for related information.

Issued in Kansas City, Missouri, on September 30, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25289 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2010–0997; Notice No. 10–14]

RIN 2120–AJ38

Safety Management System for Certificated Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would require each certificate holder to establish a safety management system (SMS) for its entire airfield environment (including movement and non-movement areas) to improve safety at airports hosting air carrier operations. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. When systematically applied in an SMS, these activities provide a set of decision-making tools that airport management can use to improve safety. This proposal would require a certificate holder to submit an implementation plan and implement an SMS within timeframes commensurate with its class of Airport Operating Certificate (AOC).

DATES: Send your comments on or before January 5, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0997 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send Comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Keri Spencer, Office of Airports Safety and Standards, Airports Safety and Operations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8972; fax (202) 493–1416; e-mail *keri.spencer@faa.gov.* For legal questions, contact Robert Hawks, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7143; fax (202) 267–7971; e-mail: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA is issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44706, "Airport operating certificates." Under that section, Congress charges the FAA with issuing airport operating certificates that contain terms that the Administrator finds necessary to ensure safety in air transportation. This proposed rule is within the scope of that authority because it requires all holders of an airport operating certificate to develop, implement, and maintain an SMS. The development and implementation of an SMS ensures safety in air transportation by assisting airports in proactively identifying and mitigating safety hazards.

Background

The FAA is committed to continuously improving safety in air transportation. As the demand for air transportation increases, the impacts of additional air traffic and surface operations, changes in air traffic procedures, and airport construction can heighten the risks of aircraft operations. While the FAA's use of prescriptive regulations and technical operating standards has been effective, such regulations may leave gaps best addressed through improved management practices. As the certificate holder best understands its own operating environment, it is in the best position to address many of its own safety issues. While the FAA would still conduct regular inspections, SMS's proactive emphasis on hazard identification and mitigation, and on communication of safety issues, provides certificate holders robust tools to improve safety.

The International Civil Aviation Organization (ICAO) defines SMS as a "systematic approach to managing safety, including the necessary organizational structures, accountabilities, policies, and

procedures." [1] In 2001, ICAO adopted a standard in Annex 14 that all member states establish SMS requirements for airport operators. The FAA supports conformity of U.S. aviation safety regulations with ICAO standards and recommended practices. The agency intends to meet the intent of the ICAO standard in a way that complements existing airport safety regulations in 14 CFR part 139. Additional information regarding these amendments, as well as ICAO's guidance on establishing an SMS framework, may be found at *http://www.icao.int/anb/safetymanagement/.*

Safety Management System Components

An SMS provides an organization's management with a set of decision-making tools that can be used to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. These tools are similar to those management already uses to make production or operations decisions. An SMS has four key components: Safety Policy, Safety Risk Management (SRM), Safety Assurance, and Safety Promotion. Definitions of these are as follows and further detailed in the proposal discussion.

Safety Policy. Safety Policy provides the foundation or framework for the SMS. It outlines the methods and tools for achieving desired safety outcomes. Safety Policy also details management's responsibility and accountability for safety.

Safety Risk Management (SRM). As a core activity of SMS, SRM uses a set of standard processes to proactively identify hazards, analyze and assess potential risks, and design appropriate risk mitigation strategies.

Safety Assurance. Safety Assurance is a set of processes that monitor the organization's performance in meeting its current safety standards and objectives as well as contribute to continuous safety improvement. Safety Assurance processes include information acquisition, analysis, system assessment, and development of preventive or corrective actions for nonconformance.

Safety Promotion. Safety Promotion includes processes and procedures used to create an environment where safety objectives can be achieved. Safety promotion is essential to create an organization's positive safety culture. Safety culture is characterized by knowledge and understanding of an organization's SMS, effective communications, competency in job responsibilities, ongoing training, and information sharing. Safety Promotion elements include training programs, communication of critical safety issues, and confidential reporting systems.

National Transportation Safety Board Recommendations

The National Transportation Safety Board (NTSB) first recommended safety management systems for the maritime industry in 1997. Since then, a number of NTSB investigations have cited organizational factors contributing to accidents and have recommended SMS as a way to prevent future accidents and improve safety. The NTSB first offered an SMS recommendation to the FAA after its investigation of the October 14, 2004, accident of Pinnacle Airlines Flight 3701.

Pinnacle Airlines Flight 3701 was on a repositioning flight between Little Rock National Airport and Minneapolis-St. Paul International Airport when both engines flamed out after a pilot-induced aerodynamic stall. The pilots were unable to regain control, and the aircraft crashed in a residential area south of Jefferson City, Missouri. The NTSB's investigation revealed "the accident was the result of poorly performing pilots who intentionally deviated from standard operating procedures and basic airmanship." [2] The NTSB further stated "operators have the responsibility for a flight crew's cockpit discipline and adherence to standard operating procedures" and offered an SMS as a means to help air carriers ensure safety.[3] The NTSB formally recommended the FAA "require all 14 CFR part 121 operators establish Safety Management System programs." [4]

Three years after the Pinnacle Airlines accident, the NTSB investigated the in-flight fire, emergency descent, and crash of a Cessna 310R in Sanford, Florida, and issued another SMS recommendation. The NTSB determined the probable causes of the accident "were the actions and decisions by NASCAR's corporate aviation division's management and maintenance personnel to allow the accident airplane to be released for flight with a known and unresolved discrepancy, and the accident pilots' decision to operate the airplane with that known discrepancy." [5] As in the Pinnacle Airlines accident, the NASCAR pilot and aviation organization failed to follow standard operating procedures (SOPs). The NTSB stated "an effective SMS program formalizes a company's SOPs and establishes methods for ensuring that those SOPs are followed." [6] The NTSB recommended the FAA "develop a safety alert for operators encouraging all 14 CFR part 91 business operators to adopt SMS programs that include sound risk management practices." [7]

While the NTSB has not formally recommended the FAA require an SMS for certificated airports, the FAA has concluded those same organizational factors apply to all regulated sectors of the aviation industry. Airports operate in similar environments as air carriers and business flight operators where adherence to standard operating procedures, proactive identification, mitigation of hazards and risks, and effective communications are crucial to continued operational safety. Accordingly, certificated airports could realize similar SMS benefits as an aircraft operator. The FAA envisions an SMS would provide an airport with an added layer of safety to help reduce the number of near-misses, incidents, and accidents. An SMS also would ensure that all levels of airport management understand safety implications of airfield operations.

FAA SMS Pilot Studies and Research Projects

The FAA initiated a number of collaborative efforts studying SMS application at U.S. certificated airports. These efforts included developing advisory guidance, researching airport SMS recommended practices, and conducting airport pilot studies.

Advisory Circulars and Research Studies

The FAA, on February 28, 2007, issued Advisory Circular (AC) 150/5200–37, Introduction to Safety Management Systems for Airport Operators. This AC provides an introduction to SMS and general guidelines for an airport SMS. While compliance with this AC is voluntary, numerous airports have used it in implementing their SMS.

[1] *See* ICAO, *Safety Management Manual,* at 6.5.3 ICAO Doc. 9859–AN/474 (2nd ed. 2009).

[2] NTSB Accident Report AAR–07/01, "Crash of Pinnacle Airlines Flight 3701 Bombardier CL–600–2B19, N8396A, Jefferson City, Missouri, October 14, 2004," at 53 (Jan. 9, 2007) .

[3] *Id.* at 61.

[4] *Id.* at 75*; see also* NTSB Safety Recommendation Letter (Jan. 23, 2007) (NTSB Recommendation A–07–10).

[5] NTSB Accident Report AAR–09/01, "In-flight Fire, Emergency Descent and Crash in a Residential Area Cessna 310R, N501N, Sanford, Florida, July 10, 2007," at iv (Jan. 28, 2009).

[6] *Id.* at 19.

[7] *Id.* at 25; *see also* NTSB Safety Recommendation Letter (Feb. 18, 2009) (NTSB Recommendation A–09–16).

The Airports Cooperative Research Program (ACRP)[8] approved two projects to prepare guidance on airport SMS. In September 2007, MITRE Corporation published the first report, *SMS for Airports Volume 1: Overview.* This report describes SMS benefits, ICAO requirements, and SMS application at U.S. airports. The second project, ACRP's *SMS for Airports Volume 2: Guidebook,* was completed in October 2009 and provides practical guidance on development and implementation of an airport SMS.

Pilot Studies

Beginning in April 2007, the FAA conducted a pilot study to evaluate SMS development at certificated airports of varying size and complexity. The study also compared current part 139 requirements and typical SMS requirements.

The first round of pilot studies included over 20 airports. The FAA later established a second round of pilot studies on SMS development at smaller airports with a Class II, III, or IV AOC.[9]

All participating airports conducted a gap analysis or benchmark study examining differences between their FAA-approved Airport Certification Manual (ACM), part 139 requirements, and a typical airport SMS. Using these results, the participating airports then developed a separate SMS Manual and Implementation Plan using AC 150/5200–37 and the FAA Airport SMS Pilot Study Participant's Guide. While pilot study airports were not required to implement an SMS, many chose to do so. As a result of these pilot studies, participating airports and the FAA made some key findings.

First, the FAA concluded that compliance with part 139 is essential to ensuring a safe and standardized airport system. However, part 139 compliance does not by itself sufficiently address the risk management, assurance, reporting, safety data management, communications, or training needs of modern airports. The FAA further concluded an SMS can help an airport achieve performance-based systems safety.

The gap analyses revealed that aspects of part 139 can serve as building blocks for an SMS. For example, at least one pilot study airport recognized its existing part 139 compliance program incorporated some SMS concepts. Additionally, the majority of participating airports have an organizational safety policy statement, but these statements may be informal or inadequate or focus on employee rather than on operational safety. The gap analysis also uncovered that less formal safety policies are often not effectively communicated to employees.

The majority of pilot study airports indicated an existing organizational structure to manage safety (such as a standing safety committee), but there is rarely one person with overall responsibility and authority for operational safety. Several airports admitted to relatively inactive safety committees. Second, several airports indicated they have safety risk management programs or policies in place (*e.g.,* part 139 self-inspection program), but most described their hazard identification processes as reactive rather than proactive. These airports concluded their existing programs could be improved to meet the intent of the SMS SRM. While § 139.327 requires an airport to identify hazards or discrepancies during its self inspection, this requirement does not realize the potential of safety management through identifying and recording all safety hazards, conducting risk assessments, and developing mitigation strategies.

Some airports indicated they did not have adequate accident or incident reporting procedures. Still others with reporting procedures indicated the procedures lacked solid analytical techniques to identify airport hazards and uncover underlying safety issues.

Third, almost all pilot study airports indicated compliance with part 139 through some auditing system. However, most of these airports also indicated the audits are not carried out systematically to determine whether the airport is meeting safety goals and objectives. Few certificated airports indicated formal procedures to systematically review safety-related data. All pilot study airports have record-keeping and retrieval systems in place, but each indicated room for improvement. Improved systems would allow for trend and other data analysis to proactively identify operational hazards and potentially prevent future incidents or accidents.

Finally, almost all pilot study airports indicated they currently conduct safety training, but some indicated there is no organizational approach to safety training. Several airports indicated their informal safety communications do not properly disseminate information (such as risk management data) throughout the organization or to other stakeholders. In general, the airports acknowledged more formalized training and communications programs, such as those required under Safety Promotion, would be beneficial.

Benefits

The FAA has determined that an SMS requirement would improve safety at part 139 certificated airports. The FAA reached this conclusion based on detailed study of ICAO's Annex 14 requirements, review of NTSB's recommendations, and the airport SMS pilot studies. Airports should realize benefits from increased communication, training, and reporting. Some airports may realize financial benefits through reduced insurance costs associated with proactive hazard identification and safety risk analysis.

A properly functioning airport SMS would help an airport ensure:

- Individuals are trained on the safety implications of working on the airside of the airport;
- Proactive hazard identification and analysis systems are in place;
- Data analysis, tracking, and reporting systems are available for trend analysis and to gain lessons learned; and
- Timely communication of safety issues to all stakeholders.

The FAA envisions an airport's SMS would uncover previously unknown hazards and risks, providing an airport the opportunity to proactively mitigate risk. Over time, these efforts should prevent accidents and incidents, thereby reducing the direct and indirect costs and risks of airport operations.

Several airports have seen benefits by voluntarily implementing SMS or applying SMS principles in their operations. For example, a large international airport holding a Class I AOC reduced insurance costs after implementing SMS principles. A smaller domestic airport holding a Class IV AOC has seen a major improvement in operational safety after implementing its SMS.

Discussion of the Proposal

The FAA proposes to require all certificate holders develop and implement an SMS for the movement and non-movement areas of the airport (i.e., airfield and ramp). The FAA proposes to add subpart E to part 139, which would include:

(1) A new § 139.401 that would require all holders of an AOC to have an approved airport SMS;

(2) a new § 139.402 that would prescribe the components of an airport SMS; and

(3) a new § 139.403 that would prescribe the implementation requirements for an airport SMS.

[8] The Transportation Research Board (TRB) manages ACRP.

[9] For definitions of classes of AOCs, *see* 14 CFR 139.5.

The proposal also would add to § 139.5 the following definitions: Accountable executive; Airport safety management system; Hazard; Non-movement area; Risk; Risk analysis; Risk mitigation; Safety assurance; Safety policy; Safety promotion; and Safety risk management (SRM).

Many of the definitions are from existing international standards and FAA guidance materials. These definitions are applicable to the following discussion.

Regulation of the Non-Movement Area

Under this proposal, an airport would implement its SMS throughout the airport environment, including the movement and non-movement areas (including runways, taxiways, run-up areas, ramps, apron areas, and on-airport fuel farms). The FAA acknowledges the proposal extends the scope of part 139 by including the non-movement areas, but the FAA has concluded that ensuring safety in air transportation requires that an SMS applies to any place that affects safety during aircraft operations.

Many pilot study airports concluded it was difficult to apply SMS concepts to only the movement area because aircraft and airport airside personnel routinely flow between movement and non-movement areas. The airports also found a large number of safety incidents occur in the non-movement area and believe applying SMS to this area may reduce that number.

The FAA does not intend to require airports to extend their SMS to the landside environment such as terminal areas. Nevertheless, an airport may voluntarily expand its SMS to all airside and landside environments.

Flexibility

The FAA envisions an SMS as an adaptable and scalable system. An organization can develop an SMS to meet its unique operating environment. For those reasons, this proposal would allow an airport the maximum amount of flexibility to develop and achieve its safety goals. Accordingly, the FAA would prescribe only the general framework of an SMS.

The FAA learned through the pilot studies there are circumstances when a certificate holder may want flexibility in maintaining SMS documentation. For example, some airport operators manage multiple airports (have multiple AOCs), and some may want to expand SMS beyond the FAA-regulated areas (such as for landside or terminal operations.) In allowing maximum flexibility, a certificate holder may maintain a separate SMS Manual in addition to the ACM or may maintain SMS documentation directly in the ACM. If a certificate holder develops a separate manual, it would cross-reference the SMS requirements in its FAA-approved ACM. Accordingly, the FAA proposes amending § 139.203 to require the FAA-approved ACM contain the policies and procedures for development, implementation, operation, and maintenance of the certificate holder's SMS. The FAA also proposes to amend § 139.103 to require two copies of the SMS manual, or SMS portion of the ACM, accompany an AOC application.

Minimum Elements of SMS

In a new § 139.402, the FAA would require each airport SMS include the four SMS components: Safety Policy, SRM, Safety Assurance, and Safety Promotion. These components are equivalent to ICAO's SMS pillars. To support each of these components, the FAA proposes a certificate holder implement a number of elements. Together the components and elements provide the general framework for an organization-wide safety management approach to airport operations. To make these components and elements effective, a certificate holder would develop processes and procedures appropriate to the airport's operating environment. The FAA understands that a certificate holder could comply with these requirements through a variety of means. The FAA intends these proposed requirements to be scalable to the size and complexity of the certificate holder. The FAA invites comments on how the FAA could clarify or improve the scalability of this proposal.

The FAA envisions a certificate holder using an operational SMS to:

- Actively engage airport management in airfield safety;
- Ensure formal documentation of hazards and analytical processes are used to analyze, assess, and mitigate risks;
- Proactively look for safety issues through analysis and use of lessons learned; and
- Train individuals accessing the airside environment on SMS and operational safety.

The following details SMS components and elements as specifically applied to a part 139 airport certificate holder.

Safety Policy

This proposal would require a certificate holder to establish a safety policy that:

- Identifies the accountable executive;
- Identifies and communicates the safety organizational structure;
- Identifies the lines of safety responsibility and accountability;
- Establishes and maintains a safety policy statement;
- Ensures the safety policy statement is available to all employees;
- Establishes and maintains safety objectives; and
- Establishes and maintains an acceptable level of safety for the organization.

This proposal would require an airport to identify an accountable executive. The FAA understands that airport operations and organizational structures vary widely. Accordingly, the FAA would not prescribe a particular job title. Nevertheless, the accountable executive must be a high-level manager who can influence safety-related decisions and has authority to approve operational decisions and changes because an effective SMS requires high-level management involvement in safety decisionmaking. Accordingly, the FAA proposes the international standard definition for an accountable executive (i.e., requiring the accountable executive to be an individual with ultimate responsibility and accountability, full control of the human and financial resources required to maintain the SMS, and final authority over operations and safety issues).[10] The FAA acknowledges it may be difficult for U.S. airports to identify an accountable executive meeting that international standard, but it believes an acceptable accountable executive would be the highest approving authority at the airport for operational decisions and changes. The FAA invites comments concerning the definition of accountable executive for certificated airports.

Additionally, we would require a certificate holder to identify its safety organizational structure and management responsibility and accountability for safety issues. The importance to identifying who in airport management is responsible for safety ensures resources are allocated to balance safety and service. For example, an airport would identify each manager accountable for safety and that manager's responsibilities under the airport SMS. Each airport employee should know who is the contact point for a particular safety issue. An airport would decide how managers' safety responsibilities and accountabilities are communicated. It could use an organizational chart or other means that identify lines of communication and decisionmaking. In some organizations, with multiple departments responsible

[10] *See* ICAO, *Safety Management Manual,* at 8.4.5 & 8.4.6 ICAO Doc. 9859–AN/474 (2nd ed. 2009).

for part 139 compliance, an airport may have multiple line managers responsible for the safety of different airport areas (*e.g.,* an operations manager for airfield operational safety issues or a maintenance manager for maintenance safety issues). The safety organizational structure should allow every employee to understand how safety issues progress through the organization. This safety organizational structure also would ensure that senior management is aware of the daily activities of these departments and has an active role in airport safety.

Currently, § 139.203 requires certificated airports to have lines of succession of airport operator responsibility. These lines may provide a foundation for establishing the airport's accountable executive and delineation of responsibility for SMS functions.

This proposal would require a certificate holder's safety policy statement be included in SMS documentation. The "accountable executive" would issue this statement because management's commitment to safety should be expressed formally. The safety policy statement would outline the methods and processes used to achieve desired safety outcomes. The statement typically would contain the following:

- A commitment by senior management to implement SMS;
- A commitment to continual safety improvement;
- The encouragement for employees to report safety issues without fear of reprisal;
- A commitment to provide the necessary safety resources; and
- A commitment to make safety the highest priority.

Some airports may be able to adapt a safety policy statement from existing policy statements. Others may supplement existing policies that focus on occupational safety issues (for example, the airport strives to have zero employee injuries). Other airports may have informal safety objectives that could be formalized into a safety policy statement.

Finally, this proposal would require an airport to establish safety objectives relevant to its operating environment. These objectives should improve overall airport safety. Some examples of safety objectives may include a reduction in the amount of Foreign Object Debris (FOD) related damage, a reduction in the number of Vehicle/Pedestrian Deviations (VPDs), timely issuance of airfield condition Notices to Airmen (NOTAMs), and continued conformance with part 139 requirements. Setting these objectives and metrics would aid the airport, stakeholders, and the FAA in verifying achievement or progress towards an airport's improvement of safety.

Safety Risk Management (SRM)

This proposal would require a certificate holder to establish an SRM process to identify hazards and their associated risks within the airport's operations. Under SRM, the airport would be required to:

- Identify safety hazards;
- Ensure that mitigations are implemented where appropriate to maintain an acceptable level of safety;
- Provide for regular assessment of safety level achieved;
- Aim to make continuous improvement to the airport's overall level of safety; and
- Establish and maintain a process for formally documenting identified hazards, their associated analyses, and management's acceptance of the associated risks.

A comprehensive SMS using SRM would provide management a tool for identification of hazards and risks and prioritization of their resolution. While each certificate holder's SRM processes may be unique to the airport's operations and organizational structure, the FAA would require it to incorporate SRM's five steps:

(1) Describing the system;

(2) Identifying the hazards;

(3) Analyzing the risk associated with those hazards;

(4) Assessing the risk associated with those hazards; and

(5) Mitigating the risk of identified hazards when necessary.

This proposal would require a certificate holder to use SRM processes to analyze risk associated with hazards discovered during daily operations and for changes to operations. Changes in airport operations could introduce new hazards into the airfield environment, such as adding new tenants or air carriers at the airport. These could be discovered, tracked, and mitigated using an existing or newly-created hazards tracking system. However, some system descriptions set the boundaries for hazard identification by considering the operating environment in which hazards are identified. Operational changes may overlap with SRM requirements under the FAA Air Traffic Organization's SMS. Examples of these changes include runway extensions or the construction of new taxiways. In these cases, the FAA expects that the certificate holder would participate in the FAA's risk analysis instead of performing an independent risk analysis under its SMS.

The first step of SRM is describing the system. This step entails describing the operating environment in which the hazards will be identified. System description serves as the boundaries for hazard identification. For airports, operational, procedural, conditional, or physical characteristics are included in the system description. A system description could answer the following questions:

- Are there visual or instrument meteorological conditions;
- Is it a time of low or high peak traffic;
- Are there closed or open runways; or
- Is the airfield under construction or normal operations?

The second step of SRM identifies hazards in a systematic way based on the system described in the first step. All possible sources of system failure should be considered. Depending on the nature and size of the system under consideration, these should include:

- Equipment (for example, construction equipment on a movement surface), the operating environment (for example, weather conditions, season, time of day);
- Human factors (for example, shift work);
- Operational procedures (for example, staffing levels);
- Maintenance procedures (for example, nightly movement area inspections by airport electricians); and
- External services (for example, ramp traffic by fixed-base operator (FBO) or law enforcement vehicles).

A certificate holder should implement hazard identification processes and procedures that reflect its management structure and complexity. There are many ways to accomplish this hazard identification, but all must use the following four elements:

(1) Operational expertise;

(2) Training in SMS (and, if possible, hazard analysis techniques);

(3) A simple, but well-defined, hazard analysis tool; and

(4) Adequate documentation of the process.

Many airports already have hazard identification processes in place to ensure part 139 compliance. For example, part 139 currently requires an airport operator to conduct a daily inspection, unless otherwise stated in the FAA-approved ACM.

A certificate holder could use hazard reports obtained through the airport's safety reporting system, which is detailed later in this discussion. The airport also would keep track of

incidents and accidents occurring in the airport's movement and non-movement areas to identify potential operational hazards. Many airports already track incidents and accidents in the movement area.

One of the most important aspects of hazard identification is systematically documenting and tracking potential hazards. This documented data allows meaningful analysis of operational safety-related trends on the airfield and of overall airport system safety.

After identifying hazards, a certificate holder would complete the third step of SRM, hazard analysis. For each hazard, the certificate holder would consider the worst credible outcome (harm), which is the most unfavorable consequence that is realistically possible, based on the system described. For the worst credible outcome, the certificate holder would determine the likelihood and severity of that outcome using quantitative or qualitative methods.

A certificate holder would define its levels of likelihood and severity. ICAO and the FAA have developed sample definitions and levels of likelihood and severity for use in categorizing hazards.[11] An example is a five-point table for severity and likelihood. The categorization of severity includes definitions for catastrophic, hazardous, major, minor, or negligible. The categorization of likelihood includes definitions for frequent, occasional, remote, improbable, and extremely improbable. A certificate holder should develop tables commensurate with its operational needs and complexity. For example, a less complex airport with few operations may find it effective to have fewer levels of gradation. However, a larger airport with a variety of operations may require a five-point or larger table to be most effective. Based on these definitions, a likelihood and severity of occurrence is selected for each hazard.

The fourth step of SRM, risk assessment, uses the likelihood and severity assessed in step three, and compares it to the organization's acceptable levels of safety risk.

One of the easiest techniques for comparison is through the use of a predictive risk matrix. A predictive risk matrix (like figure 1) graphically depicts the various levels of severity and likelihood as they relate to the levels of risk (for example, low, medium, or high). On a typical risk matrix, severity and likelihood are placed on opposing axes (*i.e.,* x- and y-axis on a grid). For example, a higher severity would be plotted further to the right on the x-axis, and a higher likelihood would be plotted further up the y-axis. The severity and likelihood assessed during the third step of SRM can then be plotted on the risk matrix grid for each of the hazards assessed.

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[11] *See* ICAO, *Safety Management Manual,* at 6.5.3 ICAO Doc. 9859–AN/474 (2nd ed. 2009); *see* also FAA Advisory Circular 150/5200–37, Introduction to Safety Management System for Airport Operators (Feb. 28, 2007).

Figure 1:

Severity / Likelihood	Negligible	Minor	Major	Hazardous	Catastrophic
Frequent					
Occasional					
Remote					
Improbable					
Extremely Improbable					

	HIGH RISK
	MEDIUM RISK
	LOW RISK

The other feature of a predictive risk matrix is its depiction of the certificate holder's acceptable level of safety risk, in other words the highest level of safety risk it will accept in its operational environment. Typically, the risk matrix depicts three levels of risk: low, medium, and high. A high risk generally would be unacceptable. A medium risk may be acceptable provided mitigations are in place and verified before operations can continue. A low risk may be acceptable without additional mitigation.

When a hazard's likelihood and severity are plotted on the risk matrix, the certificate holder can see whether the hazard's safety risk is acceptable to

the organization. Generally, as the likelihood and severity increase, the risk increases. Each certificate holder would determine its acceptable level of risk and other levels of risk when establishing its predictive risk matrix. For example, a hazard with an assessed likelihood of frequent and severity of catastrophic usually would be plotted in the high risk portion of the matrix. A hazard with an assessed likelihood of extremely improbable and assessed severity of minor usually would be plotted in the low risk portion of the matrix. These levels of risk would be based on the certificate holder's acceptable level of risk and may vary from airport to airport.

Under the fourth step of SRM, a certificate holder would plot the likelihood and severity of each hazard assessed during the third step on its predictive risk matrix. The certificate holder would see the level of risk for each hazard and could determine whether that level of risk is acceptable. The certificate holder would use this information to determine whether it must mitigate those risks. Ultimately, the certificate holder would formally accept the risk or approve the mitigation plan as required by its SMS.

In the final step of SRM, mitigation of risk, the certificate holder would take steps to reduce the risk of the hazard to an acceptable level for any hazard determined in the fourth step to present an unacceptable risk. These efforts may include removing the hazard or implementing alternative strategies to reduce the hazard's risks. Additionally, a certificate holder could mitigate the risk of a hazard if that risk is acceptable but could be reduced with mitigation. If a hazard has no associated risk or a low risk, an airport may not have to proceed with this step of SRM for the hazard.

If step five is required, the certificate holder would monitor the mitigations put in place to ensure that they actually decrease the level of risk to an acceptable level. A certificate holder could use the hazard reporting system, which is discussed later, to track identified hazards and their mitigations deployed under SRM.

Under an SMS, a certificate holder would document each of the SRM steps including the identified hazards, the risk analysis and assessment, any proposed mitigations, and management's acceptance of risk. These records can be kept either electronically or in paper-format. This documentation ensures safety-related decisions are consistent with safety policies and goals and provides historical information that can be used to make future safety-related decisions.

This proposal would require a certificate holder to retain these documents and records for the longer of either 36 consecutive calendar months after the risk analysis of identified hazards or 12 consecutive calendar months after implementing mitigation measures. The timelines associated with the retention of those documents ensure they are kept for a time period that provides the airport historical data to conduct meaningful analysis under SRM, to review during Safety Assurance activities, and for the FAA to review for compliance during inspections. These record retention requirements are consistent with other retention requirements under part 139. While these are minimum retention requirements, certificate holders may retain their documents for longer time periods.

A Practical Example of SRM

The airport in this example has one runway and conducts daily self-inspections according to its FAA-approved ACM. An operations agent conducting the airport's daily self-inspection finds foreign object debris (FOD) of substantial size and weight at a taxiway-runway intersection adjacent to an uncontrolled ramp. The operations agent removes the FOD and notes it on the inspection checklist. During a routine review of airport inspections, the operations manager notices that FOD has been collected at this same taxiway-runway intersection during multiple inspections. Under the airport's SRM process, such an event and trend triggers a formal SRM analysis.

The operations manager, who has sufficient training and understands the airport's SMS and operating environment, conducts the analysis. Using SRM documentation procedures and templates, the manager carefully describes the system. At this particular airport, the airport is approved for low-visibility operations which occur twenty-five percent of the calendar year.

The manager then identifies all hazards associated with the FOD. The manager identifies FOD damage to aircraft and/or ingestion into aircraft engines as potential hazards based on the system description.

The manager considers the worst credible outcome of FOD damage and FOD ingestion into aircraft engines based on the location of the FOD in the airport environment. Using the self-inspection records, the manager discerns the FOD usually is found closer to the runway than to the taxiway and in some instances on the runway between the centerline and edge lines. Additionally, the weight and location of the FOD could present a danger to aircraft traversing the runway or taxiway. The manager determines that the worst credible outcome could result in loss of control of the aircraft, an aborted take-off, and/or an aircraft accident.

Using the likelihood and severity definitions provided as part of the airport's SMS, the manager's knowledge of the airport environment, and outside resources (such as industry research or other documents with relevant quantitative statistical analysis), the manager assesses the likelihood and severity of the hazard. In this case, the manager determines the severity of such a hazard could be catastrophic (such as an aircraft accident with fatalities or serious injuries), and the likelihood is improbable. Referring to the airport's risk matrix, the manager plots the assessed likelihood and severity, and the hazard falls within the high risk portion of the matrix. According to the airport's SMS, the manager must take some sort of action to mitigate the occurrence of FOD in this taxiway-runway intersection.

The operations manager has identified numerous risk mitigation strategies. The manager could increase the number of targeted inspections for the area. The manager could conduct further analysis to determine the root-cause of the FOD, which could result from a lack of training, improper maintenance, or other factors that may be mitigated over time. The manager also could communicate with tenants who operate in the area to warn them of the FOD hazard.

In this case, the manager chooses all three mitigation strategies with targeted inspections implemented immediately. Over time, the manager will investigate root cause, will update the airport's FOD prevention training, and will communicate the FOD hazard to tenants.

The manager completes the five SRM steps and documents the processes and determinations on the appropriate templates following the airport's SRM guidelines. Finally, the manager adds an entry to the hazard reporting system to follow up in two weeks to review the self-inspection and targeted inspection reports to verify whether mitigations are working.

Safety Assurance

This proposal would require a certificate holder to ensure safety risk mitigations developed through the airport's SRM process are adequate, and the airport's SMS is functioning effectively. The key outcome of safety

assurance is continuous improvement of the airport's operational safety. The proposal would require the certificate holder to:

- Develop and implement a means for monitoring safety performance;
- Establish and maintain a hazard reporting system that provides a means for reporter confidentiality; and
- Develop and implement a process for reporting pertinent safety information and data to the accountable executive on a regular basis.

Safety performance monitoring and measurement is one way an organization can verify its SMS's effectiveness. ICAO also offers a variety of safety performance monitoring and measurement methods including hazard reports, safety studies, safety reviews, audits, safety surveys, and internal safety investigations.[12] While some certificate holders may not find added value in implementing or using all of these information sources, a certificate holder may benefit from using an internal audit or assessment to monitor performance. Documents created under the airport's SMS should be reviewed periodically to verify whether the airport's SMS processes and procedures are being followed, whether trends exist that have not been identified, and whether SRM mitigations are being implemented and are effective. The certificate holder would determine whether this review is completed by airport personnel or by a third party.

The proposal also would require a certificate holder to establish and maintain a hazard reporting system. A certificate holder's SRM processes and hazard identification procedures likely would not catch all potential airfield hazards. Some hazards may be identified by other employees, airfield tenants, or pilots. Therefore, an airport's SRM would include a system for hazard reporting. A certificate holder may develop the best system for its operating environment, whether a call-in line, a web-based system, or a drop box. The certificate holder would train all employees on the existence of the system and how a report flows through the system to management.

The FAA proposes that airports develop a confidential hazard reporting system. ICAO's SMS model envisions a non-punitive reporting system. Based on information obtained during the pilot studies, a U.S. airport may be unable to prevent punishment of non-airport employees (for example, tenant employees). Therefore, the FAA has concluded that requiring a confidential hazard reporting system will protect the reporter's identity and achieve the goal of protection from reprisal.

For some airports, the required data tracking, data reporting, and assessment programs already exist in other formats. Many airports have functional occupational safety programs in place with reporting, inspection, and training requirements. An airport can use these programs to build its operational SMS.

The FAA envisions an airport using safety assurance to enhance the airport's ability to spot trends and identify safety issues before they result in a near-miss, incident, or accident. An example of safety assurance may involve the performance of the airport in reducing the number of runway incursions. Effective safety assurance processes would require review and investigation of previous incidents and accidents as well as analysis of current policies, procedures, training, and equipment for potential weaknesses. In addition, the safety assurance process would review the efficacy of previously implemented safety strategies to ensure they are functioning as predicted and have not introduced any new systemic risks.

Safety assurance also prescribes data collection and analytical methods that help a certificate holder transition from a reactive approach to a more predictive approach to aviation safety. In this example, failure analysis can be used to anticipate future failures before they occur. Therefore, Safety Assurance provides management tools and data to ensure that the SMS is properly functioning and that mitigations developed through SRM processes are having their intended effect.

Safety Promotion

This proposal would require a certificate holder to establish processes and procedures to foster a safety culture. These processes and procedures include providing formal safety training to all employees with access to the airfield, and developing and maintaining formal means for communicating important safety information.

As previously stated, part 139 currently prescribes numerous training and communications requirements that can be used in developing an SMS. Under an SMS, these requirements would be enhanced and extended to more individuals operating on the airport because everyone has a role in promoting safety. For example, instead of training just those airport employees on part 139 technical requirements (such as airfield driver training), an airport would ensure that all employees with access to the movement and non-movement areas receive training on operational safety and on the airport's SMS.

The FAA proposes the SMS training requirement would apply to airport employees based on information obtained during the pilot studies. However, the FAA believes greater benefits may be achieved if that training requirement were applied to all individuals with access to the movement and non-movement areas, and it is considering that broader SMS training requirement. The FAA invites comments concerning the practical and economic implications of applying the training requirements to all individuals accessing the movement and non-movement area.

The FAA also believes that through the safety promotion component of SMS, an airport's management will promote the growth of a positive safety culture through:

- Publication of senior management's stated commitment to safety to all employees;
- Visible demonstration of management's commitment to the SMS;
- Communication of the safety responsibilities for the airport's personnel specific to their function within the airport;
- Clear and regular communication of safety policy, goals, objectives, standards, and performance to all employees of the organization;
- A confidential and effective employee reporting and feedback system;
- Use of a safety information system that provides an accessible efficient means to retrieve information; and
- Allocation of resources essential to implement and maintain the SMS.

An airport could demonstrate its commitment to safety promotion in several ways. An airport could allocate sufficient resources for the initial and recurrent training of its staff. Likewise, an airport could communicate the results of risk analysis and mitigations for reported hazards. Any training records created as part of the certificate holder's safety promotion processes and procedures would be retained and available for inspection for 24 consecutive calendar months. This retention period is consistent with that for other training records under existing § 139.301. The FAA proposes that any other communications created as part of safety promotion would be retained for 12 consecutive calendar months.

As previously discussed, the FAA recognizes that certificate holders may have systems and processes in place that partially meet the proposed SMS requirements. The FAA believes these systems and processes can easily be

[12] *See* ICAO, *Safety Management Manual,* at 9.6.4 ICAO Doc. 9859–AN/474 (2nd ed. 2009).

incorporated into an SMS and does not intend duplicative burdens. The FAA requests comments on systems and processes currently in use that would not be compatible with the proposed requirements. The FAA also requests comments specifically identifying how the FAA could clarify or improve the incorporation of existing systems and processes into an SMS.

Proposed Implementation Plan Requirements

The FAA proposes to require all certificate holders and applicants for an AOC to submit an implementation plan that accurately describes how the airport will meet the requirements of Subpart E and provides timeframes for implementing the various SMS components and elements within the airport's organization and operations. While the FAA is not requiring an airport to conduct a gap analysis before implementing an SMS, this implementation plan would require a certificate holder to proactively review its current organizational framework and determine how it conforms to airport SMS requirements. This proposal also would require a certificate holder to establish target dates for meeting the requirements of Subpart E well before compliance with Subpart E would be required. Further, the implementation plan must determine an overall SMS implementation timeline as well as dates for completion of updates to the ACM and, where applicable, the SMS Manual.

The proposal takes a two-pronged approach to implementation based on the scale of operations at the certificated airport and provides ample time for airports to conform to the SMS requirement. The FAA learned during the first pilot study that many larger airports were able to complete their gap analysis and develop the SMS Manual and Implementation Plan within six months. However, during the second pilot study with smaller certificated airports, many airports were not able to successfully complete their gap analysis and manual within that timeframe. Based on this experience, the FAA has determined that six months is adequate time for Class I airports to develop a plan of how the airport will develop and implement an SMS. Similarly, the FAA has determined that nine months is adequate time for Class II, III, and IV airports to develop an implementation plan. These implementation plans should detail the steps the airport will take to develop an SMS taking into account the unique operating environment of the airport. Based on projections from the pilot study airports, the FAA has determined that the implementation process should be completed within 18 months for a Class I airport and within 24 months for a Class II, III, and IV airport.

Based on findings from the pilot study, the FAA has determined that all components of an SMS are interrelated and must be implemented at the same time for an SMS to be effective. The FAA requests comments on the proposed implementation requirements and timeframes. If you believe the FAA should adopt a phased-in approach for the SMS components, please provide specific recommendations for how the requirements could be phased in and analysis of the effect on implementation costs and corresponding postponement of safety benefits.

The FAA also proposes to remove paragraph (c) of § 139.101 because the implementation schedule for submitting a new Airport Certification Manual (ACM) under that section is no longer applicable.

Further, the FAA intends to publish any accompanying Advisory Circulars prior to the final rule and widely communicate the requirements to airports through the various industry organizations and FAA airport conferences.

FAA's Role and Oversight

An SMS is not a substitute for compliance with FAA regulations or FAA oversight activities. Rather, an SMS would ensure compliance with safety-related statutory and regulatory requirements. An SMS enhances the FAA's ability to understand the safety of airport operations throughout the year, and not just when an FAA inspector is physically on the airfield.

During an airport's periodic inspection, the FAA envisions an inspector reviewing the certificate holder's ACM to ensure that the SMS requirements are clearly identified and detailed in the ACM or referenced SMS Manual. The inspector would verify through airport records, interviews, and other means that the SMS is being communicated, training is being provided, and senior management is actively engaged in the management and oversight of the SMS. The FAA intends this review as an evaluation of whether a certificate holder's SMS is functioning as it is intended to function rather than as a means for us to second guess a certificate holder's decisions. However, if during the course of an inspection, these processes are determined to have failed in discovering discrepancies with part 139 or have created new discrepancies, the FAA would take appropriate action to ensure the airport corrects these non-compliant conditions.

The following examples detail possible inspector activity, but this proposal does not limit any FAA inspection authority. An FAA inspector may review safety meeting minutes and sign-in sheets to verify whether members of the airport's management team are regularly attending. Additionally, an FAA inspector may request to see SRM documentation to determine whether acceptance of a given risk is being performed by the appropriate level of management. An inspector may also verify whether mitigations are being implemented, which is a clear indicator of the effectiveness of the airport's SRM and safety assurance components. As for verification of safety promotion, the inspector may review training records, training curricula, and the methods of communicating critical safety information throughout the airport organization and to key stakeholders.

If a certificate holder decided to extend the umbrella of its SMS to landside operations beyond the scope of this proposal, the FAA's oversight and inspection authority would extend only to those areas envisioned by this proposal.

The FAA has determined that an SMS is a valuable set of tools for improving safety at airports. However, an SMS does not replace part 139 requirements. An SMS would serve as an enhancement to those technical standards already required under part 139, and the FAA will continue to inspect according to part 139 standards. Additionally, the FAA will promulgate prescriptive regulations as appropriate.

Safety management systems for the aviation industry are still developing. However, the FAA believes now is the time to begin developing and implementing SMS requirements because of their benefits to aviation safety. The FAA recognizes that future rulemaking may be required to capture safety developments, connect to related regulations, and avoid duplication of SMS requirements for various industry sectors.

The FAA is considering rulemaking that would establish SMS requirements for other segments of the aviation industry. The FAA requests comments on the interaction between this proposed rule and potential future rulemakings. The FAA also requests comments on which portions of this proposed rule should be adopted for any potential SMS requirements. Finally, the FAA requests comments on whether there are other issues or principles not

included in this proposal that the FAA should consider in issuing a final rule.

Rulemaking Analyses and Notices

Paperwork Reduction Act

This proposal contains a revision of a currently approved collection of information (OMB–2120–0675) subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The title, description, and number of respondents, frequency of the collection, and estimate of the annual total reporting and recordkeeping burden are shown below.

Title: Safety Management System for Certificated Airports.

Summary: The FAA proposes to revise current part 139 to require certificated airports to establish a safety management system (SMS). An SMS is a formalized approach to managing safety that includes an organization-wide safety policy, formal methods of identifying potential hazards, formal methods for analyzing and mitigating potential hazards, and an organization-wide emphasis on promoting a safety culture.

Use of: Each airport would be able to develop its SMS based on its own unique operating environment. Because airport management can tailor its system, the FAA expects an SMS comprised of four key components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. An airport would establish and maintain records that document Safety Risk Management processes; report pertinent safety information and data on a regular basis; record training by each individual that includes, at a minimum, a description and date of training received; and, set forth an implementation plan.

The following information lists estimated initial and annual hours respondents would need to comply with the proposed part 139 SMS reporting and recordkeeping and cost requirements:

Proposed part 139 section	Description	Initial burden hours	Annual burden hours
139.203	Airport Safety Management Documentation and Implementation Plan	784,552	
139.301	Records: to include the hazard reporting system, the records database, training records, promotional material.		21,847

SMS Document (Initial Burden)

562 currently certificated airports × 1,396 hours per airport to document an airport's SMS and implementation plan = 784,552 total hours.

Record Keeping (Annual)

5 minutes to update training records per employee × 72,800 estimated employees for all 562 airports = 6,067 hours per year,

30 minutes to record a potential hazard × an estimated 1 potential hazard per week = 13,676 hours per year.

1 hour to create promotional material per airport: promotional material estimated to be distributed quarterly = 4 hours × 562 airports = 2,104 hours per year.

6,067 hours (update training records)
13,676 hours (record potential hazards)
+ 2,104 hours (create promotional material)

21,847 hours per year.

Estimated total initial SMS cost burden: $10,983,728.

Estimated total SMS document burden: 784,552 hrs.

Clerical Labor (784,552 hrs. × $14 per hr).

Total Labor Costs: $10,983,728.

Estimated total annual recordkeeping cost burden: $305,858.

Estimated total annual recordkeeping burden: 21,847 hrs.

Clerical Labor (21,847 hrs. × $14 per hr).

Total Labor Costs: $305,858.

Individuals and organizations may submit comments on the information collection requirement by January 5, 2011, to the address listed in the **ADDRESSES** section of this document.

International Compatibility

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) 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, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates 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 expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is an not an economically "significant regulatory action" but is a "significant regulatory action" for other reasons as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

This notice of proposed rulemaking would require certificated airports to establish a safety management system (SMS). An SMS is a formalized

approach to managing safety, which includes an organization-wide safety policy, formal methods of identifying potential hazards, formal methods for analyzing and mitigating potential hazards, and an organization-wide emphasis on promoting a safety culture. An SMS for airports is comprised of four key components: Safety Policy, Safety Risk Management (SRM), Safety Assurance, and Safety Promotion. These components would help airports effectively integrate the formal risk control procedures into normal operational practices thus improving safety at airports throughout the United States air transportation system that host air carrier operations.

The estimated cost of this proposed rule is $ 248 million ($172 million in present value) with potential estimated benefits ranging from $ $170,341,000 ($104,498,600 present value) up to $255,512,000 ($161,441,600 present value). Accounting for the funded survey sample bias, scalability of SMS and qualitative benefits, the FAA expects that overall the proposed rule would have benefits greater than costs.

Who is potentially affected by this rule?

- Part 139 Certificated Airports.

Assumptions

- All costs and benefits are presented in 2009 dollars.
- All costs and benefits are estimated over a 10-year period from 2012 through 2021.
- The present value discount rate of 7 percent is applied as required by the Office of Management and Budget.

Benefits of This Rule

The objective of SMS is to proactively manage safety, to identify potential hazards or risks and implement measures to mitigate those risks. In that respect, the FAA envisions airports being able to use all of the components of SMS to enhance the airport's ability to spot trends, and identify safety issues before they result in a near-miss, incident, or accident. Over the 10-year period of analysis, the potential benefits of potentially averted accidents range from $170 to $256 million.

The FAA also suspects that there are many benefits of SMS, which were unable to be quantified. For example, one of the smaller pilot study airports used their Safety Risk Management (SRM), or formal process, to identify and manage a hazard. The airport identified that loosely controlled passenger traffic was accessing the ramp area. Although, no passenger to date had been injured on the ramp, the airport had experienced "close-calls". In completing their hazard and risk analysis, the airport determined that the lack of current control presented an unacceptable high risk for the organization. The airport immediately took action to identify feasible mitigation strategies including dedicated passenger walkways, notification of passengers on airport procedures prior to ramp access, and tasking of additional staff to ramp areas for increased control and oversight of passenger traffic during peak-operations. Moreover, the FAA believes that the benefits of SMS, over the 10-year period of analysis, are much greater than what is currently quantified.

Costs of This Rule

The rule if enacted would require certificated U.S. airports to establish a safety management system (SMS) based on the four components: Safety Policy, Safety Risk Management (SRM), Safety Assurance, and Safety Promotion. These components include costs to document an airport's SMS and implementation plan, new staff, new equipment and materials, and training. The costs vary based on the size of the airport. In total this proposed rule is estimated to cost airports $248 million over 10 years.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." 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 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 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.

The proposed rule will affect all part 139 airports. Under this rule airports would be required to establish a safety management system to proactively manage safety at the airport. A substantial number of part 139 airports will meet the Small Business Administration definition of a small entity, which includes small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. The requirements of the rule are scalable by airport. They have the ability to choose low cost options. Moreover, many smaller airports expect little to no added cost, given the size of their operations. These airports have fewer operations and employees which are associated with a lower number of reportable incidents, and with fewer incidents these airports can choose inexpensive options. Options, such as an EXCEL or ACCESS for data tracking, a suggestion box for the hazard reporting system, and easy to create memorabilia for promotional material are compliance examples reported by many of these airports. The cost of these items is minimal at roughly $300 per airport. Small airports also have the option of hiring new staff, but the FAA expects that given the size of these airports no additional staff will be needed to meet the requirements of this rule. Thus while there are a substantial number of small entities, the rule would not create a significant economic impact to these airports.

Therefore, the FAA certifies this proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. The FAA solicits comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims. The FAA also invites comments regarding other small entity concerns with respect to the proposed rule.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to

the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 this proposed rule and determined that it will have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 an expenditure of $100 million or more (in 1995 dollars) 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 $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed the proposal under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this proposal are owned, operated, or regulated by a local government body (such as a city or council government), which, in turn, is incorporated by or as part of a State. Some airports are operated directly by a State. This proposal would have low costs of compliance compared with the resources available to airports, and it would not alter the relationship between certificate holders and the FAA as established by law.

Accordingly, the FAA has determined that this action 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. Therefore, the FAA has determined that this rulemaking does not have federalism implications. The FAA will mail a copy of the NPRM to each state government specifically inviting comment.

Environmental Analysis

FAA Order 1050.1E defines FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Throughout the proposal discussion, the FAA specifically identifies specific issues related to SMS and guiding principles associated with SMS on which it seeks specific comment. These specific questions are enumerated here to facilitate comment. Please include the question number in your responses to the following questions:

1. Are there interactions between this proposal and potential future rulemakings involving SMS issues? To what extent should the proposal here take into account the possibility of future rulemakings on similar topics? Would it be better to wait for experience under any final rule in this proceeding before judging whether it can or should serve as a precedent for any other SMS requirements?

2. Are there other principles that the FAA should consider in crafting a final rule on airport SMS that are not embodied in this proposal?

3. To what extent will the regulatory burdens proposed by the proposed rule flow through to persons or businesses other than the ones included in the economic analysis? If such flow-through exists, will it increase total societal costs, and if so, by how much? If costs do flow through to others, are costs correspondingly reduced to persons "upstream"? Please provide detailed economic analysis to support any claims of increased costs or cost-offsets, rather than mere assertions.

4. The FAA intends for this and any future SMS rules to be fully scalable, based on the size and complexity of the organization implementing SMS. Do commenters have suggestions for how the FAA could clarify or improve the scalability of this proposal? Please provide detailed suggestions to expand implementation flexibility within the proposal.

5. Would the cost-effectiveness of the rule be improved if the requirements are phased in? Which specific provisions should be phased in? Please provide specific recommendations for a phase-in period, including analysis of the effect on costs to industry and the corresponding postponement of safety benefits.

6. What should the FAA specifically consider when defining "accountable executive" to adequately address the unique operating environment of certificated airports?

7. Should the FAA consider expanding the SMS training requirements to all individuals (rather than just airport employees) accessing the movement and non-movement areas? What are the specific practical and economic implications of such a requirement?

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this

document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(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 docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of Title 14, Code of Federal Regulations as follows:

PART 139—CERTIFICATION OF AIRPORTS

1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44709, 44719.

2. Amend § 139.5 by adding the definitions of Accountable executive, Airport Safety Management System (SMS), Hazard, Non-movement area, Risk, Risk analysis, Risk mitigation, Safety assurance, Safety policy, Safety promotion, and Safety risk management in alphabetical order to read as follows:

§ 139.5 Definitions.

Accountable executive means a single, identifiable person who, irrespective of other functions, has ultimate responsibility and accountability, on behalf of the certificate holder, for the implementation and maintenance of the Airport Safety Management System. The Accountable Executive has full control of the human and financial resources required to implement and maintain the Airport Safety Management System. The Accountable Executive has final authority over operations conducted under the Airport's Operating Certificate and has final responsibility for all safety issues.

* * * * *

Airport Safety Management System (SMS) means an integrated collection of processes and procedures that ensures a formalized and proactive approach to system safety through risk management.

* * * * *

Hazard means any existing or potential condition that can lead to injury, illness, death, or damage to or loss of a system, equipment, or property.

* * * * *

Non-movement area means the area, other than that described as the movement area, used for the loading, unloading, parking, and movement of aircraft on the airside of the airport (including without limitation ramps, apron areas, and on-airport fuel farms).

* * * * *

Risk means the composite of predicted severity and likelihood of the worst credible outcome (harm) of a hazard.

Risk analysis means the process whereby a hazard is characterized for its likelihood and the severity of its effect or harm. Risk analysis can be either a quantitative or qualitative analysis; however, the inability to quantify or the lack of historical data on a particular hazard does not preclude the need for analysis.

Risk mitigation means any action taken to reduce the risk of a hazard's effect.

* * * * *

Safety assurance means the process management functions that evaluate the continued effectiveness of implemented risk mitigation strategies; support the identification of new hazards; and function to systematically provide confidence that an organization meets or exceeds its safety objectives through continuous improvement.

Safety policy means the statement and documentation adopted by a certificate holder defining its commitment to safety and overall safety vision.

Safety promotion means the combination of safety culture, training, and communication activities that support the implementation and operation of an SMS.

Safety risk management means a formal process within an SMS composed of describing the system, identifying the hazards, analyzing, assessing, and mitigating the risk.

* * * * *

§ 139.101 [Amended]

3. Amend § 139.101 by removing paragraph (c).

4. Amend § 139.103 by revising paragraph (b) to read as follows:

§ 139.103 Application for certificate.

* * * * *

(b) Submit with the application, two copies of an Airport Certification Manual, Safety Management System Implementation Plan (as required by § 139.103(b)), and Safety Management System Manual (where applicable) prepared in accordance with subparts C and E of this part.

5. Amend § 139.203 by redesignating paragraph (b)(29) as (b)(30) and adding a new paragraph (b)(29) to read as follows:

§ 139.203 Contents of Airport Certification Manual.

* * * * *

(b) * * *

REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS

Manual elements	Airport certificate class			
	Class I	Class II	Class III	Class IV
* * * * * * *				
29. Policies and procedures for the development, implementation, operation, and maintenance of the Airport's Safety Management System, as required under subpart E of this part	X	X	X	X
* * * * * * *				

6. Amend § 139.301 by revising paragraph (b)(1) and adding new paragraphs (b)(9) and (b)(10) to read as follows:

§ 139.301 Records.

* * * * *

(b) * * *

(1) *Personnel training.* Twenty-four consecutive calendar months for personnel training records, as required under §§ 139.303, 139.327, and 139.402.

* * * * *

(9) *Safety risk management documentation.* Thirty-six consecutive calendar months or twelve consecutive calendar months, as required under § 139.402(b).

(10) *Safety communications.* Twelve consecutive calendar months for safety communications, as required under § 139.402(d).

* * * * *

7. Add subpart E to part 139 to read as follows:

Subpart E—Airport Safety Management System

Sec.
139.401 General requirements.
139.402 Components of Airport Safety Management System.
139.403 Airport Safety Management System implementation.

Subpart E—Airport Safety Management System

§ 139.401 General requirements.

(a) Each certificate holder, or applicant for an Airport Operating Certificate, must develop and maintain an Airport Safety Management System that is approved by the Administrator.

(b) The scope of an Airport Safety Management System must encompass aircraft operation in the movement area, aircraft operation in the non-movement area, and other airport operations addressed in this part.

(c) Each required certificate holder must describe its compliance with the requirements identified in § 139.402 either:

(1) Within a separate section of the certificate holder's Airport Certification Manual titled Airport Safety Management System; or

(2) Within a separate Airport Safety Management System Manual. If the certificate holder chooses to use a separate Airport Safety Management System Manual, the Airport Certification Manual must incorporate by reference Airport Safety Management System Manual.

(d) FAA Advisory Circulars contain methods and procedures for the development of an Airport Safety Management System.

§ 139.402 Components of Airport Safety Management System.

An approved Airport Safety Management System must include:

(a) *Safety Policy.* A Safety Policy that, at a minimum:

(1) Identifies the accountable executive.

(2) Establishes and maintains a safety policy statement signed by the accountable executive.

(3) Ensures the safety policy statement is available to all employees and tenants.

(4) Identifies and communicates the safety organizational structure.

(5) Describes management responsibility and accountability for safety issues.

(6) Establishes and maintains safety objectives and the certificate holder's acceptable level of safety.

(7) Defines methods, processes, and organizational structure necessary to meet safety objectives.

(b) *Safety Risk Management.* Safety Risk Management processes and procedures for identifying hazards and their associated risks within airport operations and for changes to those operations covered by this part that at a minimum:

(1) Establish a system for identifying safety hazard.

(2) Establish a systematic process to analyze hazards and their associated risks by:

(i) Describing the system;

(ii) Identifying hazards;

(iii) Analyzing the risk of identified hazards and/or proposed mitigations;

(iv) Assessing the level of risk associated with identified hazards; and

(v) Mitigating the risks of identified hazards, when appropriate.

(3) Provide for regular assessment to ensure that safety objectives identified under paragraph (a)(6) of this section are being met.

(4) Establish and maintain records that document the certificate holder's Safety Risk Management processes.

(i) The records shall provide a means for airport management's acceptance of assessed risks and mitigations.

(ii) Records associated with the certificate holder's Safety Risk Management processes must be retained for the longer of:

(A) Thirty-six consecutive calendar months after the risk analysis of identified hazards under paragraph (b)(2)(iv) of this section has been completed; or

(B) Twelve consecutive calendar months after mitigations required under paragraph (b)(2)(v) of this section have been implemented.

(c) *Safety Assurance.* Safety Assurance processes and procedures to ensure mitigations developed through the certificate holder's Safety Risk Management processes and procedures are adequate, and the Airport's Safety Management System is functioning effectively and meeting the safety objectives established under paragraph (a)(6) of this section. Those processes and procedures must, at a minimum:

(1) Provide a means for monitoring safety performance.

(2) Establish and maintain a hazard reporting system that provides a means for reporter confidentiality.

(3) Report pertinent safety information and data on a regular basis to the accountable executive. Reportable data includes without limitation:

(i) Performance with safety objectives established under paragraph (a)(6) of this section;

(ii) Safety critical information distributed in accordance with paragraph (d)(2)(ii) of this section;

(iii) Status of ongoing mitigations required under the Airport's Safety Risk

Management processes as described under paragraph (b)(2)(v) of this section; and

(iv) Status of a certificate holder's schedule for implementing the Airport Safety Management System as described under paragraph (b)(2) of this section.

(d) *Safety Promotion.* Safety Promotion processes and procedures to foster an airport operating environment that encourages safety. Those processes and procedures must, at a minimum:

(1) Provide formal safety training to each employee and tenant with access to airport areas regulated under this part that is appropriate to the individual's role.

(2) Maintain a record of all training by each individual under this section that includes, at a minimum, a description and date of training received. Such records must be retained for 24 consecutive calendar months after completion of training.

(3) Develop and maintain formal means for communicating important safety information that, at a minimum:

(i) Ensures that all personnel are aware of the SMS and their safety roles and responsibilities;

(ii) Conveys critical safety information;

(iii) Provides feedback to reporters using the airport's hazard reporting system required under § paragraph (c)(2) of this section; and

(iv) Disseminates safety lessons learned to relevant personnel or other stakeholders.

(4) Maintain records of communications required under this section for 12 consecutive calendar months.

§ 139.403 Airport Safety Management System implementation.

(a) Each certificate holder required to develop and maintain an Airport Safety Management System under this subpart must submit an implementation plan on or before:

(1) [6 months after effective date of final rule] for Class I airports.

(2) [9 months after effective date of final rule] for Class II, III, and IV airports.

(b) An implementation plan must provide:

(1) A proposal on how the certificate holder will meet the requirements prescribed in this subpart; and

(2) A schedule for implementing SMS components and elements prescribed in § 139.402.

(d) Each certificate holder must submit its amended Airport Certification Manual and Airport Safety Management System Manual, if applicable, to the FAA for approval in accordance with its implementation plan but not later than:

(1) [18 months after effective date of final rule] for Class I airports.

(2) [24 months after effective date of final rule] for Class II, III, and IV airports.

Issued in Washington, DC, on September 30, 2010.

Michael J. O'Donnell,

Director, Office of Airport Safety and Standards.

[FR Doc. 2010–25338 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–23–000]

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

September 29, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; request for reply comments.

SUMMARY: On June 17, 2010, the Commission issued a Notice of proposed rulemaking (75 FR 37884) proposing to amend the transmission planning and cost allocation requirements established in Order No. 890 to ensure that Commission-jurisdictional services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential. With respect to transmission planning, the proposed rule would provide that local and regional transmission planning processes account for transmission needs driven by public policy requirements established by state or federal laws or regulations; improve coordination between neighboring transmission planning regions with respect to interregional facilities; and remove from Commission-approved tariffs or agreements a right of first refusal created by those documents that provides an incumbent transmission provider with an undue advantage over a nonincumbent transmission developer. Neither incumbent nor nonincumbent transmission facility developers should, as a result of a Commission-approved tariff or agreement, receive different treatment in a regional transmission planning process. Further, both should share similar benefits and obligations commensurate with that participation, including the right, consistent with state or local laws or regulations, to construct and own a facility that it sponsors in a regional transmission planning process and that is selected for inclusion in the regional transmission plan. With respect to cost allocation, the proposed rule would establish a closer link between transmission planning processes and cost allocation and would require cost allocation methods for intraregional and interregional transmission facilities to satisfy newly established cost allocation principles. The Commission is providing interested persons an opportunity to file reply comments on the proposed rule.

DATES: Reply comments to the proposed rule published June 30, 2010 (75 FR 37884) are due November 12, 2010.

ADDRESSES: You may submit reply comments, identified by Docket No. RM10–23–000, by any of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Russell Profozich (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Telephone: (202) 502–6478, E-mail: *russell.profozich@ferc.gov.*

John Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502–8705, E-mail: *john.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Notice Establishing Reply Comment Period

On September 28, 2010, Western Independent Transmission Group filed a motion to establish a period for filing reply comments to the Commission's Notice of Proposed Rulemaking issued June 17, 2010, in the above-docketed proceeding.[1]

The period for filing initial comments in this proceeding ran through September 29, 2010. Upon

[1] 131 FERC ¶ 61,253 (2010).

consideration, the Commission establishes a period for filing reply comments in this proceeding, which will run to and including November 12, 2010.

Any interested person may file a reply to initial comments made by other interested persons in this proceeding. Reply comments should not raise new arguments that are not directly responsive to arguments presented in initial comments, nor should a reply be repetitive of arguments that an interested person made in its initial comments.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–24976 Filed 10–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AB70

Metal and Nonmetal Dams

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period for its Advance Notice of Proposed Rulemaking (ANPRM) published on August 13, 2010. This extension gives commenters additional time to develop responses to questions the Agency asked in the ANPRM concerning the design, construction, operation, and maintenance of safe dams which can assure miners are protected from the hazards of dam failures.

DATES: The comment period will close midnight, Eastern Standard Time, December 13, 2010.

ADDRESSES: Comments must be clearly identified and may be submitted by any of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-Comments@dol.gov.* Include "RIN 1219–AB56" in the subject line of the message.

(3) *Telefax:* (202) 693–9441. Include "RIN 1219–AB56" in the subject.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia, 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939. Sign in at the receptionist's desk on the 21st floor.

(6) *Docket:* Comments can be accessed electronically at *http://www.msha.gov/regsinfo.htm.* MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. Silvey can be reached at *Silvey.Patricia@dol.gov* (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile). This notice is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION: On August 13, 2010, MSHA published an Advance Notice of Proposed Rulemaking (75 FR 49429) asking interested parties to comment on measures to assure that metal and nonmetal mine operators design, construct, operate and maintain dams in a safe manner to protect miners against the hazards of a dam failure.

In response to requests, MSHA is extending the comment period from October 12, 2010 to December 13, 2010. This allows commenters additional time to review the questions and submit responses. All comments and other appropriate data must be submitted by midnight, Eastern Standard Time, December 13, 2010.

Dated: October 1, 2010.

Joseph A. Main,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 2010–25248 Filed 10–6–10; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0041–200902; FRL–9211–4]

Approval and Promulgation of Implementation Plans; State of Mississippi: Prevention of Significant Deterioration Rules: Nitrogen Oxide as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of a revision to the Mississippi State Implementation Plan (SIP), submitted by the Mississippi Department of Environmental Quality (MDEQ), to EPA on November 28, 2007. The revision modifies Mississippi's prevention of significant deterioration (PSD) permitting regulations in the SIP to address permit requirements promulgated in the 1997 8–Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation Rule-Phase II (hereafter referred to as the "Ozone Implementation New Source Review (NSR) Update"). The Ozone Implementation NSR Update revised permit requirements relating to the implementation of the 1997 8-hour ozone NAAQS specifically incorporating nitrogen oxides (NO_X) as a precursor to ozone. Specifically, this SIP revision incorporates by reference the Ozone Implementation NSR Update federal regulations into the Mississippi SIP through Air Pollution Control Section 5 (APC–S–5) "Regulations for the Prevention of Significant Deterioration of Air Quality." EPA's approval of Mississippi's incorporation by reference of the Ozone Implementation NSR Update federal regulations, including provisions to recognize NO_X as an ozone precursor, into the Mississippi SIP, is based on EPA's determination that Mississippi's revision related to these provisions complies with current Federal requirements and section 110 of the Clean Air Act (CAA).

EPA is not taking action on two portions of Mississippi's November 28, 2007 submittal. The first is regarding Mississippi's incorporation by reference of provisions promulgated by EPA on May 1, 2007, which exclude from the NSR major source permitting requirements "chemical process plants" that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule"). See 72 FR 24060. EPA may consider further action

for the aforementioned provision in a future rulemaking. The second is Mississippi's compliance with Section 110(a)(2)(D)(i) of the CAA regarding interstate air pollution transport for the 1997 8-hour ozone and fine particulate matter NAAQS as it pertains to the prevention of significant deterioration of air quality and visibility. EPA is also not addressing Mississippi's submission regarding interstate transport in today's action.

DATES: Comments must be received on or before November 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0041, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2009–0041, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2009–0041." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. *Telephone number:* (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding NSR/PSD, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. *Telephone number:* (404) 562–9214; *e-mail address: adams.yolanda@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. *Telephone number:* (404) 562–9029; *e-mail address: spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA proposing today?
II. What is the background for the action that EPA is proposing today?
III. What is EPA's analysis of Mississippi's SIP revision?
IV. Proposed Action
V. Statutory and Executive Order Reviews

I. What action is EPA proposing today?

EPA is proposing to revise the Mississippi SIP to include the portion of Mississippi's November 28, 2007, SIP revision which incorporates by reference the Ozone Implementation NSR Update into Mississippi's Air Quality Regulations, APC–S–5 "Regulations for the Prevention of Significant Deterioration." This revision is consistent with current Federal NSR requirements (40 CFR 52.21 and the Ozone Implementation NSR Update) relevant to NO_X as an ozone precursor and section 110 of the CAA. The revision, which became state-effective on September 24, 2007, is incorporated by reference into Mississippi's PSD program, and EPA has preliminarily determined that the incorporation by reference of NO_X as an ozone precursor meets the requirements of the Ozone Implementation NSR Update.

II. What is the background for the action that EPA is proposing today?

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. Related to the 2004 designations, EPA also promulgated an implementation rule for the 1997 8-hour ozone NAAQS in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, addresses classifications for the 8-hour ozone NAAQS, revocation of the 1-hour ozone NAAQS, anti-backsliding principles, attainment dates and timing of emissions reductions needed for attainment. See 69 FR 23857.

On November 29, 2005, EPA promulgated the second phase for the implementation provisions related to the 1997 8-hour ozone standards—also known as the Phase II Rule. See 70 FR 71612. The Phase II Rule addresses the remaining control and planning requirements as they apply to areas

designated nonattainment for the 1997 8-hour ozone NAAQS which include NSR requirements. Specific to this rulemaking, the Phase II Rule made changes to Federal regulations found at 40 CFR 51.165, 51.166 and 52.21, which govern the nonattainment NSR and PSD permitting programs.[1] Specifically, the Phase II Rule requirements include among other changes, a provision stating that NO_X is an ozone precursor. 70 FR 71612, (page 71679) (November 29, 2005). In the Phase II Rule, EPA stated as follows:

"The EPA has recognized NO_X as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA's recognition of NO_X as an ozone precursor is supported by scientific studies, which have long recognized the role of NO_X in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO_X should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO_X is an ozone precursor in attainment areas."

In the Phase II Rule, EPA established that states must submit SIPs incorporating required changes (including the addition of NO_X as a precursor for ozone) no later than June 15, 2007. *See* 70 FR 71612 (page 71683).

III. What is EPA's analysis of Mississippi's SIP revision?

On November 28, 2007, the State of Mississippi, through MDEQ, submitted a revision to EPA for approval, which revised the PSD program. This revision incorporates by reference, EPA's federal regulations specified in the Ozone Implementation NSR Update relating to NO_X as an ozone precursor. Specifically, the revision is found in Mississippi's Air Quality Regulations, APC–S–5 "Regulations for the Prevention of Significant Deterioration." The submittal revised Mississippi's PSD program to include NO_X as a precursor to ozone for PSD permitting, consistent with changes to the Federal regulations set forth in the Ozone Implementation NSR Update. Mississippi's November 28, 2007 SIP revision incorporates by reference the federal PSD regulations (at 40 CFR 52.21) to include the Ozone Implementation NSR Update rules and additional subsequent revisions to the federal program made through July 15, 2007. Currently, the State of Mississippi is in attainment for all the NAAQS and all major sources are subject to the PSD permitting program in the Mississippi SIP which incorporates by reference 40 CFR 52.21. Today's action only relates to the portion of Mississippi's SIP revision which incorporates by reference the federal provisions related to NO_X as an ozone precursor.

The Mississippi NO_X as an ozone precursor PSD language was incorporated by reference and is identical to the Federal PSD requirements. The SIP revision is consistent with the CAA because it adds NO_X as a precursor to ozone and is consistent with federal requirements. Therefore, EPA has preliminarily determined that the Mississippi PSD provisions to include NO_X as an ozone precursor are approvable.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the portion of Mississippi's SIP revision submitted November 28, 2007, which incorporates by reference NO_X as an ozone precursor for PSD purposes into the Mississippi SIP. EPA is proposing to approve these revisions because they are consistent with the CAA and its implementing regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Ozone.

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

Dated: September 22, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–25309 Filed 10–6–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0666–201031; FRL–9211–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Knoxville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 14, 2010, the State of Tennessee, through the Tennessee

[1] These changes included amendments to major source thresholds for sources in certain classes of nonattainment areas, changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas, provisions addressing offset requirements for facilities that shut down or curtail operation, and a requirement stating that NO_X emissions are ozone precursors.

Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request to redesignate the Knoxville 8-hour ozone nonattainment area to attainment for the 1997 8-hour National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Knoxville, Tennessee Area. The Knoxville 1997 8-hour ozone nonattainment area is comprised of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entireties, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park (hereafter referred to as the "Knoxville Area"). In this action, EPA is proposing to approve the July 14, 2010, 8-hour ozone redesignation request for the Knoxville Area. Additionally, EPA is proposing to approve the 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area, including the 2007 baseline emission inventory, and the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for 2024 for the Knoxville Area. This proposed approval of Tennessee's redesignation request is based on EPA's determination that the Knoxville Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Knoxville 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. In this action, EPA is also describing the status of its transportation conformity adequacy determination for the new 2024 MVEBs that are contained in the 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area. This action is being taken pursuant to the CAA and its implementing regulations.

DATES: Comments must be received on or before November 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0666, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0666, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0666. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. 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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Royce Dansby-Sparks of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.* Mr. Dansby-Sparks may be reached by phone at (404) 562–9187, or via electronic mail at *dansby-sparks.royce@epa.gov.*

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I. What proposed actions is EPA taking?

EPA is proposing several related actions, which are summarized below and described in greater detail throughout this notice of rulemaking: (1) To redesignate the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS; (2) to approve under section 172(c)(3) the emissions inventory submitted with the maintenance plan; and (3) to approve, under section 175A of the CAA, Knoxville's 1997 8-hour ozone NAAQS maintenance plan into the Tennessee SIP, including the associated MVEBs. In addition, and

related to today's actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Knoxville Area MVEBs.

First, EPA is proposing to determine that the Knoxville Area has attained the 1997 8-hour ozone NAAQS. EPA further proposes to determine that, if EPA's proposed approval of the 2007 baseline emissions inventory for the Knoxville Area is finalized, the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Knoxville Area 1997 8-hour ozone area is composed of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entireties, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park. In this action, EPA is now proposing to approve a request to change the legal designation of Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entireties, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park in the Knoxville Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve under the CAA, Tennessee's 2007 inventory for the Knoxville Area (under section 172(c)(3)). Tennessee selected 2007 as the attainment emissions inventory year for the Knoxville Area. This attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS.

Third, EPA is proposing to approve Tennessee's 1997 8-hour ozone NAAQS maintenance plan for the Knoxville Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Knoxville Area in attainment of the 1997 8-hour ozone NAAQS through 2024. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2024 NO_X and VOC MVEBs. EPA is proposing to approve (into the Tennessee SIP) the 2024 MVEBs that are included as part of Tennessee's maintenance plan for the 1997 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2024 NO_X and VOC MVEBs for the Knoxville Area. The Adequacy comment period for the Knoxville Area 2024 MVEBs began on June 15, 2010, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site. (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The Adequacy comment period for these MVEBs closed on July 15, 2010. No adverse comments were received during the Adequacy public comment period. On September 15, 2010, EPA published its adequacy notice for the 2024 MVEB's for the Knoxville Area (75 FR 55977). Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs determination.

Today's notice of proposed rulemaking is in response to Tennessee's July 14, 2010, SIP submittal requesting the redesignation of the Knoxville 1997 8-hour ozone area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What is the background for EPA's proposed actions?

The CAA establishes a process for air quality management through the NAAQS. Ozone is a criteria pollutant for which NAAQS are established. On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm).[1] These NAAQS are more stringent than the previous 1-hour ozone NAAQS. Under EPA regulations found at 40 CFR part 50, the 1997 8-hour ozone NAAQS are 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 a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the percent of days with valid ambient monitoring data is greater than 90 percent, on average, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, "*Comparisons with the Primary and Secondary Ozone Standards*" states:

> The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site 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. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 1997 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Knoxville Area was initially designated nonattainment for the 1997 8-hour ozone NAAQS using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) 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 certain ozone nonattainment areas. Under EPA's Phase I 1997 8-Hour Ozone Implementation Rule (69 FR 23857) (Phase I Rule), published April 30, 2004, an area was classified under subpart 2 based on its 1997 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas were covered under subpart 1, based upon their 8-hour ambient air quality design values.

Knox County (which is a part of the Knoxville Area) was originally designated as marginal nonattainment for the 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694). Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). At that same time, Anderson, Blount, Cocke, Jefferson, Loudon and Sevier Counties in their entireties were designated attainment/unclassifiable for the 1-hour ozone NAAQS. On April 30, 2004, EPA designated the Knoxville Area (of which Knox County is a part) as a "basic" (subpart 1) 8-hour ozone nonattainment area (69 FR 23857, April 30, 2004). When Tennessee submitted

[1] 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. As a result, NO_X and VOC are referred to as precursors of ozone.

its final redesignation request on July 14, 2010, the Knoxville Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

EPA promulgated implementation rules for the 1997 8-hour ozone NAAQS. These rules were published in 2 phases. The Phase I Implementation Rule (69 FR 23951, April 30, 2004) was published at the same time as the ozone designations and addresses such topics as classifications, revocation of the 1-hour NAAQS, anti-backsliding principles, and timing for emission reductions. The Phase II Rule was published November 29, 2005, (72 FR 31727) and addressed remaining implementation issues not covered by the Phase 1 Rule. Various aspects of EPA's Phase 1 Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit Court) vacated EPA's Phase 1 Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase I Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase I Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 1997 8-hour ozone NAAQS nonattainment areas, the 1997 8-hour ozone NAAQS attainment dates and the timing for emissions reductions needed for attainment of the 1997 8-hour ozone NAAQS remain effective. The June 8th decision left intact the court's rejection of EPA's reasons for implementing the 1997 8-hour NAAQS in certain nonattainment areas under subpart 1 in lieu of subpart 2, i.e., the court's rejection of the subpart 1 classification. By limiting the vacatur, the court let stand EPA's revocation of the 1-hour NAAQS and those anti-backsliding provisions of the Phase I Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress (RFP) toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour MVEBs until 1997 8-hour ozone NAAQS budgets were available for 8-hour ozone conformity determinations, which is already required under EPA's conformity regulations. The court thus clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, nor does EPA believe the court's ruling prevents EPA from proposing or ultimately finalizing this redesignation. EPA believes that the court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Knoxville Area to attainment.

With respect to the 1997 8-hour ozone NAAQS, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 1997 8-hour ozone NAAQS, and remanded that matter back to the Agency. In its January 16, 2009, proposed rulemaking in response to the *SCAQMD* decision, EPA has proposed to classify the Knoxville Area under subpart 2 as a moderate area (74 FR 2936). If EPA finalizes the reclassification of the Knoxville Area before the July 14, 2010, redesignation request is approved, the requirements under subpart 2 will become applicable when they are due. EPA proposed a deadline for submission of these requirements of one year after the effective date of the final rulemaking classifying this and other areas (74 FR 2940–2941). However, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Knoxville Area was not classified under subpart 2, nor were subpart 2 requirements yet due for this Area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). See also the September 17, 1993, Michael Shapiro Memorandum ("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 Shapiro, Acting Assistant Administrator for Air and Radiation), and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit Court has recognized the inequity in such retroactive rulemaking (see *Sierra Club* v. *Whitman* 285 F. 3d 63 (DC Cir. 2002)), in which the court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated, "[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here, it would be unfair to penalize the Knoxville Area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Knoxville Area attained the NAAQS.

With respect to the requirements under the 1-hour ozone NAAQS, only the Knox County portion of the Knoxville Area was originally designated as a marginal nonattainment for the 1-hour ozone NAAQS in November 6, 1991 (56 FR 56694); the remainder of the Knoxville Area was

designated as attainment. Knox County was redesignated as attainment for the 1-hour ozone NAAQS on September 27, 1993 (58 FR 50271). Therefore, Knox County was redesignated to attainment of the 1-hour ozone NAAQS prior to its nonattainment designation for the 1997 8-hour ozone NAAQS. As a result, Knox County (as part of the Knoxville Area) is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour ozone NAAQS. The DC Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 1997 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

First, there are no conformity requirements relevant for evaluating the Knoxville Area redesignation request, such as a transportation conformity SIP.[2] It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a 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 40 CFR 51.390; see also *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation); 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida). Tennessee currently has a fully approved 1-hour ozone transportation conformity SIP, which was approved on May 16, 2003 (68 FR 26492).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the DC Circuit Court found were not properly retained, Knox County, Tennessee is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR requirement no longer applies to this area because it was redesignated to attainment of the 1-hour standard. Because Knox County was redesignated as a 1-hour attainment area, the contingency measure (pursuant to section 172(c)(9) or 182(c)(9)) and fee provision requirements no longer apply to the Knoxville Area. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS.

As was noted earlier, in 2009, the ambient ozone data for the Knoxville Area indicated no further violations of the 1997 8-hour ozone NAAQS, using data from the 3-year period of 2007–2009 to demonstrate attainment. As a result, on July 14, 2010, Tennessee requested redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (March 1st through October 31st) of 2007–2009, indicating that the 1997 8-hour ozone NAAQS has been achieved for the entire Knoxville Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The 1997 8-hour ozone design values for the Knoxville Area indicate that between 1999 and 2009, ozone concentrations declined noticeably at both high and low evaluations. While ozone concentrations are dependent on a variety of conditions, the likely reason for the overall downtrend in ozone concentrations in the Knoxville Area is most likely due to the reduction of NOx emissions that have occurred since 2004.

III. What are the criteria for redesignation?

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) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator 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) the Administrator 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 for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (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:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "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;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "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 Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas

[2] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "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.

IV. Why is EPA proposing these actions?

On July 14, 2010, Tennessee, through TDEC, requested redesignation of the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS. EPA's evaluation indicates that the Knoxville Area has attained the 1997 8-hour ozone NAAQS and has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also proposing to approve the 2007 baseline emission inventory under section 172(c)(3) because Tennessee has used methodology consistent with EPA guidance and implementing regulations to develop this inventory. EPA is also announcing the status of its adequacy determination of the 2024 NO_X and VOC MVEBs which are relevant to the requested redesignation.

V. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee's redesignation request would change the legal designation of the Anderson, Blount, Jefferson, Knox, Loudon, and Sevier Counties in their entireties, and the portion of Cocke County that falls within the boundary of the Great Smoky Mountains National Park for the 1997 8-hour ozone NAAQS found at 40 CFR part 81 from nonattainment to attainment. Approval of Tennessee's request would also incorporate into the Tennessee SIP, a plan for maintaining the 1997 8-hour ozone NAAQS in the Knoxville Area through 2024. This maintenance plan includes contingency measures to remedy future violations of the 1997 8-hour ozone NAAQS. The maintenance plan also establishes NO_X and VOC MVEBs for the Knoxville Area. The NO_X and VOC MVEBs for 2024 for the Knoxville Area are 36.32 tons per day (tpd) and 25.19 tpd, respectively. Final action would also approve the Area's emissions inventory under section 172(c)(3). Approval of Tennessee's maintenance plan would also result in approval of the NO_X and VOC MVEBs. Additionally, EPA is notifying the public of the status of its adequacy determination for the 2024 NO_X and VOC MVEBs pursuant to 40 CFR 93.118(f)(1).

VI. What is EPA's analysis of the request?

EPA is proposing to make the determination that the Knoxville 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS, and that all other redesignation criteria have been met for the Knoxville Area. The basis for EPA's determination for the Area is discussed in greater detail below.

Criteria (1)—The Knoxville Area Has Attained the 1997 8-Hour Ozone NAAQS

EPA is proposing to determine that the Knoxville Area has attained the 1997 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if it meets the 1997 8-hour ozone standard, 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 these NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, appendix I, the NAAQS are 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 the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Knoxville Area for the ozone season from 2007–2009. These data have been quality-assured and are recorded in AQS. The fourth-highest 8-hour ozone average for 2007, 2008 and 2009, and the 3-year average of these values (*i.e.,* design values), are summarized in the following Table 1 of this proposed rulemaking.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE KNOXVILLE 8-HOUR OZONE AREA (ppm)

County	Site name	Monitor ID	Eight-hour design values (ppm)		
			2005–2007	2006–2008	2007–2009
Anderson	Freels Bend Study Area	470010101–1	0.080	0.077	0.072
Blount	Look Rock, GSMNP	470090101–1	0.086	0.085	0.079
	Cades Cove, GSMNP	470090102–1	0.070	0.072	0.069
Jefferson	1188 Lost Creek Road	470890002–1	0.084	0.081	0.076
Knox	9315 Rutledge Pike	470930021–1	0.081	0.081	0.077
	4625 Mildred Drive	470931020–1	0.088	0.088	0.082
Loudon	1703 Roberts Road	47105109–1	0.085	0.082	0.077
Sevier	Cove Mountain, GSMNP	47155101–1	0.082	0.082	0.079

As discussed above, the design value for an area is the highest 3-year average of the annual fourth-highest 8-hour ozone value recorded at any monitor in the area. Therefore, the most recent 3-year design value (2007–2009) for the Knoxville Area is 0.082 ppm, which meets the NAAQS as described above. Current air quality data show that the Area continues to attain the NAAQS. If the Area does not continue to attain until EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, the State of Tennessee has committed to continue monitoring in this Area in accordance with 40 CFR part 58. EPA proposes to find that the Knoxville Area has attained the 1997 8-hour ozone NAAQS.

Criteria (2)—Tennessee Has a Fully Approved SIP Under Section 110(k) for the Knoxville Area and Criteria (5)—Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

Below is a summary of how these two criteria were met.

EPA proposes to find that Tennessee has met all applicable SIP requirements for the Knoxville Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. EPA also proposes to find that the Tennessee SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to subpart 1 basic 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA proposes to determine 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 determinations, EPA ascertained which requirements are applicable to the Area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Knoxville Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum describes EPA's interpretation of section 107(d)(3)(E). 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, ("SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992," September 17, 1993); 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). 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. See section 175A(c) of the CAA; *Sierra Club,* 375 F.3d 537; see also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

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. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements 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 requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (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 the transport of air pollutants (NO_X SIP Call [3] and Clean Air Interstate Rule (CAIR [4])). 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 classifications 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 the CAA's interstate transport 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 area will still be subject to these requirements after the 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 approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, 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, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Therefore, as was discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the Tennessee SIP addressing section 110 elements under the 1-hour ozone NAAQS (45 FR 53809, August 13, 1980). The State believes that the section 110 SIP approved for the 1-hour ozone NAAQS are sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. Tennessee submitted a letter dated December 14, 2007, setting forth its belief that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 1997 8-hour ozone NAAQS. EPA has not yet approved this submission, but such

[3] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP Call, Tennessee developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, major cement kilns, and internal combustion engines. On January 22, 2004, EPA approved Tennessee's rules as fulfilling Phase I (69 FR 3015) and Phase II on December 27, 2005 (70 FR 76408).

[4] On May 12, 2005 (70 FR 25162), EPA promulgated CAIR which required 28 upwind States and the District of Columbia to revise their SIPs to include control measures that would reduce emissions of sulfur dioxide and NO_X. Various aspects of CAIR rule were petitioned in court and on December 23, 2008, the U.S. Court of Appeals for the District of Columbia Circuit remanded CAIR to EPA (*see North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir., 2008)) which left CAIR in place to "temporarily preserve the environmental values covered by CAIR" until EPA replaces it with a rule consistent with the court's decision. The court directed EPA to remedy various areas of the rule that were petitioned consistent with its July 11, 2008, opinion (*see, North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir., 2008)), but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR is currently in effect in Tennessee.

approval is not necessary for purposes of redesignation.

Part D requirements. EPA proposes that if EPA approves Tennessee's base year emissions inventory, which is part of the maintenance plan submittal, the Tennessee SIP will meet applicable SIP requirements under part D of the CAA. We believe the emissions inventory is approvable because the 2007 VOC and NO_x emissions for Tennessee were developed consistent with EPA guidance for emission inventories, and the choice of the 2007 base year is appropriate because it represents the 2007–2009 period when the 1997 8-hour ozone NAAQS were not violated.

Part D, subpart 1 applicable SIP requirements. EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section IX of this rulemaking, the Tennessee SIP will meet the applicable SIP requirements for the Knoxville Area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets for the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification. Since the Knoxville Area was not classified under subpart 2 at the time the redesignation request was submitted, the subpart 2 requirements do not apply for purposes of evaluating the Tennessee's redesignation request. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498).

Subpart 1 Section 172 Requirements.[5] For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Knoxville Area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration.

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Knoxville Area has monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Knoxville Area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. As part of Tennessee's redesignation request for the Knoxville Area, Tennessee submitted a 2007 base year emissions inventory. As discussed below in section IX, EPA is proposing to approve the 2007 base year inventory that Tennessee submitted with the redesignation request as meeting the section 172(c)(3) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, 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 NAAQS without part D NSR. A more detailed 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 New Source Review Requirements for Areas Requesting Redesignation to Attainment." Tennessee has demonstrated that the Knoxville Area will be able to maintain the NAAQS without part D NSR in effect; therefore, EPA concludes that Tennessee need not have fully approved part D NSR programs prior to approval of the redesignation request. Tennessee's PSD programs will become effective in the Knoxville Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Tennessee SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. 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 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements[6] 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,* 265 F.3d 426 (upholding this interpretation);

[5] On August 3, 2010, EPA proposed to approve a clean data determination for the Knoxville Area for the 1997 8-hour ozone NAAQS (75 FR 45568). If EPA takes final action on this determination, under the provisions of EPA's ozone implementation rule (see 40 CFR Section 51.918), the requirements for the State of Tennessee to submit an attainment demonstration and associated reasonably available control measures plan, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for the Knoxville Area, shall be suspended for as long as the Area continues to meet the 1997 8-hour ozone NAAQS.

[6] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Tennessee submitted its transportation conformity SIP for 1-hour ozone on March 19, 2002. EPA issued a direct final rule approving Tennessee's Transportation Conformity SIP on May 16, 2003 (68 FR 26492).

NSR Requirements. 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 NAAQS without a part D NSR program 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 New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Tennessee has demonstrated that the Knoxville Area will be able to maintain the NAAQS without a part D NSR program in effect, and therefore, Tennessee need not have a fully-approved part D NSR program prior to approval of the redesignation request. However, Tennessee currently has a fully-approved part D NSR program in place. Tennessee's PSD program will become effective in the Knoxville Area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Knoxville Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Knoxville Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the applicable Tennessee SIP for the Knoxville 8-hour ozone nonattainment area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone NAAQS SIP elements applicable in Knox County, Tennessee (58 FR 50271, September 27, 1993; and 69 FR 4852, February 2, 2004).

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 since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). With the approval of the emissions inventory, EPA will have approved all Part D subpart 1 requirements applicable for purposes of redesignation.

Criteria (3)—The Air Quality Improvement in the Knoxville Area 1997 8-Hour Ozone NAAQS Nonattainment 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 Tennessee has demonstrated that the observed air quality improvement in the Knoxville Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

Measured reductions in ozone concentrations in and around the Knoxville Area are largely attributable to reductions from emission sources of VOC and NO_X, which are precursors in the formation of ozone. Table 2 summarizes several of the measures adopted that contributed to reductions of emissions. The majority of these reductions have been realized from federal measures related to mobile sources and electrical power generation.

TABLE 2—FEDERAL AND STATE MEASURES CONTRIBUTING TO EMISSIONS REDUCTIONS

Federal Measures:
NO_X Budget Trading Program.
NO_X SIP call.
National Low Emission Vehicles.
Tier 2 Vehicle Standards.
Tier 1, Tier 2 and Tier 3 (non-road).
Sources-Spark Ignition Engines (non-road).
State and Local Measures:
Stage I Vapor Recovery.
Motor Vehicle Anti-tampering Rule.
Air Quality Alert Programs.
Smart Trips Program.

One key program, the NO_X SIP, required states to make significant, specific emissions reductions (63 FR 57356). It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR ozone season trading program—which states could use to meet their SIP Call obligations, 70 FR 25289–90. All NO_X SIP Call states have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. Notably, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

Regarding point source emissions, the Tennessee Valley Authority's (TVA's) Bull Run Steam Plant located in Anderson County and Kingston Steam Plant located in Roane County include a total of 10 coal-fired boilers. As a result of EPA's "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Region Transport of Ozone" (NO_X SIP Call), TVA began operation of selective catalytic reduction (SCR) systems in 2004 at Bull Run's unit and on eight of the nine units at Kingston. TVA began operation of a SCR for the ninth unit at Kingston in 2006. There was an 85 percent and 90 percent reduction in NO_X emissions from the Bull Run and Kingston facilities, respectively from 2003 to 2008 as a result of these controls. Furthermore, NO_X emissions from all categories are projected to decrease in the Knoxville Area by 56.1 tpd between 2007 and

2024 (41.5 percent reduction). Total point source NO_X emissions are projected to increase slightly (2.42 tpd), while EGU NO_X emissions are projected to remain unchanged between 2007 and 2024. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance. Here, Tennessee has demonstrated maintenance based in part on those requirements.

In addition, EPA undertook an analysis of the changes in NO_X expected across a broader region. In particular, EPA reviewed available projections of NO_X emissions from nearby states from 2002 to 2018.

TABLE 3—2002 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X*

[Tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR	24,722	47,698	62,472	21,700	141,894	5,492	303,978
KY	201,928	38,434	104,571	39,507	156,417	534	541,391
LA	111,703	199,218	114,711	93,069	180,664	6,942	706,307
MS	40,433	61,533	88,787	4,200	111,914	308	307,175
MO	145,438	36,144	99,306	32,435	189,852	2,442	505,617
TN	152,137	64,344	96,827	17,844	238,577	217	569,946
Total	676,361	447,371	566,674	208,755	1,019,318	15,935	2,934,414

* From the Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

TABLE 4—2018 BASE ANNUAL EMISSION INVENTORY SUMMARY FOR NO_X *

[Tons per year]

States	EGU point	Non-EGU point	Non-road	Area	Mobile	Fires	Total
AR	34,938	36,169	34,305	25,672	33,640	5,600	170,324
KY	64,378	41,034	79,392	44,346	52,263	714	282,127
LA	44,485	225,748	106,685	114,374	44,806	6,969	543,067
MS	21,535	61,252	68,252	4,483	30,619	1,073	187,214
MO	83,181	51,489	59,625	35,213	50,861	2,442	282,811
TN	31,715	62,519	70,226	19,597	69,385	405	253,847
Total	280,232	478,211	418,485	243,685	281,574	17,203	1,708,390

* From the Tennessee Regional Haze SIP, Appendix D, page D.3–5 and support table for Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, page 2–40, figure 2–4.

From 2002 to 2018 NO_X emissions are projected to decrease in the region by 1,215,024 tpy or 41.4 percent in all. EGU NO_X anticipated decreases due to CAIR and the NO_X SIP Call are projected to be 198,150 tpy. However the largest source in this region remains the motor vehicle sector, which is projected to decrease 737,744 tpy. Even without EGU controls on NO_X emissions, total NO_X emissions are projected to continually decrease throughout the maintenance period.

On July 6, 2010, EPA proposed the Transport Rule, which will require significant reductions in sulfur dioxide and NO_X emissions that cross state boundaries. This proposed rule will potentially form the basis for a final rule which replaces EPA's 2005 CAIR (*North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir., 2008)).

These regional projections of emissions data have been prepared through 2018. However, since motor vehicle and non-road emissions continue to decrease long after a rule is adopted as the engine population is gradually replaced by newer engines, it is reasonable to expect that this projected decrease in regional NO_X emissions from mobile and non-road sources should continue through 2024 and assure that ozone in the Knoxville Area will continue to decline throughout the 10-year maintenance period. Hence, we believe the projected regional NO_X reductions are adequate to assure that the Knoxville Area will continue demonstrating maintenance throughout the 10-year maintenance period.

Criteria (4)—The Knoxville Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Knoxville Area to attainment for the 1997 8-hour ozone NAAQS, TDEC submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. 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 the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of Tennessee must submit a revised maintenance plan, which demonstrates 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 1997 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

provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, Tennessee's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

The Knoxville Area attained the 1997 8-hour NAAQS with monitoring data from 2007, 2008, and 2009, therefore Tennessee selected 2007 as the attainment emission inventory year. The attainment inventory identifies the level of emissions in the Area, which is sufficient to attain the 1997 8-hour ozone NAAQS. Tennessee began development of the attainment inventory by first developing a baseline emissions inventory for the Knoxville Area. The year 2007 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2010, 2013, 2016, 2020, and 2024. The projected inventory estimates emissions forward to 2024, which is beyond the 10-year interval required in section 175(A) of the CAA. Non-road mobile emissions estimates were based on EPA's NONROAD2008 model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2007 VOC and NO_X emissions, as well as the emissions for other years, for the Knoxville Area were developed consistent with EPA guidance, and are summarized in Tables 5 and 6 in the following subsection.

c. Maintenance Demonstration

The July 14, 2010, final submittal includes a maintenance plan for the Knoxville Area. This demonstration:

(i) Shows compliance and maintenance of the 1997 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment inventory year 2007 emissions levels. The year 2007 was chosen as the attainment inventory year because it is one of the most recent three years (i.e., 2007, 2008, and 2009) for which the Knoxville Area has clean air quality data for the 1997 8-hour ozone NAAQS.

(ii) Uses 2007 as the attainment inventory year and includes future emission inventory projections for 2010, 2013, 2016, 2020, and 2024.

(iii) Identifies an "out year," at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NOx and VOC MVEBs were established for the last year (2024) of the maintenance plan.

(iv) Provides the following actual and projected emissions inventories, in tpd for the Knoxville Area. See Tables 5 and 6.

TABLE 5—KNOXVILLE AREA VOC EMISSIONS

[Summer season tpd]

Summary of VOC emissions (tpd)								
Year	Point	Area	Onroad	Nonroad (excluding MLA)	Nonroad (MLA)	Total	Safety margin	Change from 2007 (percent)
2007	7.32	33.25	36.77	34.26	0.68	112.28	.....	.....
2010	7.17	34.21	33.53	31.05	0.62	106.58	5.70	−5.1
2013	7.37	35.23	30.29	26.47	0.52	99.88	12.40	−11.0
2016	7.88	36.64	27.05	22.07	0.44	94.08	18.20	−16.2
2020	8.64	38.40	22.72	18.04	0.35	88.15	24.13	−21.5
2024	9.53	40.24	18.39	16.62	0.33	85.11	27.17	−24.2

Note: Emissions are for Anderson, Blount, Jefferson, Knox, Loudon, Sevier and onroad emissions for Cocke County.
MLA = Commercial Marine Vessels, Locomotives and Aircraft.

TABLE 6—KNOXVILLE AREA NO_X EMISSIONS

[Summer season tpd]

Summary of NO_X emissions (tpd)								
Year	Point	Area	Onroad	Nonroad (excluding MLA)	Nonroad (MLA)	Total	Safety margin	Change from 2007 (percent)
2007	42.69	2.07	71.83	13.16	5.44	135.19		
2010	42.65	2.15	63.10	12.17	5.03	125.10	10.09	−7.5
2013	42.94	2.29	54.36	10.51	4.34	114.44	20.75	−15.3
2016	43.56	2.50	45.62	8.74	3.61	104.03	31.18	−23.0
2020	44.30	2.60	33.96	7.21	2.98	91.05	44.14	−32.7
2024	45.11	2.68	22.29	6.37	2.63	79.08	56.11	−41.5

Note: Emissions are for Anderson, Blount, Jefferson, Knox, Loudon, Sevier and onroad emissions for Cocke County.
MLA = Commercial Marine Vessels, Locomotives and Aircraft.

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. Tennessee has decided to allocate a portion of the available safety margin to the Area's VOC and NO_X MVEBs for 2024 for the Knoxville Area and has calculated the safety margin in its submittal. Specifically, 14.03 tpd of the available NO_X safety margin is allocated

to the 2024 MVEB, the remaining safety margin for NO_X for 2024 is 42.08 tpd. Also, 6.8 tpd of the available VOC safety margin is allocated to the 2024 MVEB, the remaining safety margin for VOC for 2024 is 20.37 tpd. See Tables 5 and 6, above. This allocation and the resulting available safety margin for the Knoxville Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently nine monitors measuring ozone in the Knoxville Area (see Table 1).[7] TDEC and the Knox County Department of Air Quality Management (DAQM) have committed, in the maintenance plan, to continue operation of monitors in the Knoxville Area in compliance with 40 CFR part 58, and have addressed the requirement for monitoring.

e. Verification of Continued Attainment

The State of Tennessee, through TDEC, and the Knox County DAQM have the legal authority to enforce and implement the requirements of the Knoxville Area 1997 8-Hour Ozone Maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Both agencies will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Knoxville Area using the latest emissions factors, models and methodologies. For these periodic inventories, TDEC and Knox County DAQM will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the Knoxville Area will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the July 14, 2010, submittal, Tennessee affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The primary trigger will be a quality assured/quality controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS. In addition to the primary trigger indicated above, Tennessee and the Knox County DAQM will monitor regional emissions through the Consolidated Emissions Reporting Rule (CERR). If the CERR results indicate that the projected emissions in this maintenance plan are significantly less than the CERR reveals (greater than ten percent), TDEC and Knox County DAQM will investigate the differences and develop an appropriate strategy for addressing the differences. In addition, if ambient monitoring data indicates that a violation of the three-year design value may be imminent, TDEC and Knox County DAQM will evaluate existing control measures to determine whether further emission reduction measures should be implemented. If QA/QC data indicates a violating design value for the 1997 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible violation but later QA/QC data indicates that the NAAQS was not violated, then a triggering event will not have occurred, and contingency measures will not be required.

The contingency plan states that upon a measured violation of the 1997 8-hour ozone NAAQS in the Knoxville Area, TDEC and the Knox County DAQM will complete sufficient analyses and provide those to the EPA. If deemed necessary, contingency measures would be adopted and implemented as expeditiously as possible, but no later than eighteen to twenty-four months after a triggering event. The proposed schedule for these actions would be as follows:

- Six months to identify appropriate contingency measures, including identification of emission sources and appropriate control technologies;
- Between three and six months to initiate a stakeholder process; and
- Between nine and twelve months to implement the contingency measures. This step would include the time required to draft rules or SIP amendments, complete the rulemaking process, and submit the final plans to EPA.

Tennessee will consider one or more of the following contingency measures to re-attain the NAAQS:

- Implementation of diesel retrofit programs, including incentives for performing retrofits.
- Reasonable Available Control Technology for NO_X sources in nonattainment counties.
- Programs or incentives to decrease motor vehicle use, including employer-based programs, additional park and ride services, enhanced transit service and encouragement of flexible work hours/compressed work week/telecommuting.
- Trip reduction ordinances.
- Additional emissions reductions on stationary sources.
- Enhanced stationary source inspection to ensure that emissions control equipment is functioning properly.
- Voluntary fuel programs, including incentives for alternative fuels.
- Construction of high-occupancy vehicle (HOV) lanes, or restriction of certain roads or lanes for HOV.
- Programs for new construction and major reconstruction of bicycle and pedestrian facilities including shared use paths, sidewalks, and bicycle lanes.
- Expand Air Quality Action Day activities/Clean Air Partners public education outreach.
- Expansion of E-government services at State and local levels.
- Additional enforcement or outreach on driver observance of reduced speed limits.
- Land use/transportation polices.
- Promote non-motorized transportation.
- Promote tree-planting standards that favor trees with low VOC biogenic emissions.
- Promote energy savings plans for local government.
- Gas can and lawnmower replacement programs.
- Seasonal open burning ban in nonattainment counties.

[7] Of the nine air quality ozone monitors in the Knoxville Area, the Clingman's Dome ozone monitoring site in Sevier County does not meet siting criteria listing in 40 CFR part 58, and thus is not appropriate to be used for the determination of attainment or nonattainment for the ozone NAAQS.

- Evaluate anti-idling rules and/or policy.
- Additional controls in upwind areas, if necessary.

Other control measures, not included in the above list, will be considered if new control programs are deemed more advantageous for this Area.

EPA has concluded that 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. The maintenance plan SIP revision submitted by the State of Tennessee for the Knoxville Area meets the requirements of section 175A of the CAA and is approvable.

VII. What is EPA's analysis of Tennessee's proposed NO_X and VOC MVEBs for the Knoxville area?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See 40 CFR 93.101. The 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 the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Knoxville Area, Tennessee has elected to develop MVEBs for VOC and NO_X for the entire Area. Tennessee is developing these MVEBs, as required, for the last year of its maintenance plan, 2024. The MVEBs reflect the total on-road emissions for 2024, plus an allocation from the available VOC and NO_X safety margin. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO_X and VOC MVEBs for the Knoxville Area are defined in Table 7 below.

TABLE 7—KNOXVILLE AREA VOC AND NO_X MVEBS

[Summer season tpd]

	2024
NO_X	36.32
VOC	25.19

As mentioned above, the Knoxville Area has chosen to allocate a portion of the available safety margin to the 2024 NO_X and VOC MVEBs. This allocation is 14.03 tpd for NO_X and 6.80 tpd for VOC. Thus, the remaining safety margin in 2024 is 42.08 tpd for NO_X and 20.37 tpd for VOC.

Through this rulemaking, EPA is proposing to approve the 2024 MVEBs for VOC and NO_X for the Knoxville Area because EPA has determined that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Knoxville Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

VIII. What is the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for 2024 for the Knoxville Area?

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 the NAAQS. 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 SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP 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). The 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 $PM_{2.5}$ 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). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Tennessee's maintenance plan submission includes VOC and NO_X MVEBs for the Knoxville Area for 2024. EPA reviewed both the VOCs and NO_X MVEBs through the adequacy process. The Tennessee SIP submission, including the Knoxville Area VOC and NO_X MVEBs was open for public comment on EPA's adequacy Web site on June 15, 2010, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The public comment period on adequacy of the 2024 VOC and NO_X MVEBs for Knoxville Area closed on July 15, 2010. EPA did not receive any comments on the adequacy of the

MVEBs, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2024 MVEBs for the Knoxville Area for transportation conformity purposes in the near future by completing the adequacy process that was started on June 15, 2010. After EPA finds the 2024 MVEBs adequate or approves them, the new MVEBs for VOC and NO_X must be used, for future transportation conformity determinations. For required regional emissions analysis years prior to 2024, the conformity test will be the applicable interim emissions test applicable for the Area per 40 CFR Part 93 (the transportation conformity rule). For required regional emissions analysis years that involve 2024 or beyond, the applicable budgets will be the new 2024 MVEBs. The 2024 MVEBs are defined in section VII of this proposed rulemaking.

IX. What is EPA's analysis of the proposed 2007 base year emissions inventory for the Knoxville Area?

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Tennessee's request to redesignate the Knoxville Area, the state submitted 2007 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by source-specific descriptions of emission calculation procedures and sources of input data. On-road mobile emissions were prepared using the MOBILE6.2 emissions model. Tennessee's submittal documents 2007 emissions in the Knoxville Area in units of tons per summer day. Table 8 below provides a summary of the 2007 summer day emissions of VOC and NO_X for the Knoxville Area.

TABLE 8—KNOXVILLE AREA 2007 SUMMER DAY EMISSIONS FOR VOC AND NO_X

[Summer season tpd]

Source	NO_X	VOC
Point Source Total	42.69	7.32
Area Source Total	2.07	33.25
On-Road Mobile Source Total	71.83	36.77
Non-Road Mobile Source Total	13.16	34.26
Non-Road Mobile Source Total	5.44	0.68
Total for all Sources	135.19	112.28

EPA is proposing to approve this 2007 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the 2024 NO_X and VOC MVEBs for the Knoxville Area

EPA is proposing to make the determination that the Knoxville Area has met the criteria for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. Further, EPA is proposing to approve Tennessee's July 14, 2010, SIP submittal including the redesignation request for the Knoxville Area. Additionally, EPA is proposing to approve the baseline emissions inventory for the Knoxville Area for the 1997 8-hour ozone NAAQS. EPA believes that the redesignation request and monitoring data demonstrate that the Knoxville Area has attained the 1997 8-hour ozone NAAQS.

EPA is also proposing to approve the maintenance plan for the Knoxville Area included as part of the July 14, 2010, SIP revision as meeting the requirements of section 175A of the CAA. The maintenance plan includes NO_X and VOC MVEBs for 2024. EPA is proposing to approve the 2024 NO_X and VOC MVEBs for the Knoxville Area because the maintenance plan demonstrates that, in light of expected emissions for all source categories, the Area will continue to maintain the 1997 8-hour ozone NAAQS.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2024 NO_X and VOC MVEBs, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

XI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 28, 2010.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2010–25291 Filed 10–6–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R03–RCRA–2010–0132; FRL–9211–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, also the Agency or we in this preamble) is proposing to grant a petition submitted by Babcock & Wilcox Nuclear Operations Group, Inc., the current owner, and to BWX Technologies, Inc., as predecessor in interest to the current owner, identified collectively hereafter in this preamble as "B&W NOG," to exclude (or delist) on a one-time basis from the lists of hazardous waste, a certain solid waste generated at its Mt. Athos facility near Lynchburg, Virginia.

The Agency has tentatively decided to grant the petition based on an evaluation of specific information provided by the petitioner. This tentative decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The Agency is requesting comments on this proposed decision.

DATES: To make sure we consider your comments on this proposed exclusion, they must be received by November 22, 2010. Comments received after the close of the comment period will be designated as late. These late comments may not be considered in formulating a final decision.

Any person may request a hearing on this tentative decision to grant the petition by filing a request by October 22, 2010. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2010–0132 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: friedman.davidm@epa.gov.*
- *Mail:* David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Management Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029.
- *Hand Delivery or Courier:* Deliver your comments to: David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Management Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments delivered in this manner are only accepted during normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R03–RCRA–2010–0132. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www/regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and that is made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www/epa/gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Land and Chemicals Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029. The hard copy RCRA regulatory docket for this proposed rule, EPA–R03–RCRA–2010–0132, is available for viewing from 8 a.m. to 3 p.m., Monday through Friday, excluding Federal holidays. You may copy material from any regulatory docket at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the B&W NOG facility petition, contact David M. Friedman, Environmental Protection Agency Region III, Land and Chemicals Division, Office of Technical and Administrative Support, Mail Code: 3LC10, 1650 Arch Street, Philadelphia, PA 19103–2029, by calling 215–814–3395 or by e-mail at *friedman.davidm@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this preamble is organized as follows:

I. Background
A. What is a listed hazardous waste?
B. What laws and regulations give EPA the authority to delist waste?
C. What is a delisting petition?
II. What did B&W NOG request in its petition?
III. Waste-Specific Information
A. How was the waste generated?
B. What information did B&W NOG submit to support its petition?
IV. EPA's Evaluation of the Petition
A. What method did EPA use to evaluate risk?
B. What other factors did EPA consider in its evaluation?
C. What conclusion did EPA reach?
V. Conditions for Exclusion
A. What conditions are associated with this exclusion?
B. What happens if B&W NOG fails to meet the conditions of this exclusion?
VI. How would this action affect states?
VII. When would the proposed exclusion be finalized?
VIII. Statutory and Executive Order Reviews

I. Background

A. What is a listed hazardous waste?

EPA published amended lists of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA. These lists have been amended several times, and are found at 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of 40 CFR Part 261 (*i.e.,* ignitability, corrosivity, reactivity, and toxicity), or (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

We also define residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes as hazardous wastes. (*See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively).

B. What laws and regulations give EPA the authority to delist waste?

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility that would otherwise meet the listing description may not be.

For this reason, a procedure to exclude or delist a waste was established based on the discretionary authority of Section 2002(a)(1) of RCRA. This procedure is contained in 40 CFR 260.20 and 260.22 and it allows a person to petition EPA or an authorized state in order to demonstrate that a specific listed waste from a particular generating facility should not be regulated as a hazardous waste.

C. What is a delisting petition?

A delisting petition is a request from a facility to EPA or an authorized State to exclude waste from the list of hazardous wastes on a site-specific basis. A facility petitions EPA because it does not believe the waste should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed. The criteria which EPA uses to evaluate a waste for listing are found in 40 CFR 261.11. An explanation of how these criteria apply to a waste is contained in the background document for that particular listed waste.

In addition to the criteria that we used when we originally listed the waste, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics found in 40 CFR part 261, subpart C, and must present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste as required by Section 3001(f) of RCRA (42 U.S.C. 6921(f)) and 40 CFR 260.22(a).

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA or an authorized state has "delisted" the waste and to ensure that future generated wastes meet the conditions set forth.

II. What did B&W NOG request in its petition?

On September 30, 1994, B&W NOG (then known as Babcock and Wilcox) petitioned EPA to exclude from the lists of hazardous waste listed at 40 CFR 261.31, both past and currently generated sludge produced by its wastewater treatment facility. This sludge was derived from the treatment of wastewaters in the pickle acid treatment system and was designated as EPA Hazardous Waste No. F006 (wastewater treatment sludge from electroplating operations). On August 9, 1999 (64 FR 42317), EPA proposed, and on January 14, 2000 (65 FR 2337), EPA finalized, a conditional exclusion for the facility (then known as BWX Technologies) delisting the currently generated filter cake solids from its pickle acid wastewater treatment system.

As explained in EPA's proposed exclusion of August 4, 1999, the previously generated sludge was classified as a "mixed waste" under RCRA. A mixed waste is defined as a waste that contains both a radioactive component subject to the Atomic Energy Act (AEA), and a hazardous component subject to RCRA.

RCRA regulations are promulgated under one of two statutory authorities which are (1) the original RCRA authority (or base program) and (2) the Hazardous and Solid Waste Amendments of 1984 (HSWA). The hazardous components of mixed wastes are subject to RCRA base program jurisdiction. Under Section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. When new, more stringent federal requirements are promulgated or enacted, the state is obligated to enact equivalent authority within specified time frames. New federal requirements do not take effect in authorized states until the state adopts the requirements as state law.

Up until 1986, the applicability of RCRA to mixed waste was unclear. To address this issue, EPA issued a clarification notice on July 3, 1986 (51 FR 24504). In that notice, EPA announced that the hazardous component of mixed waste was subject to RCRA jurisdiction and that the radioactive portion of the waste (source, special nuclear, and by-product material) was subject to the Atomic Energy Act (AEA). EPA also required states which had obtained RCRA base program authorization prior to the July 3, 1986 notice to revise their programs to clarify the regulatory status of mixed waste (*i.e.,* to include the hazardous component of mixed waste in their program definition of solid waste), and to apply to EPA for authorization of their revised program. The Commonwealth of Virginia had been granted authorization to administer the RCRA base program prior to July 3, 1986. However, when EPA granted the above referenced exclusion on January 14, 2000, Virginia had not been specifically authorized for mixed waste.

In a State which was authorized for the RCRA base program, but not specifically authorized for mixed waste, the waste was not subject to the Federal hazardous waste requirements. Mixed waste remained outside Federal jurisdiction until the State revised its program and received authorization specifically for mixed waste. Therefore,

at the time of the January 14, 2000 exclusion, EPA could not consider the previously generated sludge at B&W NOG for exclusion.

The Virginia Department of Environmental Quality's (VADEQ's) authorization for the mixed waste portion of the RCRA program became effective on September 29, 2000. At that time, mixed waste in the Commonwealth of Virginia became subject to Federal RCRA jurisdiction.

Beginning in May 2001, B&W NOG informally submitted information on the sludge that was deposited in two on-site surface impoundments designated as Final Effluent Ponds (FEPs) 1 and 2. Because FEP 1 received effluent from the low level radioactive waste treatment system in the past and FEP 2 currently receives effluent from the low level radioactive waste treatment system, the FEP sludge in both units includes a Nuclear Regulatory Commission (NRC) regulated radioactive component, and therefore, is a mixed waste designated as EPA hazardous waste No. F006.

On February 21, 2003, BWX Technologies, Inc. petitioned EPA to exclude from the lists of hazardous waste contained in 40 CFR 261.31 on a one-time basis, the sludge which was deposited in FEPs 1 and 2 because it believed that the petitioned waste did not meet any of the criteria for which the waste was listed and because there were no additional constituents or factors that would cause the waste to be hazardous. The volume of sludge contained in each FEP was, at that time, determined to be 6,600 cubic yards, for a combined sludge volume of 13,200 cubic yards.

On September 3, 2008, B&W NOG notified EPA that it had successfully completed a sludge removal project at FEPs 1 and 2. Sludge was removed from these units and disposed of at a mixed waste disposal facility permitted under the authority of both RCRA and the Atomic Energy Act, as amended. B&W NOG conservatively estimated that of the 13,200 cubic yards of sludge in both units, only 148 cubic yards (less than 2 percent of the original volume) remained. In this notification, B&W NOG requested that its petition be amended to reflect the reduced volume, and that the Agency proceed with the delisting request based on the new volume.

III. Waste-Specific Information

A. How was the waste generated?

B&W NOG is engaged in the production and assembly of nuclear components primarily for the United States government at its Mt. Athos facility near Lynchburg, Virginia. This activity includes the use of special nuclear materials, primarily unirradiated enriched uranium. B&W NOG's operations include the recovery and purification of scrap uranium and uranium downblending. B&W NOG's operations are regulated under Nuclear Regulatory Commission License SNM–42.

B&W NOG is primarily a metal fabricator (SIC No. 3443), involving the fabrication of metal components from stock metals through various machining processes, welding, grinding, pickling and final assembly. Secondary operations include the recovery of uranium fuel, the research and development of uranium fuel manufacturing techniques and downblending operations.

Hydrofluoric acid and nitric acid are used in combination by B&W NOG in the pickling and cleaning of specialty metals. Some of these spent pickling and cleaning solutions and rinse waters are treated on-site in the pickle acid and low level radioactive wastewater treatment systems.

Support facilities at the Mt. Athos site include a steam plant, process water treatment and wastewater treatment facilities.

The Lynchburg Technology Center (LTC) houses B&W NOG headquarters, B&W Nuclear Power Generation Group, Inc. laboratories and B&W Corporate Service Centers. Wastewater generated at the LTC is piped to the B&W NOG for treatment. Solid wastes produced at the LTC are delivered to B&W NOG for recycling and/or disposal.

The wastewaters generated at the B&W NOG facility are treated in an on-site wastewater treatment plant that consists of four discrete wastewater treatment systems. They are the low level radioactive waste treatment system, pickle acid waste treatment system, sanitary waste treatment system, and water production waste treatment system. Once-through non-contact cooling water does not require treatment and discharges directly to FEP 1. Both FEPs have each received a combination of these wastewater streams during their operating history.

The FEPs are two surface impoundments located adjacent to the James River at the B&W NOG Mt. Athos site. The FEPs are part of the VADEQ permitted industrial wastewater system (Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0003697) and they provide equalization of the liquid effluent for control of pH and suspended solids.

B&W NOG's wastewater neutralization processes generate precipitation solids which are removed by filter presses. The remaining suspended solids are discharged with wastewater and gradually accumulate in the FEPs as sludge. The FEP sludge consists in part of suspended solids which carry over into the units in the effluent from the filter presses that remove solids in the pickle acid waste treatment system, and additional suspended solids which enter the units from the low level radioactive, and grit-blast wastewater treatment systems.

FEP 1 was placed in service in 1973, with a nominal capacity of 2,000,000 gallons. FEP 2 was placed in service in 1979, with a nominal capacity of 1,900,000 gallons. Although the routing of treated wastewaters into these FEPs has changed throughout the operating history of the units, at some point in their history they have both received suspended solids from the pickle acid treatment system and the low level radioactive treatment system, as well as various process or sanitary wastewaters. It is the pickle acid treatment system suspended solids that resulted in the formation of F006 sludge prior to the January 14, 2000 delisting.

The current configuration of wastewater streams discharged to each FEP is as follows:

FEP 1 receives non-industrial processing operations wastewater consisting of wastewater from the water production (deionized and make-up non-contact cooling water) treatment system and once through non-contact cooling water.

FEP 2 receives industrial processing operations wastewater consisting of wastewater from the pickle acid waste treatment system, the low level radioactive treatment system and the grit blast waste treatment system.

Wastewater from the sanitary waste treatment system discharges directly to the James River through a VPDES permitted outfall.

B. What information did B&W NOG submit to support its petition?

To provide a comprehensive sludge sampling strategy of the FEPs, a two-phase sampling and analysis plan was implemented by B&W NOG.

Phase 1 involved the collection of fully penetrating core samples of sludge from four representative locations in each FEP. These samples were analyzed for a comprehensive list of chemical constituents and other analytical parameters, including the 40 CFR Part 264 Appendix IX (Ground-Water Monitoring List) analytes for the metal, volatile organic carbon, semivolatile

organic compound, polychlorinated biphenyl (PCB), and dioxin/furan groups; plus formaldehyde, based on process knowledge. Other analytical parameters included total cyanide, fluoride, oil and grease, sulfide, water content, corrosivity and ignitability. The sludge characterization included analyses for both total concentrations and toxicity characteristic leaching procedure (TCLP) concentrations. In addition to the standard TCLP performed on all samples using an acidic leaching fluid, one sample from each FEP was tested utilizing the TCLP procedure but substituting two different leaching fluids. The additional leaching fluids were: (1) Reagent water with a neutral pH; and (2) an alkaline solution of sodium bicarbonate and sodium carbonate with a pH of 10.

The Phase 2 chemical characterization involved the collection and analysis of thirteen independent composite samples of sludge, seven from FEP 1 and six from FEP 2. Each composite sample was comprised of continuous sludge cores collected from four randomly selected locations within a 10,000 square foot sub-section of the unit. Samples were analyzed for an abbreviated list of constituents which were selected based on the results of the comprehensive chemical analyses performed on sludge samples collected in the Phase 1 chemical characterization. The Phase 2 analytes were fluoride, 1,2-dichloroethane, tetrachloroethane, trichloroethene, cadmium, copper, mercury, nickel, thallium, PCBs and dioxins/furans.

The Phase 2 sludge samples were analyzed for both total and leachable concentrations of each analyte. In Phase 2, only one leaching test using the TCLP procedure was performed for each analyte. Each analyte was tested using the leaching fluid that produced the highest soluble concentration of that analyte in the Phase 1 characterization.

The maximum total constituent and maximum leachate concentrations for all detected inorganic constituents in B&W NOG's waste samples are presented in Table 1.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by B&W NOG using appropriate methods to analyze the waste.

TABLE 1—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN SLUDGE

Inorganic constituents	Total constituent concentration (mg/kg)	TCLP Leachate concentration (mg/l)
Antimony	1.12	0.002555
Arsenic	2.56	0.000972
Barium	52.3	0.355
Beryllium	0.429	0.00914
Cadmium	14	0.0323
Chromium	198	0.132
Cobalt	2.03	0.0546
Copper	2390	633
Lead	7.73	0.00528
Mercury	1.7	< 0.00004
Nickel	93.1	2.49
Selenium	0.447	0.00181
Silver	148	0.0351
Thallium	0.544	0.00481
Tin	279	0.01375
Vanadium	9.6	0.028
Zinc	126	1.75
Cyanide (total)	0.245	0.01225
Fluoride	722	182

[1] These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.
< Denotes that the constituent was not detected at the concentration specified in the table.

The maximum total constituent and maximum leachate concentrations for all detected organic constituents in B&W NOG's waste samples are presented in Table 2.

The detection limits presented in Table 2 represent the lowest concentrations quantifiable by B&W NOG using appropriate methods to analyze the waste.

TABLE 2—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN SLUDGE

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Acetone	0.371	0.212
Benzene	0.0051	0.0026
Benzoic acid	< 4.57	0.0028
Benzo(b)fluoranthene	0.388	< 0.0115
bis(2-Ethylhexyl)phthalate	2.265	0.0028
2-Butanone (methyl ethyl ketone)	0.0544	< 0.01
Carbon disulfide	0.0136	< 0.01
Carbon tetrachloride	< 0.0202	0.0024

TABLE 2—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS [1] IN SLUDGE—Continued

Organic constituents	Total constituent concentration (mg/kg)	TCLP leachate concentration (mg/l)
Chloroform	< 0.0202	0.0024
1,2-Dichloroethane	< 0.0202	0.0029
1,1-Dichloroethene	< 0.0202	0.0026
cis-1,2-Dichloroethene	0.0136	< 0.01
Diethylphthalate	< 4.57	0.0056
Diphenylamine	< 4.57	0.0135
Fluoranthene	3.385	0.0021
2-Hexanone	0.0253	< 0.01
1-Methylnaphthalene	< 4.57	0.0012
2-Methylnaphthalene	< 4.57	0.0011
3-Methylphenol (m-cresol)	< 4.57	0.0017
4-Nitroaniline	< 4.57	0.0027
Total PCBs	0.23	< 0.0084
Pyrene	0.535	< 0.0115
2,3,7,8-TCDD [2]	0.0000035	0.00000000101
Tetrachloroethene	0.220	0.0083
1,1,1,-Trichloroethane	< 0.0202	0.0014
Trichloroethene	1.2	0.015
Trichlorofluoromethane	< 0.0202	0.0011
1,2,4-Trimethylbenzene	0.0232	< 0.01
m,p-Xylenes	< 0.0202	0.0018

[1] These levels represent the highest concentration of each constituent found in any sample. These levels do not necessarily represent the specific levels found in any one sample.
[2] For risk assessment of PCDDs and PCDFs compounds, toxicity values are expressed as 2,3,7,8-TCDD equivalents (TEQs).
< Denotes that the constituent was not detected at the concentration specified in the table.

B&W NOG also submitted groundwater monitoring data to support its delisting request. Three groundwater monitoring wells had previously been installed to monitor groundwater quality in the vicinity of the FEPs as a requirement of VPDES Permit No. VA0003697, because it was thought that constituents from the FEPs may be impacting groundwater quality in the vicinity of the ponds. An additional groundwater monitoring well located further downgradient between the ponds and the James River was added to the monitoring network as a result of RCRA corrective action investigations at the site.

Groundwater was sampled by B&W NOG over five quarters (starting in February 2001) to support this delisting request. These samples were analyzed for the 40 CFR Part 264 Appendix IX (Ground-Water Monitoring List) analytes for the metal, volatile organic carbon, semivolatile organic compound, and polychlorinated biphenyl (PCB) groups. Other analytical parameters included total cyanide, fluoride, and sulfide. An examination of the results shows that several chemicals were detected in one or more wells, some above an established Agency health-based level (*e.g.,* a Maximum Contaminant Level (MCL) promulgated at 40 CFR part 141, pursuant to the Safe Drinking Water Act, 41 U.S.C. Section 300g–1). However, in order to evaluate the source of contamination, upgradient and downgradient concentrations of contaminants were compared. Based on an evaluation of this data, it was determined that the FEPs are not the source of the groundwater contamination with one exception. Of the constituents that are elevated above a health-based level in downgradient wells, only fluoride cannot be attributed to a contamination source upgradient of the FEPs. Fluoride is present at elevated levels in all three of the downgradient wells and exceeded EPA's MCL in one of these wells with a maximum fluoride concentration of 18.1 mg/l.

EPA requires that petitioners submit signed certifications affirming the truthfulness, accuracy and completeness of the information in their delisting petitions (*See* 40 CFR 260.22(i)(12)). B&W NOG submitted signed certifications stating that all submitted information is true, accurate and complete.

IV. EPA's Evaluation of the Petition

A. What method did EPA use to evaluate risk?

Because the sludge that is the subject of this delisting petition contains low levels of radioactivity, it is, and if delisted by EPA, will remain subject to NRC regulations. Although the sludge currently resides in the FEPs and will continue to do so for many years, the FEPs will be subject to NRC decommissioning rules when they are taken out of service. At that time, any sludge remaining in the units will have to be removed and disposed of in a facility licensed to accept low-level radioactive waste.

We evaluated B&W NOG's waste using the Agency's Delisting Risk Assessment Software Program (DRAS) version 3.0 to estimate the potential releases of waste constituents and to predict the risk associated with those releases. DRAS performs a multi-pathway and multi-chemical risk assessment to determine the potential impact of a waste disposed of in a landfill or surface impoundment. The sludge which is the subject of this petition is not a liquid, however, it currently resides in units that are designed as surface impoundments. In order to be conservative in our evaluation of potential risk, we performed an evaluation of this waste using the DRAS surface impoundment module in addition to the DRAS landfill module. The process that we used to adapt the sludge data for use in the surface impoundment module is described in the docket for this proposed rule.

For the DRAS evaluation, we considered transport of the hazardous waste constituents present in the waste through groundwater, surface water and air. The evaluation is based on a reasonable worst-case (least protective)

disposal scenario for B&W NOG's petitioned waste even though the waste will remain subject to more stringent NRC disposal regulations.

DRAS uses a fate and transport model to predict the release of hazardous constituents from the petitioned waste, in order to evaluate the potential impact on human health and the environment. DRAS accomplishes this using several EPA models including the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport model which calculates dilution/attenuation factors for evaluating impacts on groundwater. From a release to groundwater, DRAS considers routes of exposure to a human receptor of direct ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water runoff, DRAS evaluates the exposure to a human receptor by ingestion of fish and direct ingestion of drinking water. From a release of volatile emissions from a surface impoundment and waste particles, and a release of volatile emissions to the air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil with subsequent ingestion of the contaminated soil by a child.

The volatile emission evaluation in the DRAS version 3.0 surface impoundment module currently does not produce valid results due to an operational problem with the software. Furthermore, the methodology currently used by DRAS to estimate volatile emissions does not produce a very conservative estimate of average volatile emission rates. Therefore, we prepared an independent calculation of volatile emissions from these surface impoundments using the methodologies presented in Chapter 5.0 (Surface Impoundments and Open Tanks) of the EPA report, "Air Emissions Models for Waste and Wastewater," November 1994, EPA–453/R–94–080A. This report can be found at: *http://www.epa.gov/ttn/chief/software/water/air_emission_models_waste_wastewater.pdf.* Chapter 5.0 of this report is included in the docket for this proposed rule.

The calculated emission rates were then run through a dispersion model to estimate downwind concentrations. The methodology used is described in section 2.3.2.4 (Calculation of Downwind Waste Constituent Concentration in Air at the POE Surface Impoundment) of Chapter 2 of the RCRA Delisting Technical Support Document. Risk and hazard from these estimated downwind concentrations were determined using the methods presented in Chapter 4 (Risk and Hazard Assessment) of the DRAS Delisting Technical Support Document.

For a detailed description of the DRAS program, the software itself, the Delisting Technical Support Document, and the DRAS version 3.0 User's Guide, go to: *http://www.epa.gov/reg5rcra/wptdiv/hazardous/delisting/dras-software.html.*

In addition to the chemical constituents contained in the DRAS database and whose properties are described in the RCRA Delisting Technical Support Document, Appendix A, Chemical Specific Data, three additional constituents were detected in B&W NOG's sludge samples. These chemical constituents are 1-methylnaphthalene, 1,2,4-trimethylbenzene, and 2-hexanone. These chemicals were added to the DRAS database so that they would be included in the risk analysis. The chemical specific data that we used for each of these chemical constituents can be found in the docket for this proposed rule.

For constituents which are not detected in leachate analysis, DRAS requires that the detection limit be entered along with the other data. In these circumstances, DRAS uses one-half the detection limit to calculate risk. We believe it is inappropriate to evaluate constituents which are not detected in any sample analyzed if an appropriate analytical method was used.

Similarly, DRAS also predicts possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the groundwater analyses, DRAS uses the established acceptable risk level, the health-based data, and standard risk assessment and exposure algorithms to perform this assessment.

In most cases, because a delisted waste is no longer subject to hazardous waste regulation, the Agency is generally unable to predict, and does not presently control, how a petitioner will manage a waste after it is excluded. Therefore, we believe that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

However, as discussed earlier in this preamble, the waste that is being considered for delisting in this B&W NOG petition contains a radioactive component and, therefore, will remain subject to NRC jurisdiction.

For a one-time delisting petition, we determine cumulative risk. Beginning with the leachate and total waste concentrations for each constituent in the waste (source concentrations), the waste volume and exposure parameters are used to estimate the upper-bound excess lifetime cancer risks (risk) and noncarcinogenic hazards (hazard).

If a delisting evaluation is performed for a one-time exclusion, DRAS computes the cumulative carcinogenic risk by summing the carcinogenic risks for all waste constituents for a given exposure pathway and then summing the carcinogenic risks for each pathway analyzed in the delisting risk assessment. DRAS also computes the cumulative noncarcinogenic hazard by summing the Hazard Quotients for all waste constituents for a given exposure pathway to obtain exposure pathway-specific Hazard Indices (HIs), and then summing the HIs associated with each exposure pathway analyzed.

For a one-time delisting, EPA Region III evaluates the cumulative cancer risk and cumulative hazard index of the petitioned waste. A cumulative cancer risk less than 1×10^{-4} and a cumulative hazard index less than or equal to 1 are considered to be protective of human health and will be considered acceptable for this type of delisting determination.

B. What other factors did EPA consider in its evaluation?

We also consider the applicability of groundwater monitoring data during the evaluation of delisting petitions where the petitioned waste is currently managed or was once managed in a land-based unit (*e.g.,* a landfill or surface impoundment).

We use the results of groundwater monitoring data evaluations as a check on the reasonable worst case evaluations performed, in order to provide an additional level of confidence in our delisting decisions. Because groundwater monitoring data are normally descriptive of the impact of the petitioned waste under actual conditions, and not reasonable worst case assumptions, evidence of groundwater contamination originating from a land-based waste management unit may be a factor resulting in petition denial.

Regarding the fluoride in the groundwater, B&W NOG makes the argument that the fluoride concentrations can be attributed to a source other than the FEP sludge which is the subject of this delisting request. As previously discussed in this preamble, the FEPs are used as equalization ponds for treating

industrial effluent and are part of B&W NOG's VPDES permitted wastewater treatment system that discharges to the James River.

In support of its position that the sludge is not the source of the fluoride in the groundwater, B&W NOG submitted the following two documents regarding the chemistry of fluoride: A declaration of David W. Griffiths, Ph.D., regarding the use and disposition of fluorine containing compounds at the Mt. Athos site dated February 17, 2003, and a white paper on calcium fluoride solubility submitted to EPA on July 27, 2009. Both of these documents can be found in the docket for this proposed rule.

Based on the wastewater treatment chemistry, B&W NOG has demonstrated that the fluoride in the sludge is present in the form of calcium fluoride, an insoluble precipitate. In contrast, the fluoride in the effluent is in a dissolved form (sodium fluoride) that can migrate through the soil and affect the underlying groundwater. The fluoride content in this effluent is regulated under B&G NOG's existing VPDES permit. The fluoride in the groundwater has been evaluated through a site-specific risk assessment. The actual area of fluoride contamination is very limited and the conclusion of the risk assessment accepted by VADEQ was that the risk to human health and the environment was so low that no action by B&G NOG was required to address this contamination.

C. What conclusion did EPA reach?

EPA has concluded that the information provided by B&W NOG provides a reasonable basis to grant B&W NOG's petition. We, therefore, propose to grant B&W NOG a one-time delisting for the 148 cubic yards of petitioned sludge currently residing in the FEPs. The data submitted to support the petition and the Agency's evaluation show that the constituents in the FEP sludge are below health-based levels used by the Agency for delisting decision-making, and that the sludge does not exhibit any of the characteristics of a hazardous waste as described in 40 CFR part 261 subpart C.

For this delisting determination, we used information gathered to identify plausible exposure routes (*i.e.,* groundwater, surface water, air) for hazardous constituents present in the petitioned waste. We applied the DRAS described above to predict potential concentrations of hazardous constituents that may be released from the petitioned waste after disposal using both the landfill and surface impoundment modules. We performed a separate and more conservative evaluation of volatile emissions from surface impoundments using the methodology described in the EPA report, "Air Emissions Models for Waste and Wastewater" (as described earlier in this preamble.) We determined the potential impact of the disposal of B&W NOG's waste on human health and the environment.

The estimated total cumulative risk as calculated using the DRAS landfill scenario is 2.5×10^{-7}. The estimated total cumulative risk as calculated using both the DRAS surface impoundment scenario and the methodology in the EPA report, "Air Emissions Models for Waste and Wastewater" is 2.0×10^{-6}. We conclude that these risks are acceptable because, for a one-time delisting, EPA Region III considers a cumulative cancer risk less than 1×10^{-4} to be protective of human health.

The estimated cumulative hazard index for this waste as calculated by DRAS using the landfill scenario is 4.6×10^{-2}. The estimated cumulative hazard index for this waste as calculated using both the DRAS surface impoundment scenario and the methodology in the EPA report, "Air Emissions Models for Waste and Wastewater" is 1.3×10^{-1}. We likewise conclude that these risks are acceptable because, for a one-time delisting, EPA Region III considers a cumulative hazard index less than or equal to 1 to be protective of human health.

We conclude that the data submitted in support of the petition show that the waste will not pose a threat when relieved of Subtitle C requirements. We, therefore, propose to grant B&W NOG's request for a one-time delisting for the 148 cubic yards of sludge currently residing in B&W NOG's FEPs.

V. Conditions for Exclusion

A. What conditions are associated with this exclusion?

The proposed exclusion would apply only to the estimated 148 cubic yards of sludge currently residing in B&W NOG's FEPs.

If B&W NOG discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, B&W NOG will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that condition.

The purpose of this condition is to require B&G NOG to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct. If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* (1978), (APA), to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, in the event that a decision is made to dispose of all or of part of the sludge off-site, we will require that B&W NOG provide a one-time notification to any state regulatory agency to which or through which the delisted waste will be transported for disposal. B&W NOG will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion.

B. What happens if B&W NOG fails to meet the conditions of this exclusion?

If B&W NOG violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion, and may initiate enforcement actions.

VI. How would this action affect states?

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.,* both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (*i.e.,* to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, B&W

NOG must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VII. When would the proposed exclusion be finalized?

EPA is today making a tentative decision to grant B&W NOG's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of RCRA Section 3010, EPA has determined that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedures Act, 5 U.S.C. 553(d).

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. 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 as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the cumulative carcinogenic and noncarcinogenic risk. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this 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. 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 this action under section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a RCRA Subtitle D landfill or surface impoundment. Therefore, EPA does not believe that any populations in proximity of the landfills or surface impoundments used by this facility should be adversely affected by common waste management practices for this delisted waste.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 24, 2010.

William C. Early,

Acting Regional Administrator, Region III.

For the reasons set forth in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Babcock & Wilcox Nuclear Operations Group, Inc., current owner, and BWX Technologies, Inc., predecessor in interest to the current owner, identified collectively hereafter as "B&W NOG".	Lynchburg, Virginia	Wastewater treatment sludge from electroplating operations (Hazardous Waste Number F006) generated at the Mt. Athos facility near Lynchburg, VA and currently deposited in two on-site surface impoundments designated as Final Effluent Ponds (FEPs) 1 and 2. This is a one-time exclusion for 148 cubic yards of sludge and is effective after (insert publication date of the final rule). (1) *Reopener language* (a) If B&W NOG discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then B&W NOG must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. (2) *Notification Requirements* In the event that the delisted waste is transported off-site for disposal, B&W NOG must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action.
* *	* *	* * *

[FR Doc. 2010–25319 Filed 10–6–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1130]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 5, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1130, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Randolph County, Arkansas, and Incorporated Areas				
Baltz Lake	Approximately 1,800 feet downstream of State Highway 115.	None	+278	Unincorporated Areas of Randolph County.
	Approximately 900 feet upstream of State Highway 115.	None	+279	
Black River	Approximately 9,000 feet downstream of the confluence with Mill Creek.	None	+268	City of Pocahontas, Unincorporated Areas of Randolph County.
	Approximately 2,250 feet upstream of the confluence with Pettit Creek.	None	+269	
Mill Creek	Just upstream of Ridgecrest Road	None	+270	City of Pocahontas, Unincorporated Areas of Randolph County.
	Approximately 600 feet upstream of U.S. Route 62	None	+288	
Pettit Creek	At the confluence with the Black River	None	+269	City of Pocahontas, Unincorporated Areas of Randolph County.
	Approximately 1,500 feet upstream of U.S. Route 67	None	+269	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Pocahontas

Maps are available for inspection at 410 North Marr Street, Pocahontas, AR 72455.

Unincorporated Areas of Randolph County

Maps are available for inspection at 107 West Broadway Street, Pocahontas, AR 72455.

Polk County, Iowa, and Incorporated Areas				
Big Creek Lake	Entire shoreline within the City of Polk City	None	+926	City of Polk City.
Fourmile Creek	Approximately 0.7 mile upstream of Northeast 14th Street.	None	+947	City of Alleman.
	Approximately 1,150 feet south of the intersection of Northeast 6th Street and Northwest 134th Avenue.	None	+953	
Fourmile Creek	Approximately 1,100 feet east of the intersection of Northwest 2nd Street and Northwest 134th Avenue.	None	+961	City of Alleman.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	At the intersection of Northwest 2nd Street and Northwest 142nd Avenue.	None	+966	
Mud Creek	Approximately 0.5 mile upstream of the confluence with the Des Moines River.	None	+780	City of Runnells.
	Approximately 1.25 mile upstream of the confluence with the Des Moines River.	None	+780	
North River	At the intersection of Southeast 72nd Avenue and Southwest 60th Street.	+780	+781	Unincorporated Areas of Polk County.
	At the intersection of Southeast Avon Drive and Southwest Goodhue Drive.	+780	+782	
Raccoon River	Approximately 250 feet upstream of the I–35 crossing	+828	+829	Unincorporated Areas of Polk County.
	Approximately 1.6 mile upstream of the I–35 crossing	+831	+833	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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ADDRESSES

City of Alleman
Maps are available for inspection at 14000 Northeast 6th Street, Alleman, IA 50007.

City of Polk City
Maps are available for inspection at 112 3rd Street, Polk City, IA 50226.

City of Runnells
Maps are available for inspection at 110 Brown Street, Runnells, IA 50237.

Unincorporated Areas of Polk County
Maps are available for inspection at 111 Court Avenue, Des Moines, IA 50309.

Dakota County, Minnesota, and Incorporated Areas

Alimagnet Lake	Entire shoreline within Dakota County	None	+959	City of Apple Valley.
Keller Lake	Entire shoreline within Dakota County	None	+936	City of Apple Valley.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Apple Valley
Maps are available for inspection at 7100 West 147th Street, Apple Valley, MN 55124.

Cambria County, Pennsylvania (All Jurisdictions)

Chest Creek	Approximately 0.38 mile downstream of the railroad	None	+1723	Township of Chest, Township of Elder.
	Approximately 1,240 feet upstream of Ridge Avenue	None	+1733	
Clapboard Run	Approximately 670 feet upstream of Martin Road	None	+1923	Township of Richland.
	Approximately 710 feet upstream of Martin Road	None	+1923	
Clearfield Creek	Approximately 130 feet upstream of Liberty Street	None	+1623	Township of Allegheny, Township of Gallitzin.
	Approximately 375 feet upstream of the confluence with Clearfield Creek Tributary A.	None	+1626	
Conemaugh River	Approximately 510 feet downstream of the confluence with Laurel Run No. 4.	None	+1154	Township of Lower Yoder.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 395 feet downstream of the confluence with Laurel Run No. 4.	None	+1154	
Fox Run	Approximately 1,560 feet upstream of 8th Street	None	+1503	Township of Susquehanna.
	Approximately 1,790 feet upstream of 8th Street	None	+1505	
Laurel Run Tributary A	Approximately 120 feet downstream of the confluence with Laurel Run No. 2.	None	+1607	Township of Croyle.
	Approximately 100 feet downstream of the confluence with Laurel Run No. 2.	None	+1608	
Little Conemaugh River	Approximately 790 feet downstream of the confluence with South Branch Little Conemaugh River.	None	+1469	Township of Conemaugh, Township of East Taylor.
	Approximately 765 feet downstream of the confluence with South Branch Little Conemaugh River.	None	+1469	
Little Conemaugh River	Approximately 295 feet upstream of the railroad	None	+1536	Township of Croyle.
	Approximately 520 feet upstream of the railroad	None	+1537	
Little Conemaugh River	Approximately 0.49 mile upstream of the railroad	None	+1560	Township of Summerhill.
	Approximately 0.51 mile upstream of the railroad	None	+1560	
Little Conemaugh River	Approximately 715 feet upstream of the railroad	None	+1761	Township of Portage.
	Approximately 1,475 feet upstream of the railroad	None	+1767	
Little Conemaugh River	Approximately 1,555 feet downstream of the confluence with Bear Rock Run.	None	+1861	Township of Washington.
	Approximately 1,480 feet downstream of the confluence with Bear Rock Run.	None	+1862	
Little Paint Creek	Approximately 0.77 mile upstream of Bridge Street	None	+1734	Township of Richland.
	Approximately 0.79 mile upstream of Bridge Street	None	+1735	
North Branch Little Conemaugh River.	Approximately 815 feet downstream of Evergreen Road.	None	+1555	Township of Summerhill.
	Approximately 105 feet downstream of Evergreen Road.	None	+1556	
Paint Creek	Approximately 0.47 mile downstream of Scalp Avenue	None	+1548	Township of Richland.
	Approximately 0.44 mile downstream of Scalp Avenue	None	+1552	
Sams Run	Approximately 260 feet upstream of Belmont Street	None	+1808	Township of Richland.
	Approximately 375 feet upstream of Belmont Street	None	+1810	
Solomon Run	Approximately 1,730 feet upstream of Widman Street	+1390	+1387	Township of Stonycreek.
	Approximately 1,750 feet upstream of Widman Street	+1390	+1390	
South Branch Blacklick Creek.	Approximately 0.56 mile downstream of Chestnut Street.	None	+1700	Township of Blacklick, Township of Jackson.
	Approximately 0.54 mile downstream of Chestnut Street.	None	+1700	
South Fork Little Conemaugh River.	Approximately 0.76 mile downstream of Cedar Street	None	+1849	Township of Summerhill.
	Approximately 0.62 mile downstream of Cedar Street	None	+1862	
St. Clair Run	Approximately 1,200 feet downstream of Tremont Road.	+1228	+1229	Township of Lower Yoder.
	Approximately 35 feet downstream of Tremont Road	+1260	+1260	
West Branch Susquehanna River.	Approximately 0.53 mile downstream of Redbud Street.	None	+1437	Township of Susquehanna.
	Approximately 0.51 mile downstream of Redbud Street.	None	+1437	
West Branch Susquehanna River.	Approximately 1,500 feet upstream of the confluence with Fox Run.	None	+1480	Township of Barr.
	Approximately 1,550 feet upstream of the confluence with Fox Run.	None	+1480	
West Branch Susquehanna River.	Approximately 285 feet upstream of the railroad	None	+1538	Township of Barr.
	Approximately 910 feet upstream of the railroad	None	+1549	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Township of Allegheny
Maps are available for inspection at the Allegheny Township Building, 107 Storm Road, Loretto, PA 15940.

Township of Barr
Maps are available for inspection at the Barr Township Building, 389 Moss Creek Road, Northern Cambria, PA 15714.

Township of Blacklick
Maps are available for inspection at the Blacklick Township Building, 138 Duman Road, Belsano, PA 15922.

Township of Chest
Maps are available for inspection at the Chest Township Building, 2658 Saint Lawrence Road, Flinton, PA 16640.

Township of Conemaugh
Maps are available for inspection at the Conemaugh Township Municipal Building, 104 Janie Street, Johnstown, PA 15902.

Township of Croyle
Maps are available for inspection at the Croyle Township Building, 1654 Railroad Street, Summerhill, PA 15958.

Township of East Taylor
Maps are available for inspection at the East Taylor Township Building, 1552 William Penn Avenue, Conemaugh, PA 15909.

Township of Elder
Maps are available for inspection at the Elder Township Building, 302 Scout Road, Hastings, PA 16646.

Township of Gallitzin
Maps are available for inspection at the Gallitzin Township Building, 245 Amsbry Street, Gallitzin, PA 16641.

Township of Jackson
Maps are available for inspection at the Jackson Township Building, 513 Pike Road, Johnstown, PA 15909.

Township of Lower Yoder
Maps are available for inspection at the Lower Yoder Township Building, 128 J Street, Johnstown, PA 15906.

Township of Portage
Maps are available for inspection at the Township Building, 416 Miller Shaft Road, Portage, PA 15946.

Township of Richland
Maps are available for inspection at the Richland Township Building, 322 Schoolhouse Road, Johnstown, PA 15904.

Township of Stonycreek
Maps are available for inspection at the Stonycreek Township Building, 1610 Bedford Street, Suite 3, Johnstown, PA 15902.

Township of Summerhill
Maps are available for inspection at the Summerhill Township Building, 114 Irvan Street, Beaverdale, PA 15958.

Township of Susquehanna
Maps are available for inspection at the Susquehanna Township Building, 508 Hillcrest Street, Northern Cambria, PA 15714.

Township of Washington
Maps are available for inspection at the Washington Township Building, 93 Jones Street, Lilly, PA 15938.

Crawford County, Pennsylvania (All Jurisdictions)

Conneaut Creek	Approximately 975 feet downstream of Old Depot Road.	None	+842	Township of Spring.
	Approximately 80 feet upstream of Old Depot Road	None	+927	
Conneaut Outlet	Approximately 400 feet downstream of Mercer Pike	None	+1066	Township of Union.
	Approximately 1,000 feet upstream of Marsh Road	None	+1066	
Conneauttee Creek	Just upstream of State Route 99	None	+1142	Township of Venango.
	Approximately 385 feet downstream of McClellan Street.	None	+1142	
French Creek	Approximately 10 feet upstream of Townhall Road	None	+1066	Township of Union.
	Approximately 1.97 mile downstream of Williams Street.	None	+1072	
French Creek	Approximately 0.86 mile downstream of Gravel Run Road.	None	+1133	Township of Venango.
	Approximately 696 feet downstream of McClellan Street.	None	+1142	
French Creek	Approximately 1.17 mile upstream of Main Street	None	+1143	Township of Rockdale.
	Approximately 2.42 miles upstream of Main Street	None	+1143	
Little Sugar Creek	Approximately 250 feet downstream of U.S. Route 322.	None	+1080	Township of Wayne.
	Approximately 80 feet downstream of U.S. Route 322	None	+1082	
Torry Run	Approximately 0.56 mile downstream of Drake Mills Road.	None	+1142	Township of Venango.
	Approximately 0.38 mile upstream of Drakes Mills Road.	None	+1142	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Rockdale
Maps are available for inspection at the Rockdale Township Hall, 29393 Miller Station Road, Cambridge Springs, PA 16403.

Township of Spring
Maps are available for inspection at the Spring Township Building, 16 Beaverridge Road, Beaver Springs, PA 17812.

Township of Union
Maps are available for inspection at the Union Township Municipal Building, 3111 State Route 72, Jonestown, PA 17038.

Township of Venango
Maps are available for inspection at the Venango Township Supervisor's Office, 21790 Center Road, Venango, PA 16440.

Township of Wayne
Maps are available for inspection at the Wayne Township Supervisor's Office, 25500 Bell Hill Road, Cochranton, PA 16314.

Indiana County, Pennsylvania (All Jurisdictions)

Conemaugh River	Approximately 1.74 mile downstream of Front Street	None	+996	Township of Burrell.
	Approximately 1.7 mile downstream of Front Street	None	+997	
Crooked Creek	Approximately 1,700 feet upstream of Fulton Run Road.	None	+1025	Township of White.
	Approximately 0.56 mile upstream of Fulton Run Road.	None	+1026	
Dixon Run	Approximately 1,051 feet downstream of Brocious Road.	None	+1317	Township of Rayne.
	Approximately 355 feet downstream of Brocious Road	None	+1321	
Two Lick Creek	Approximately 0.85 mile downstream of Franklin Street.	None	+1208	Township of Cherryhill.
	Approximately 630 feet upstream of the confluence with Buck Run.	None	+1228	
Whites Run	Approximately 435 feet upstream of Chestnut Street	None	+1278	Township of White.
	Approximately 495 feet upstream of Chestnut Street	None	+1278	

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+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Burrell
Maps are available for inspection at the Burrell Township Building, 321 Park Drive, Black Lick, PA 15716.

Township of Cherryhill
Maps are available for inspection at the Cherryhill Township Building, 184 Spaulding Road, Penn Run, PA 15765.

Township of Rayne
Maps are available for inspection at the Rayne Township Building, 140 Tanoma Road, Home, PA 15747.

Township of White
Maps are available for inspection at the White Township Building, 1412 Park Drive, Clarksburg, PA 15725.

Somerset County, Pennsylvania (All Jurisdictions)

Casselman River	Approximately 858 feet upstream of Robert Brown Road.	None	+1333	Township of Addison.
	Approximately 1.25 mile upstream of Robert Brown Road.	None	+1386	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Casselman River	Approximately 1.33 mile downstream of U.S. Route 219 (Mason Dixon Highway).	None	+1945	Township of Summit.
	Approximately 540 feet downstream of Cuba Street	None	+1952	
East Branch Coxes Creek	Approximately 473 feet upstream of the Pennsylvania Turnpike.	None	+2107	Township of Somerset.
	Approximately 593 feet upstream of the Pennsylvania Turnpike.	None	+2107	
Laurel Hill Creek	Approximately 0.43 mile upstream of the Park Street Bridge.	None	+1330	Township of Lower Turkeyfoot.
	Approximately 0.67 mile upstream of Park Street	None	+1332	
Paint Creek	Approximately 688 feet downstream of Main Street	+1628	+1623	Borough of Paint.
	Approximately 595 feet downstream of Main Street	+1635	+1629	
Stonycreek River	Approximately 330 feet downstream of the confluence with Quemahoning Creek.	None	+1543	Borough of Benson.
	Approximately 140 feet upstream of the confluence with Quemahoning Creek.	None	+1543	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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ADDRESSES

Borough of Benson
Maps are available for inspection at 118 Main Street, Hollsopple, PA 15935.

Borough of Paint
Maps are available for inspection at 2044 Centennial Drive, Windber, PA 15963.

Township of Addison
Maps are available for inspection at 343 High Point Road, Fort Hill, PA 15540.

Township of Lower Turkeyfoot
Maps are available for inspection at 2584 Jersey Hollow Road, Confluence, PA 15424.

Township of Somerset
Maps are available for inspection at 2209 North Center Avenue, Somerset, PA 15501.

Township of Summit
Maps are available for inspection at 192 Township Office Road, Meyersdale, PA 15552.

Johnson County, Texas, and Incorporated Areas

Hurst Creek	Just upstream of County Road 601A	+680	+679	City of Burleson, Unincorporated Areas of Johnson County.
	Approximately 540 feet upstream of Hidden Court	+722	+721	
Little Booger Creek	Approximately 375 feet downstream of Summercrest Boulevard.	+741	+739	City of Burleson.
	Approximately 725 feet upstream of Marcia Lane	+770	+769	
Low Branch	Approximately 1,600 feet downstream of U.S. Route 287 Business.	+615	+616	City of Mansfield.
	Just upstream of U.S. Route 287 Business	None	+622	
McAnear Creek	At the confluence with East Buffalo Creek	+731	+732	City of Cleburne.
	Approximately 1,850 feet upstream of Kilpatrick Avenue.	+815	+817	
Quil Miller Creek	Approximately 450 feet downstream of Hidden Creek	+682	+683	City of Burleson, Unincorporated Areas of Johnson County.
	Approximately 75 feet east of Litchfield Lane	+694	+695	
Shannon Creek	Approximately 1,500 feet upstream of the confluence with Unnamed Tributary to Shannon Creek.	+755	+758	City of Burleson.
	Just downstream of County Road 1020	None	+793	
Tributary of Valley Branch	Approximately 500 feet upstream of County Road 608	+677	+674	Unincorporated Areas of Johnson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,000 feet upstream of County Road 608.	+677	+674	
Unnamed Tributary to Shannon Creek.	Approximately 0.30 mile upstream of the confluence with Shannon Creek.	None	+756	City of Burleson.
	Approximately 0.98 mile upstream of the confluence with Shannon Creek.	None	+773	
VC–8A Stream	Just upstream of Greenway Drive	+789	+788	City of Burleson, Unincorporated Areas of Johnson County.
	Approximately 100 feet upstream of County Road 802	+816	+818	
Valley Branch	Approximately 0.38 mile downstream of County Road 529.	+678	+673	Unincorporated Areas of Johnson County.
	Approximately 1,500 feet downstream of County Road 529.	+678	+673	
Village Creek	At the northern Tarrant County boundary	+659	+658	City of Burleson.
	Approximately 0.44 mile upstream of the confluence with North Creek.	+676	+677	
West Buffalo Creek	Approximately 650 feet downstream of Westhill Drive	+798	+799	City of Cleburne.
	Approximately 300 feet downstream of U.S. Route 67	+799	+800	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Burleson
Maps are available for inspection at City Hall, 141 West Renfro Street, Burleson, TX 76028.

City of Cleburne
Maps are available for inspection at City Hall, 10 North Robinson Street, Cleburne, TX 76033.

City of Mansfield
Maps are available for inspection at 1200 East Broad Street, Mansfield, TX 76063.

Unincorporated Areas of Johnson County
Maps are available for inspection at the Johnson County Courthouse, 2 North Main Street, Cleburne, TX 76033.

Dunn County, Wisconsin, and Incorporated Areas

Beaver Creek	Approximately 0.35 mile downstream of Main Street	+978	+976	Unincorporated Areas of Dunn County, Village of Downing.
	At the St. Croix County boundary	+993	+992	
Chippewa River	Approximately 0.3 mile downstream of the Chippewa River State Trail.	+729	+730	Unincorporated Areas of Dunn County.
	Approximately 0.16 mile downstream of the Eau Claire County boundary.	+759	+760	
Cranberry Creek	Just upstream of 650th Street	+736	+737	Unincorporated Areas of Dunn County.
	Just upstream of 90th Avenue	None	+799	
Eighteen Mile Creek	Just downstream of State Highway 40	+927	+919	Unincorporated Areas of Dunn County, Village of Colfax.
	At the Chippewa County boundary	None	+974	
Elk Creek	Just upstream of 410th Avenue	+818	+819	Unincorporated Areas of Dunn County.
	Approximately 0.2 mile downstream of County Highway EE.	+842	+843	
Gilbert Creek	Just downstream of County Highway PN	+787	+788	City of Menomonie, Unincorporated Areas of Dunn County.
	Just upstream of 550th Avenue	None	+821	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Hay River	Approximately 0.3 mile upstream of County Highway D.	+880	+881	Unincorporated Areas of Dunn County, Village of Wheeler.
	Approximately 0.5 mile downstream of the Barron County boundary.	+1007	+1008	
Red Cedar River	Just downstream of County Highway Y	+729	+730	City of Menomonie, Unincorporated Areas of Dunn County, Village of Colfax.
	Approximately 1.4 mile upstream of County Highway V.	+995	+996	
South Fork Hay River	Approximately 0.2 mile downstream of County Highway F.	+916	+917	Unincorporated Areas of Dunn County.
	Approximately 1.5 mile upstream of State Highway 64	+992	+993	
South Fork Lower Pine Creek.	At the Barron County boundary	None	+1078	Unincorporated Areas of Dunn County, Village of Ridgeland.
	Approximately 0.8 mile upstream of County Highway V.	None	+1097	
Tiffany Creek	Approximately 1.8 mile downstream of East Street	+936	+937	Unincorporated Areas of Dunn County, Village of Boyceville, Village of Downing.
	At the St. Croix County boundary	+983	+982	
Wilson Creek	Just upstream of Stokke Trail	None	+814	City of Menomonie, Unincorporated Areas of Dunn County, Village of Knapp.
	At the St. Croix County boundary	None	+981	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Menomonie
Maps are available for inspection at City Hall, 800 Wilson Avenue, Menomonie, WI 53751.

Unincorporated Areas of Dunn County
Maps are available for inspection at the Dunn County Government Center, 800 Wilson Avenue, Menomonie, WI 54751.

Village of Boyceville
Maps are available for inspection at the Village Hall, 903 Main Street, Boyceville, WI 54725.

Village of Colfax
Maps are available for inspection at the Village Hall, 613 Main Street, Colfax, WI 54730.

Village of Downing
Maps are available for inspection at the Village Hall, 306 Main Street, Downing, WI 54734.

Village of Knapp
Maps are available for inspection at the Village Hall, 111 Oak Street, Knapp, WI 54749.

Village of Ridgeland
Maps are available for inspection at 103 South Elliot Street, Ridgeland, WI 54763.

Village of Wheeler
Maps are available for inspection at the Village Hall, 105 West Tower Road, Wheeler, WI 54772.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 21, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–25335 Filed 10–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1144]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 5, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1144, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
McCracken County, Kentucky, and Incorporated Areas				
Arnold Branch (backwater effects from Ohio River).	From the confluence with Blizzards Ponds Drainage Ditch to approximately 0.7 mile upstream of the Blizzards Ponds Drainage Canal.	None	+341	Unincorporated Areas of McCracken County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Bayou Creek (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 1.0 mile downstream of Ogden Landing Road.	+333	+336	Unincorporated Areas of McCracken County.
Blizzards Ponds Drainage Canal (backwater effects from Ohio River).	From the confluence with West Fork Clarks River to approximately 275 feet upstream of Husband Road.	None	+341	Unincorporated Areas of McCracken County.
Camp Creek (backwater effects from Ohio River).	From the confluence with West Fork Clarks River to approximately 0.5 mile downstream of KY–348.	None	+341	Unincorporated Areas of McCracken County.
Clarks River (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 0.7 mile upstream of KY–787.	None	+341	Unincorporated Areas of McCracken County.
Crooked Creek	At the confluence with Perkins Creek	+365	+363	Unincorporated Areas of McCracken County.
	Approximately 400 feet upstream of U.S. Route 62	None	+402	
Cross Creek	Just upstream of the Illinois Central Railroad Yard	+333	+331	Unincorporated Areas of McCracken County.
	Approximately 345 feet upstream of South 24th Street	+343	+341	
Deer Lick Creek (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 2.9 miles upstream of the confluence with the Ohio River.	None	+336	Unincorporated Areas of McCracken County.
Horse Branch (backwater effects from Ohio River).	From the confluence with the Clarks River to approximately 85 feet downstream of Georgia Street South.	None	+341	Unincorporated Areas of McCracken County.
Island Creek Tributary 6.1 (backwater effects from Island Creek).	From the confluence with Island Creek to approximately 800 feet downstream of I–24.	None	+336	Unincorporated Areas of McCracken County.
Little Bayou Creek (backwater effects from Ohio River).	From the confluence with Bayou Creek to approximately 2.3 miles downstream of Ogden Landing Road.	+334	+336	Unincorporated Areas of McCracken County.
Little Massac Creek (backwater effects from West Fork Massac Creek).	From the confluence with West Fork Massac Creek to approximately 1,000 feet upstream of the confluence with West Fork Massac Creek.	None	+378	Unincorporated Areas of McCracken County.
Middle Fork	Approximately 1,800 feet upstream of the confluence with Massac Creek.	+354	+352	City of Paducah, Unincorporated Areas of McCracken County.
Massac Creek	Approximately 1,700 feet upstream of McCracken Boulevard.	+355	+354	
Nasty Creek (backwater effects from Ohio River).	From the confluence with Newtons Creek I to approximately 0.6 mile upstream of Grief Road.	None	+335	Unincorporated Areas of McCracken County.
Newtons Creek I (backwater effects from Ohio River).	From the confluence with the Ohio River to approximately 0.7 mile upstream of Grief Road.	None	+335	Unincorporated Areas of McCracken County.
Ohio River	Approximately 1,700 feet downstream of the confluence with Redstone Creek.	+331	+334	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 2.0 miles upstream of the confluence with the Tennessee River.	+339	+340	
Perkins Creek	At the confluence with the Ohio River	+337	+339	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 0.5 mile upstream of Blandville Road	None	+399	
Perkins Creek Tributary 4 (backwater effects from Ohio River).	From the confluence with Perkins Creek to approximately 80 feet downstream of U.S. Route 60.	None	+339	City of Paducah, Unincorporated Areas of McCracken County.
Redstone Creek (backwater effects from Ohio River).	From the confluence with Redstone Creek Tributary 5 to approximately 0.6 mile upstream of the confluence with Redstone Creek Tributary 5.	+332	+335	Unincorporated Areas of McCracken County.
Redstone Creek Tributary 5 (backwater effects from Ohio River).	From the confluence with Redstone Creek to approximately 0.5 mile upstream of the confluence with Redstone Creek.	+332	+335	Unincorporated Areas of McCracken County.
Tennessee River	At the confluence with the Ohio River	+339	+340	City of Paducah, Unincorporated Areas of McCracken County.
	Approximately 3.0 miles upstream of U.S. Route 60	None	+341	
West Fork Clarks River (backwater effects from Ohio River).	From the confluence with Clarks River to approximately 3.7 miles upstream of the confluence with Camp Creek at the county boundary.	None	+341	Unincorporated Areas of McCracken County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
West Fork Massac Creek (backwater effects from Ohio River).	From the confluence with Massac Creek to approximately 2,000 feet upstream of Wilmington Road.	+336	+338	Unincorporated Areas of McCracken County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Paducah
Maps are available for inspection at City Hall, 300 South 5th Street, Paducah, KY 42002.

Unincorporated Areas of McCracken County
Maps are available for inspection at the McCracken County Courthouse, 301 South 6th Street, Paducah, KY 42003.

Franklin County, Pennsylvania
(All Jurisdictions)

Back Creek	At the confluence with Conococheague Creek	None	+481	Township of Antrim, Township of Peters.
	Approximately 180 feet upstream of the confluence with Conococheague Creek.	None	+481	
Conodoguinet Creek	Approximately 500 feet downstream of Burnt Mill Road.	None	+544	Township of Letterkenny, Township of Lurgan.
	Approximately 1.49 mile upstream of Tanyard Hill Road (State Route 433).	None	+603	
Middle Spring Creek	Approximately 20 feet upstream of Hot Point Avenue (Avon Drive).	None	+630	Township of Southampton.
	Approximately 80 feet upstream of Hot Point Avenue (Avon Drive).	None	+630	
Tributary to Falling Spring Branch.	At the confluence with Falling Spring Branch	+634	+631	Township of Guilford.
	At the upstream inlet of the I–81 culvert	+634	+631	
Unnamed Tributary to West Branch Antietam Creek.	Approximately 1,900 feet downstream of the Access Road Bridge.	None	+637	Township of Washington.
	Approximately 100 feet downstream of the Access Road Bridge.	None	+647	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Antrim
Maps are available for inspection at the Antrim Township Municipal Building, 10655 Antrim Church Road, Greencastle, PA 17225.

Township of Guilford
Maps are available for inspection at the Guilford Township Building, 115 Spring Valley Road, Chambersburg, PA 17201.

Township of Letterkenny
Maps are available for inspection at the Letterkenny Township Building, 4924 Orrstown Road, Orrstown, PA 17244.

Township of Lurgan
Maps are available for inspection at the Lurgan Township Building, 8650 McClays Mill Road, Newburg, PA 17240.

Township of Peters
Maps are available for inspection at the Peters Township Building, 5342 Lemar Road, Mercersburg, PA 17236.

Township of Southampton

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Township Building, 705 Municipal Drive, Southampton, PA 17257.

Township of Washington

Maps are available for inspection at the Washington Township Building, 13013 Welty Road, Waynesboro, PA 17268.

Marion County, South Carolina, and Incorporated Areas

Little Pee Dee River	Just upstream of Drama Court extended	None	+28	Unincorporated Areas of Marion County.
	Just downstream of U.S. Route 76	None	+51	
Sellers Branch	Approximately 250 feet downstream of Church Street	None	+72	Town of Sellers, Unincorporated Areas of Marion County.
	Approximately 1,500 feet upstream of Main Street	None	+85	
White Oak Creek Tributary 1.1.	At the confluence with White Oak Creek Tributary 1	None	+84	City of Mullins.
	Approximately 50 feet downstream of Lowman Street	None	+95	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Mullins

Maps are available for inspection at 151 East Front Street, Mullins, SC 29574.

Town of Sellers

Maps are available for inspection at 2552 U.S. Route 301, Sellers, SC 29592.

Unincorporated Areas of Marion County

Maps are available for inspection at 1305 North Main Street, Marion, SC 29571.

Kaufman County, Texas, and Incorporated Areas

Brooklyn Branch	At the confluence with Mustang Creek	None	+457	City of Forney.
	Approximately 1,382 feet upstream of Ridgecrest Road.	None	+471	
Buffalo Creek	Just upstream of Union Pacific Railroad	None	+389	City of Forney, Unincorporated Areas of Kaufman County.
	Just upstream of FM 740	None	+403	
Cedar Creek	Approximately 2.9 miles downstream of U.S. Route 175.	None	+342	City of Mabank, Unincorporated Areas of Kaufman County.
	Approximately 1 mile downstream of State Highway 274.	None	+342	
Duck Creek	Approximately 925 feet downstream of Country Road 337.	None	+458	Unincorporated Areas of Kaufman County.
	Approximately 1,755 feet upstream of FM 2728	None	+485	
East Fork Trinity River	Just upstream of Union Pacific Railroad	None	+389	City of Dallas, City of Heath, Unincorporated Areas of Kaufman County.
	Approximately 0.85 mile upstream of the Rockwell-Forney Dam.	None	+398	
Mustang Creek	Approximately 0.51 mile upstream of Shady Brook Lane.	None	+413	City of Forney, Unincorporated Areas of Kaufman County.
	Approximately 0.51 mile upstream of Ridgecrest Road	None	+480	
Unnamed Tributary to Kings Creek.	Approximately 1,600 feet upstream of the confluence with Kings Creek (Upper Reach).	None	+486	City of Terrell, Unincorporated Areas of Kaufman County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.91 mile upstream of the confluence with Kings Creek (Upper Reach).	None	+506	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Dallas
Maps are available for inspection at 320 East Jefferson Boulevard, Room 307, Dallas, TX 75203.

City of Forney
Maps are available for inspection at City Hall, 101 West Main Street, Forney, TX 75126.

City of Heath
Maps are available for inspection at City Hall, 200 Laurence Drive, Heath, TX 75032.

City of Mabank
Maps are available for inspection at City Hall, 129 East Market Street, Mabank, TX 75147.

City of Terrell
Maps are available for inspection at City Hall, 201 East Nash Street, Terrell, TX 75160.

Unincorporated Areas of Kaufman County
Maps are available for inspection at the Kaufman County Courthouse, 100 West Mulberry Street, Kaufman, TX 75142.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 21, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–25337 Filed 10–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1145]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 5, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1145, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or

pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of Suffolk, Virginia					
Virginia	City of Suffolk	Hampton Roads	From the intersection of Sandy Drive and South Road to approximately 310 feet south, extending approximately 500 feet west along Sandy Drive.	None	+8
Virginia	City of Suffolk	Unnamed Ponding areas controlled by Hampton Roads.	From the intersection of Sandy Drive and Hampton Road to approximately 1,100 feet south, and extending approximately 510 feet east along Sandy Drive.	None	+8

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Suffolk

Maps are available for inspection at Suffolk City Manager's Office, 441 Market Street, Suffolk, VA 23434.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Clay County, Arkansas, and Incorporated Areas				
Cypress Creek Ditch	Just upstream of Corridor 143	None	+283	City of Corning, Unincorporated Areas of Clay County.
	Approximately 0.54 mile downstream of Corridor 142	None	+289	
Sugar Creek	Approximately 1,255 feet downstream of Pfeiffer Street.	None	+282	Unincorporated Areas of Clay County.
	Approximately 0.57 mile upstream of the confluence with Club Drain.	None	+317	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tributary 2	Approximately 1,350 feet upstream of West Jackson Street.	None	+329	Unincorporated Areas of Clay County.
Victory Lake	Approximately 0.5 mile upstream of Union Pacific Railroad.	None	+281	City of Corning, Unincorporated Areas of Clay County.
	Approximately 1.15 mile upstream of Process Road	None	+283	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Corning

Maps are available for inspection at City Hall, 304 Southwest 2nd Street, Corning, AR 72422.

Unincorporated Areas of Clay County

Maps are available for inspection at the Clay County Courthouse, 168 East Main Street, Piggott, AR 72454.

Montgomery County, Indiana, and Incorporated Areas

Dry Branch	At the confluence with Sugar Creek	None	+659	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 0.5 mile upstream of Joe Allen Parkway.	None	+766	
Sugar Creek	Approximately 1.2 mile downstream of NYC Railroad	None	+647	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 0.38 mile upstream of I–74	None	+689	
Unnamed Tributary Dry Branch.	At the confluence with Dry Branch	None	+698	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 260 feet upstream of County Road 150 South.	None	+791	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Crawfordsville

Maps are available for inspection at the Planning and Community Development Department, 300 East Pike Street, Crawfordsville, IN 47933.

Unincorporated Areas of Montgomery County

Maps are available for inspection at the Montgomery County South Boulevard Building, 110 West South Boulevard, Crawfordsville, IN 47933.

Morehouse Parish, Louisiana, and Incorporated Areas

Horse Bayou	Just upstream of Cherry Ridge Road	None	+98	City of Bastrop, Unincorporated Areas of Morehouse Parish.
	Approximately 140 feet upstream of Louisiana Highway 830–4.	None	+122	
Staulking Head Creek	Approximately 489 feet downstream of Henry Avenue	None	+84	City of Bastrop, Unincorporated Areas of Morehouse Parish.
	Approximately 520 feet upstream of Cleveland Street	None	+114	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
W–10 Canal	Approximately 4,330 feet downstream of the dam	None	+91	City of Bastrop, Unincorporated Areas of Morehouse Parish.
	Approximately 2,382 feet upstream of the dam	None	+102	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bastrop

Maps are available for inspection at 202 East Jefferson Street, Room 230, Bastrop, LA 71221.

Unincorporated Areas of Morehouse Parish

Maps are available for inspection at 125 East Madison Avenue, Bastrop, LA 71220.

Cecil County, Maryland, and Incorporated Areas

Back Creek	Approximately 224 feet downstream of 2nd Street	None	+11	Unincorporated Areas of Cecil County.
	Approximately 1,136 feet upstream of Old Telegraph Road.	None	+11	
Big Elk Creek	At West Pulaski Road	+11	+12	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 1,140 feet downstream of Elk Mills Road.	None	+80	
Bohemia River	At Augustine Herman Highway	None	+11	Unincorporated Areas of Cecil County.
	Approximately 860 feet upstream of Old Telegraph Road.	None	+11	
Chesapeake and Delaware Canal.	Approximately 0.92 mile upstream of Augustine Herman Highway.	None	+11	Unincorporated Areas of Cecil County.
	Approximately 1.96 mile upstream of Augustine Herman Highway.	None	+11	
Christina Creek	Approximately 647 feet downstream of Little Egypt Road.	+179	+181	Unincorporated Areas of Cecil County.
	Approximately 977 feet downstream of Elbow Road	+259	+260	
Dogwood Run	At the confluence with Little Elk Creek	+21	+22	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 422 feet upstream of the confluence with Little Elk Creek.	+21	+22	
Gravelly Run	At the confluence with Little Elk Creek	None	+50	Unincorporated Areas of Cecil County.
	Approximately 246 feet downstream of Blue Ball Road.	None	+57	
Hall Creek	At Glebe Road	None	+11	Unincorporated Areas of Cecil County.
	Approximately 0.86 mile upstream of Mill Lane	None	+11	
Herring Creek	Approximately 2.74 miles downstream of Augustine Herman Highway.	None	+11	Unincorporated Areas of Cecil County.
	Approximately 1,609 feet downstream of Augustine Herman Highway.	None	+11	
Laurel Run	At the confluence with Little Elk Creek	None	+40	Unincorporated Areas of Cecil County.
	Approximately 1,500 feet downstream of the confluence with West Branch Laurel Run.	None	+59	
Little Bohemia Creek	At the confluence with Bohemia Creek	None	+11	Unincorporated Areas of Cecil County.
	At Bohemia Church Road	None	+11	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Little Elk Creek	Approximately 631 feet downstream of West Pulaski Highway.	+11	+14	Town of Elkton, Unincorporated Areas of Cecil County.
	Approximately 1,220 feet downstream of Elkton Road	+15	+16	
Little Elk Creek	Approximately 425 feet downstream of the confluence with Laurel Run.	None	+40	Unincorporated Areas of Cecil County.
	Approximately 910 feet downstream of Heron Lane	None	+58	
Little Northeast Creek	Approximately 210 feet upstream of Pulaski Highway	+37	+39	Unincorporated Areas of Cecil County.
	Approximately 115 feet upstream of Mechanics Valley Road.	+52	+53	
Long Creek	At Boat Yard Road	None	+11	Unincorporated Areas of Cecil County.
	At Woods Road	None	+11	
Mill Creek	Approximately 52 feet downstream of Chessie System Railroad.	+104	+106	Unincorporated Areas of Cecil County.
	Approximately 260 feet downstream of Principio Road	+283	+284	
Mill Creek (Tributary to Little Elk Creek).	Approximately 1,624 feet downstream of Old Elk Neck Road.	None	+11	Unincorporated Areas of Cecil County.
	Approximately 1,939 feet upstream of Old Elk Neck Road.	None	+11	
Northeast Creek	Approximately 76 feet downstream of Main Street	+11	+13	Town of North East, Unincorporated Areas of Cecil County.
	Approximately 125 feet downstream of Chessie System Railroad.	+71	+72	
Perch Creek	Approximately 0.49 mile downstream of Augustine Herman Highway.	None	+11	Unincorporated Areas of Cecil County.
	At Augustine Herman Highway	None	+11	
Plum Creek	Approximately 1.32 mile downstream of Old Field Point Road.	None	+11	Unincorporated Areas of Cecil County.
	Approximately 1,154 feet upstream of Old Elk Neck Road.	None	+11	
Susquehanna River	Approximately 1.75 mile upstream of I–95	+11	+12	Unincorporated Areas of Cecil County.
	At U.S. Route 1	+37	+38	
Tributary 1 To Stone Run	Approximately 0.4 mile downstream of Mount Street	+282	+283	City of Rising Sun, Unincorporated Areas of Cecil County.
	Approximately 995 feet downstream of Main Street	+327	+330	
Unnamed Tributary To Laurel Run.	Approximately 230 feet upstream of the confluence with Laurel Run.	None	+41	Unincorporated Areas of Cecil County.
	Approximately 1,400 feet upstream of the confluence with Laurel Run.	None	+52	
West Branch Christina River	Approximately 525 feet downstream of Vieves Way	+143	+144	Unincorporated Areas of Cecil County.
	Approximately 332 feet upstream of Barksdale Road	+156	+157	
West Branch Laurel Run	Approximately 494 feet upstream of the confluence with Laurel Run.	None	+64	Unincorporated Areas of Cecil County.
	Approximately 93 feet upstream of Marley Road	None	+74	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rising Sun

Maps are available for inspection at City Hall, 1 East Main Street, Rising Sun, MD 21911.

Town of Elkton

Maps are available for inspection at the Town Hall, 100 Railroad Avenue, Elkton, MD 21921.

Town of North East

Maps are available for inspection at the Town Hall, 106 South Main Street, North East, MD 21901.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of Cecil County				
Maps are available for inspection at the Cecil County Office Of Planning and Zoning, 200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921.				
Walsh County, North Dakota, and Incorporated Areas				
Red River of the North	Approximately 2,000 feet downstream of 77th Street Northeast extended.	None	+802	Unincorporated Areas of Walsh County.
	Approximately 260 feet upstream of North Dakota Highway 54.	None	+812	

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ADDRESSES

Unincorporated Areas of Walsh County

Maps are available for inspection at 600 Cooper Avenue, Grafton, ND 58237.

Schuylkill County, Pennsylvania (All Jurisdictions)				
Little Schuylkill River	Approximately 1,750 feet downstream of State Route 895 bridge.	None	+548	Township of East Brunswick.
	Approximately at the railroad bridge	None	+563	
Mahanoy Creek	Approximately 0.71 mile upstream of Rice Road	None	+781	Township of Butler.
	Approximately 560 feet upstream of the railroad bridge.	None	+811	
Schuylkill River	Approximately 1,349 feet upstream of Mount Carbon Arch Road.	None	+594	Borough of Mechanicsville, Borough of Palo Alto.
	Approximately 100 feet upstream of Coal Street	None	+631	
West Branch Schuylkill River	Approximately 1,582 feet upstream of East Sunbury Street.	None	+702	Township of New Castle, Township of Norwegian.
	Approximately 169 feet upstream of the intersection of Greenbury Road and State Route 4002.	None	+848	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Mechanicsville

Maps are available for inspection at the Mechanicsville Borough Hall, 1342 Pottsville Street, Mechanicsville Borough Hall, PA 17901.

Borough of Palo Alto

Maps are available for inspection at the Borough Hall, 142 East Bacon Street, Palo Alto, PA 17901.

Township of Butler

Maps are available for inspection at the Butler Township Municipal Building, 211 Broad Street, Ashland, PA 17921.

Township of East Brunswick

Maps are available for inspection at the East Brunswick Township Municipal Building, 55 West Catawissa Street, New Ringgold, PA 17960.

Township of New Castle

Maps are available for inspection at the New Castle Township Municipal Building, 248–250 Broad Street, Saint Clair, PA 17970.

Township of Norwegian

Maps are available for inspection at the Norwegian Township Municipal Building, 506 Maple Avenue, Marlin, PA 17951.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Darlington County, South Carolina, and Incorporated Areas				
Beaverdam Creek	At the confluence with Black Creek	None	+178	Unincorporated Areas of Darlington County.
	Approximately 0.7 mile upstream of Bobo Newsom Highway.	None	+189	
Black Creek (DS)	Approximately 0.5 mile downstream of Muses Bridge Road.	None	+77	City of Darlington, Unincorporated Areas of Darlington County.
	Just downstream of Society Hill Road	None	+102	
Black Creek	Approximately 1.4 mile downstream of Patrick Highway.	None	+158	City of Hartsville, Unincorporated Areas of Darlington County.
	Approximately 0.5 mile downstream of New Market Road.	None	+178	
Black Creek (US)	Approximately 1,148 feet downstream of West Old Camden Road.	None	+189	Unincorporated Areas of Darlington County.
	Approximately 2.6 miles upstream of West Old Camden Road.	None	+227	
Black Creek Tributary 1	At the confluence with Black Creek	None	+85	Unincorporated Areas of Darlington County.
	Approximately 0.5 mile upstream of the confluence with Black Creek.	None	+86	
Great Pee Dee River	Approximately 927 feet downstream of North Main Street.	None	+82	Unincorporated Areas of Darlington County.
	At the confluence with Cedar Creek	None	+84	
High Hill Creek	Approximately 67 feet downstream of Pisgah Road	None	+89	Unincorporated Areas of Darlington County.
	Approximately 140 feet upstream of Ebenezer Road	None	+110	
Indian Creek	At the confluence with Swift Creek	None	+117	City of Darlington, Unincorporated Areas of Darlington County.
	Approximately 0.5 mile upstream of Rogers Road	None	+142	
McCalls Branch	Approximately 1,441 feet downstream of I–20	None	+166	Unincorporated Areas of Darlington County.
	Approximately 364 feet upstream of Buck Reynolds Road.	None	+176	
Newman Swamp	Approximately 445 feet downstream of Zion Road	None	+149	Town of Lamar, Unincorporated Areas of Darlington County.
	Approximately 1,860 feet upstream of Lamar Highway	None	+152	
Spring Branch	At the confluence with Black Creek	None	+159	Unincorporated Areas of Darlington County.
	Approximately 0.9 mile upstream of North 5th Street	None	+187	
Star Fork Branch	At the confluence with High Hill Creek	None	+103	Unincorporated Areas of Darlington County.
	Approximately 325 feet upstream of Ebenezer Road	None	+114	
Star Fork Branch Tributary 1	At the confluence with Star Fork Branch	None	+103	Unincorporated Areas of Darlington County.
	Approximately 733 feet downstream of Ebenezer Road.	None	+120	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Darlington

Maps are available for inspection at 400 Pearl Street, Darlington, SC 29532.

City of Hartsville

Maps are available for inspection at 133 West Carolina Avenue, Hartsville, SC 29551.

Town of Lamar

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Maps are available for inspection at 117 Main Street, Lamar, SC 29069.				
Unincorporated Areas of Darlington County				
Maps are available for inspection at 1 Public Square, Room 405, Darlington, SC 29532.				
Navarro County, Texas, and Incorporated Areas				
Harris Branch of Richland Creek.	Approximately 1,300 feet upstream of Southwest County Road 1070.	None	+406	City of Corsicana, Unincorporated Areas of Navarro County.
	Approximately 1,600 feet downstream of West Cowhead Road.	None	+435	
Harris Branch of Richland Creek Tributary 1.	Just upstream of the confluence with Harris Branch of Richland Creek.	None	+417	City of Corsicana.
	Approximately 900 feet upstream of the confluence with Harris Branch of Richland Creek.	None	+422	
Harris Branch of Richland Creek Tributary 2.	Just upstream of the confluence with Harris Branch of Richland Creek.	None	+423	City of Corsicana.
	Approximately 1,150 feet upstream of the confluence with Harris Branch of Richland Creek.	None	+425	
Harris Branch of Richland Creek Tributary 3.	Just upstream of the confluence with Harris Branch of Richland Creek.	None	+423	City of Corsicana.
	Approximately 0.28 mile upstream of the confluence with Harris Branch of Richland Creek.	None	+430	
Harris Branch of Richland Creek Tributary 5.	Just upstream of the confluence with Harris Branch of Richland Creek.	None	+424	City of Corsicana.
	Approximately 0.44 mile upstream of the confluence with Harris Branch of Richland Creek.	None	+432	
Little Harris Branch	Just upstream of the confluence with Harris Branch of Richland Creek.	None	+406	City of Corsicana, Unincorporated Areas of Navarro County.
	Approximately 0.58 mile upstream of the confluence with Harris Branch of Richland Creek.	None	+424	
Little Mesquite Branch	Approximately 1,500 feet downstream of the confluence with Mesquite Branch.	None	+384	City of Corsicana.
	Approximately 750 feet downstream of I–45	None	+403	
Post Oak Creek	Approximately 750 feet upstream of County Road 10	None	+347	Unincorporated Areas of Navarro County.
	Approximately 900 feet upstream of the confluence with Post Oak Creek Tributary 7.	None	+416	
Post Oak Creek Tributary 5 ..	Just upstream of Burlington Northern Santa Fe Railroad.	+418	+416	City of Corsicana.
	Just upstream of Forrest Lane	+430	+427	
Post Oak Creek Tributary 7 ..	Approximately 250 feet downstream of Bowie Circle ..	None	+414	City of Corsicana, Unincorporated Areas of Navarro County.
	Approximately 775 feet upstream of Ryan Drive	None	+440	
Town Branch	Approximately 550 feet upstream of 24th Street	None	+454	City of Corsicana.
	Approximately 900 feet upstream of 24th Street	None	+457	
Tributary of Little Mesquite Branch.	Just upstream of the confluence with Little Mesquite Branch.	None	+330	City of Corsicana.
	Approximately 825 feet upstream of U.S. Route 287 ..	None	+409	

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Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Corsicana

Maps are available for inspection at City Hall, 200 North 12th Street, Corsicana, TX 75110.

Unincorporated Areas of Navarro County

Maps are available for inspection at the Navarro County Courthouse, 300 West 3rd Avenue, Corsicana, TX 75110.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 21, 2010.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–25340 Filed 10–6–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2009–041; Docket 2010–0105, Sequence 1]

RIN 9000–AL65

Federal Acquisition Regulation; Sudan Waiver Process

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise section 25.702, Prohibition on contracting with entities that conduct restricted business operations in Sudan, to add specific criteria that an agency must address in a waiver request and a waiver consultation process regarding foreign policy aspects of the waiver request for consultations. This information will be provided, in a waiver request, to the President or his appointed designee for consideration on whether the prohibition on awarding a contract to a contractor that conducts business in Sudan should be waived.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before December 6, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR Case 2009–041 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–041" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–041." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–041" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2009–041, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2009–041.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) published a final rule, FAR Case 2008–004, Prohibition on Restricted Business Operations in Sudan and Imports from Burma, in the **Federal Register** at 74 FR 40463 on August 11, 2009, amending the FAR to implement section 6 of the Sudan Accountability and Divestment Act of 2007, Public Law 110–174. Section 6 requires certification in each contract entered into by an Executive Agency that the contractor does not conduct certain business operations in Sudan as described in the act. Additionally, section 6 establishes the President's authority to waive this requirement, on a case-by-case basis, if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

Section 6 of the Sudan Accountability and Divestment Act of 2007 was implemented in the FAR but did not include a waiver consultation process and specific criteria for the waiver request. With the addition of these changes, the FAR will provide consistent guidance on specific criteria that must be included in the waiver request for consideration; and establish a consultation process to ensure all waiver request are reviewed by the appropriate agency experts.

The Councils propose to amend FAR 25.702–4 to add (1) waiver criteria that agencies must address when requesting a waiver to enter into a contract with a firm that conducts restricted business operations in Sudan that will include specific criteria for the waiver request; and (2) a waiver consultation process that will require all requests to be submitted through the Office of Federal Procurement Policy (OFPP) to the President or his appointed designee for consideration. OFPP will be required to consult with the President's National Security Council, Office of African Affairs and the Department of State Sudan Office and Sanctions Office on foreign policy matters relevant to the waiver request and include this information in the recommendation to the President. All waiver requests must clearly explain why the product or service must be procured from the offeror for which the waiver is requested and why it is in the national interest to waive the statutory prohibition against contracting with an offeror that conducts prohibited business operations in Sudan. In addition, the waiver request must address any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with that offeror, and the extent of the offeror's business operations in Sudan. All of the information required to be included in the waiver request will be considered in determining whether to recommend that the President waive the prohibition.

Additionally, individual and class waiver requests will be considered for a specific contract or class of contracts, as long as the waiver request has been reviewed and cleared by the agency head prior to submitting it to OFPP and the request includes the appropriate waiver information specified at FAR 25.702–4(c)(3). However, a waiver will not be issued for an indefinite period of time, and may be cancelled, if warranted.

In accordance with section 6 of the Sudan Accountability and Divestment Act of 2007, the Administrator of Federal Procurement Policy is required to submit semiannual reports, on April 15th and October 15th, to Congress, on waivers approved by the President. OFPP has submitted two reports to Congress since the publication of the first rule, FAR Case 2008–004, Prohibition on Restricted Business Operations in Sudan and Imports from Burma, but is proposing to include this reporting requirement in the FAR to emphasize this waiver process and reporting requirement.

This is a significant regulatory action and, therefore, was subject to review under section 6 of Executive Order 12866, Regulatory Planning and Review,

dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2000–041) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 28, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 25.702–4 by revising paragraph (b), and adding paragraphs (c) and (d) to read as follows:

25.702–4 Waiver.

* * * * *

(b) An agency seeking waiver of the requirement shall submit the request through the Administrator of the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(iii) Description/nature of product or service.

(iv) The total cost and length of the contract.

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702–4(b).

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System (including the Federal Awardee Performance Information and Integrity System at *http://www.ppirs.gov*) and any other relevant information).

(vii) Information regarding the offeror's relationship or connection with other firms that conduct prohibited business operations in Sudan.

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in 25.702–4(b) and the information in 25.702–4(c)(3) will be considered in determining whether to recommend that the President waive the requirement of subsection 25.702–2. In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will submit a report to Congress, semiannually on April 15th and October 15th, on the waivers granted.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0013]
[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 12–month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12–month finding on a petition to list the Sacramento splittail (*Pogonichthys macrolepidotus*) as endangered or threatened under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the Sacramento splittail is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Sacramento splittail or its habitat at any time.

DATES: The finding announced in this document was made on October 7, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R8-ES-2010-0013. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, San Francisco Bay Delta Fish and Wildlife Office, 650 Capitol Mall, Sacramento, CA 95814. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Dan Castelberry, San Francisco Bay Delta Fish and Wildlife Office (see **ADDRESSES**); by telephone at 916-930-5632; or by facsimile at 916-930-5654. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened

Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are tendangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

Please refer to the final listing rule (64 FR 5963) for a discussion of Federal actions that occurred prior to February 8, 1999. Please refer to the Notice of Remanded Determination of Status for the Sacramento Splittail (68 FR 55139) for a discussion of Federal actions that occurred after February 8, 1999, and prior to September 22, 2003. It is our intent, in this document, to reiterate and discuss only those topics directly relevant to this decision.

On September 22, 2003, the Service published a Notice of Remanded Determination of Status for the Sacramento Splittail in the **Federal Register** (68 FR 55139) that removed the Sacramento splittail from the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)). On August 13, 2009, the Center for Biological Diversity (CBD) filed a complaint in U.S. District Court for the Northern District of California, challenging the Service on the merits of the 2003 determination alleging improper political influence. In a settlement dated February 1, 2010 (Case4:09-cv-03711-PJH), the Service agreed to open a 30–day public comment period for a new 12 month finding to allow for the submission of additional information by the public. The Service also agreed to submit to the **Federal Register** a new status review and 12–month finding as to whether listing the Sacramento splittail is warranted or not warranted. If warranted, the Service further agreed to publish, concurrently with the 12–month finding, a proposed rule to list the Sacramento splittail before September 30, 2010 and a final determination on or before September 29, 2011.

Definitions

To assist the reader in understanding terminology used in this determination, we have provided below several terms with their corresponding definitions as they are used in this document. As used in this determination, the term "Delta'" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay at the southwest corner. The term "Estuary" as used in this determination, refers to the collective tidal waters contained in the Sacramento and San Joaquin Rivers, the Delta, and San Pablo and San Francisco bays.

Species Information

Species Description

The Sacramento splittail is a fish species native to central California and represents the only extant species in its genus in the world (Baerwald *et al.* 2007, p. 160). Splittail can grow to a length of 40centimeters (cm) (15 inches (in.)), and have an elongate body, small head, and enlarged upper tail lobe. Their body coloration is dusky olive gray on the back and silver on the sides. During breeding season, their fins become tinged with red-orange. Additionally, males develop white tubercles on their heads and become darker in color during the breeding season (Moyle 2002, p. 146).

Taxonomy

Splittail were first described in 1854 by W.O. Ayres as *Leuciscus macrolepidotus* and by S.F. Baird and C. Girard as *Pogonichthys inaeqilobus*. Although Ayres' species description is accepted, the species was assigned to the genus *Pogonichthys* in recognition of the distinctive characteristics exhibited by the two splittail species *P. ciscoides* and *P. macrolepidotus* (Hopkirk 1973, p. 24). *Pogonichthys ciscoides*, endemic to Clear Lake, Lake County, California, has been extinct since the early 1970s. The Sacramento splittail is currently classified as *Pogonichthys macrolepidotus*. Recent studies have revealed two populations of splittail that differ in their genetic makeup, one in the Napa/Petaluma drainages (hereafter referred to as the San Pablo population) and one in the greater Central Valley drainage (hereafter referred to as the Delta population) (Baerwald *et al.*2007, pp. 159-167).

Distribution

Historically, Sacramento splittail were found as far north as Redding on the Sacramento River. Splittail were also found in the tributaries of the Sacramento River as far as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter *et al.* 1908, p. 131). Along the San Joaquin River, splittail were harvested by native peoples in Tulare and Buena Vista Lakes where splittail bones have been found in archeological middens (Moyle *et al.*, 2004, p. 7). In the San Francisco Bay area, splittail have historically been reported at the mouth of Coyote Creek in Santa Clara County and the Southern San Francisco Bay (Snyder *et al.* 1905, pp. 327-338). Splittail were documented in Suisun and Napa marshes as well as Suisun Bay in the 1950's (Caywood . 1974, p. 29-65).

Splittail occur in the San Francisco estuary and its tributaries and are found most often in slow moving sections of rivers and sloughs including dead end sloughs and shallow edge habitats (Moyle 2002, p. 147; Daniels and Moyle 1983, p. 653; Feyrer *et al.* 2005, pp. 164-165). Recent studies have shown the splittail's range in the Sacramento, San Joaquin, Napa, Mokelumne and Petaluma rivers is significantly greater than previously thought when it was first petitioned in the early 1990's as a threatened species (Sommer *et al.* 2007, pp. 27-28; Sommer *et al.* 1997, p. 970). The following chart created by Sommer and featured in his splittail paper follows (Sommer *et al.* 2007, p. 28).

TABLE 1. UPSTREAM-MOST LOCATIONS OF HISTORICAL AND RECENT SPLITTAIL COLLECTIONS (1998-2002). RIVER KILOMETER (RKM) IS THE DISTANCE FROM THE MOUTH OF THE RIVER. *Location (rkm) of splittail collection*

River System	*Historic (Rutter 1908)*	*1970s (Cawood 1974)*	*Mid- 1990s (Sommer et al. 1997)*	*Recent (Freyer et al. 05)* unless noted otherwise	*Distance to first dam*[a]
Sacramento	483	387	331	391[b]	387
Feather	109	Present	94	94[c]	109
American	49	37	19	No new data	37
San Joaquin	Widespread	Present	201	218.5[d]	295
Mokelumne	NA	25	63	96[e]	63
Napa	NA	21	10	32	NA
Petaluma	NA	25	8	28	NA

[a] Lowest dams in reach of river are Red Bluff (Sacramento), Oroville (Feather), Nimbus (American), Sack (San Joaquin), and Woodbridge (Mokelumne). Woodbridge is a seasonal dam. Napa River is not dammed within the range of splittail; first dam was removed from the Petaluma River in 1994.
[b] D. Killam, California Department of Fish and Game, personal communication.
[c] B. Oppenheim, NOAA Fisheries, personal communication.
[d] R. Baxter, California Department of Fish and Game, unpublished data.
[e] J. Merz, East Bay Municipal Utility District, November 2000.

Distribution on the Sacramento River over the past 30 years has consistently ranged at least 232 to296 river kilometers (rkm) (144 to184 miles (mi)) upstream of the estuary (Feyrer *et. al.* 2005, pp. 163-167). The consistent finding of splittail more than 200 rkm (124 mi) upstream of the Estuary may represent a population persisting there or may reflect the long distance that splittail migrate during dry years (Feyrer *et al.* 2005, pp. 165-166). Juvenile splittail have been recorded at the Glenn-Colusa Irrigation District Intake at rkm 331 (206 mi) on the Sacramento River year-round from 1994 - 2001. It is unknown why these individuals do not migrate downstream after spawning as do the majority of splittail (Feyrer *et al.* 2005, pp 165-166). Splittail have been documented on the Toulumne River to rkm 27.4 (mi 17) (Heyne 2003, pers. comm.) and on the Merced River to rkm 20.9 (13 mi) (Heyne 2003, pers. comm.). Splittail have been recorded in recent times from within Salt Slough (Baxter 1999a, p. 10; 1999b, p. 30). A 1998 California Department of Fish and Game (CDFG) gillnet survey of the tidal reaches of the Lower Walnut Creek found splittail to be the most abundant fish in the creek (Leidy *et al.* 2007). Splittail are found in the Napa Marsh during years with high freshwater flow, but are rare during years of low freshwater outflow (Baxter 1999a, p. 11).

Splittail can utilize a variety of habitats and having no known collection in an area does not mean that splittail are not there because it is impractical to survey the entire Delta. Splittail have been observed in a number of tributaries of major rivers such as the Sacramento and San Joaquin and are likely distributed much more widely in small creeks and marshes throughout the lower portions of the Estuary than known collections indicate (Kratville 2010, pers comm.). Suisun Marsh and Bay contain the largest areal extent of shallow water habitat available to the splittail and likely have the greatest concentrations of the species.

Splittail's spawning habitat includes the natural and newly-restored floodplains of the Cosumnes River, managed floodplains such as the Yolo and Sutter bypasses, and disjunct segments of floodplain adjacent to the Sacramento and San Joaquin rivers and tributaries. These areas approximate the large, open, shallow-water areas which once existed throughout the Delta (Sommer *et al.* 1997, p. 971). The largest portion of splittail spawning habitat occurs in the Yolo Bypass and higher splittail young-of-the-year abundances are strongly correlated with the flooding of the Yolo Bypass. The best spawning conditions for splittail occur in the bypass when water remains in the bypass until fish have completed spawning (at least 30 days), and larvae are able to swim out on their own during the draining process.

In years where the Yolo and Sutter bypasses are not inundated for at least 30 days, splittail spawning is confined primarily to the natural and newly restored floodplains of the Cosumnes River and the margins of rivers and other floodplain features that are inundated at lower river stages. The Cosumnes River is unique in that it is the only major river flowing into the Delta that does not host a major dam. There are indications, based on presence of larvae and juveniles, that spawning in the Sacramento River occurs relatively far upstream at Colusa (Baxter 1999a, p. 8; 1999b, p. 29). Splittail also utilize the San Joaquin River for spawning in wet years when river flow exceeds the capacity for storage and flooding occurs. The Tuolumne, Cosumnes, Feather, American, Napa, and Petaluma Rivers, and numerous other smaller waters also support splittail spawning activity.

In summary, the geographic distribution of the splittail has not decreased detectably over the last several decades and is in fact larger than estimated in our last listing decision (Sommer *et al.* 2007, pp.27-28; 68 FR 55139).

Habitat Requirements

Although primarily a freshwater species, splittail tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle and Yoshiyama 1992). Salinity tolerance in splittail increases in proportion to body length; adults can tolerate salinities as high as 29 ppt for short periods in laboratory conditions, but experience loss of equilibrium (bodily balance) when salinities exceed 23 ppt (Young and Cech 1996, p. 668). Hospitable temperatures for non-breeding splittail range from 5 to 24° Celsius (C) (75° Fahrenheit (F)) although acclimated fish can survive temperatures up to 33°C (91° F) for short periods of time (Young and Cech 1996, pp. 667-675). Splittail are also tolerant

of low dissolved oxygen and can be found in water where levels are around 1 mg O^2 L $^{-1}$ (Moyle *et al.* 2004, p. 13).

Splittail are frequently found in areas subject to flooding because they require flooded vegetation for spawning and rearing. Historically, the major flood basins (e.g., Colusa, Sutter, American, and Yolo basins; Tulare, Buena Vista, and Kern lakes) distributed throughout the Sacramento and San Joaquin valleys provided spawning and rearing habitat. These flood basins have all been reclaimed or modified for flood control purposes (i.e. as bypasses), and much of the floodplain area adjacent to the rivers is now inaccessible behind levees.

Splittail make use of the Sutter Bypass, and particularly heavy use of the Yolo Bypass, for spawning under certain hydrologic conditions. The shallow, vegetated waters of the bypasses provide excellent rearing conditions for juvenile fish (Sommer *et al.* 2001, p. 11). The bypasses are primarily flood control facilities and secondarily, passively operated as agricultural lands. These lands are also managed for waterfowl and other wildlife habitat. Splittail using the bypasses are subject to the same threats found elsewhere, such as habitat loss, environmental contamination, harmful reservoir operations, competition with and predation by non-native fish, and so forth.

The bypasses are only fully flooded when flows in the Sacramento River reach a certain level. The Yolo Bypass becomes inundated when the Sacramento River flow rate at the Freemont Weir exceeds 1,600 cubic meters per second (cms) (56,503 cubic feet per second (cfs)). This occurs when the River reaches approximately 9.0 meters (m) (30 feet (ft.) (National Geodetic Vertical Datum standard) in depth at the Freemont Weir (Sommer *et al.* 2001, pp. 7-8). Partial flooding of the Yolo Bypass via high flows from Cache and Putah creeks can occur independently regardless of Sacramento River flows. Due to the unpredictable flooding frequencies and duration of the bypass, splittail, having migrated long distances upstream, could arrive at floodplains that have not been inundated and therefore the splittail could be denied the opportunity to spawn. In those cases where adult splittail successfully spawn, the eggs or larvae could become trapped and killed if waters recede too rapidly. Insufficient duration of floodplain inundation could also force egress of juvenile splittail before they have attained a size and swimming ability sufficient to avoid predation. The annual splittail spawning and reproductive success is strongly correlated with frequency and duration of Yolo bypass inundation (Sommer *et al.* 2007, pp. 33-34).

The Fremont Weir has been overtopped—resulting in Yolo Bypass inundation—19 of the last 31 years with 10 of these years producing inundation durations of more than 30 days (DWR 2010a, pp. 1-2). Inundation durations of 30-90 days are needed to produce robust splittail year classes on the bypass (Kratville 2010, pers. comm.). According to the ST5 (T. C. Foin) model, the inundation of floodplains that splittail utilize as spawning habitat must occur at a minimum of every 7 years for a minimum of 30 days for splittail populations to persist. Bypasses and other floodplains have historically been exceeding these parameters and we have no evidence that suggests they will not continue to do so in the foreseeable future.

The Yolo Bypass supports agricultural crops such as corn and safflower and can support tomatoes in non-flood years. Optimal flooding conditions for the splittail (February through May) have negative effects on agricultural production in the area destroying and damaging crops, eroding soils and decreasing overall yields (Yolo Bypass Management Strategy 2001, ch. 2 p. 6). Because Yolo Bypass inundation is likely to be one of the most important factors in determining the continued production of high splittail population numbers, cooperation on the flood management between the landowners of the bypass and resource management agencies is essential.

Splittail spawning occurs over flooded vegetation in freshwater marshes, sloughs, and shallow reaches of large rivers with depths of at least 1m (3.3 ft) (Moyle *et al.* 2007 , pp. 1-27). Observations of splittail spawning have indicated the species spawns at depths of less than 1.5 m (4.9 ft) in the Cosumnes River floodplain and at depths of less than 2 m (6.6 ft) in Sutter Bypass (Moyle *et al.* 2004, pp. 16-17). These studies show that splittail spawn in water depths between 1 to 2 m (3.3 to 6.6 ft) depending on location of spawning. Splittail may not spawn again in the year following a successful effort (Moyle *et. al.* 2004, p. 32).

It is speculated that Suisun Marsh is the late-stage rearing area for juvenile splittail hatched and reared in the extensive spawning habitat found within the Yolo Bypass because water flowing out of the Yolo Bypass tends to stay on the north side of the delta and be drawn into Suisun Marsh (Moyle *et al.* 2004, p. 31).

Biology

Splittail are relatively long-lived and larger fish may be 8 to 10 years old (Moyle 2002). Splittail reach about 110 millimeters (mm) (4.3 in) standard length (SL) (tip of the snout to the posterior end of the last vertebra)in their first year, 170 mm (6.6 in) SL in their second year, and 215 mm (8.4 in) SL in their third year (Moyle 2002, p. 148). Male and female splittail generally mature by the end of their second year, but some males mature in their first year and some females do not mature until their third year (Daniels and Moyle 1983, p.650).

Estimates of splittail fecundity have shown high variability in numbers of eggs produced. Caywood (1974, p. 4015) found a mean of 165 eggs per mm of SL of fish sampled and reported a maximum of 100,800 eggs in one female. Feyrer and Baxter (1998, p. 123) found a mean of 261 eggs per mm of SL and a fecundity range of 28,416 to 168,196 eggs. Bailey *et al.* (1999) examined fish held for a considerable time in captivity and found that fecundity ranged from 24,753 to 72,314 eggs per female, which most closely agrees with Caywood's (1974, p. 4015) observations.

Splittail are benthic (feeding in the bottom of the water column) foragers that mainly feed in the daytime. Composition of splittail gut contents has revealed that they feed almost exclusively on aquatic invertebrates with chironomid larvae making up the largest portion of the diet in all areas except the Petaluma River where copepods make up the largest portion of the diet (Feyrer *et al.* 2007a, p. 1398). Until the 1980's, opossum or mysid shrimp (*Neomysis mercedis*), made up a large portion of the di*et al*ong with amphipods and harpacticoid copepods (Moyle *et al.* 2004, p. 14). Introductions of the Asiatic clam (*Corbicula fluminea*) in 1945 and more importantly the overbite clam (*Corbula amurensis*) first recorded from the estuary in 1986) were followed by a sharp decline in shrimp abundance that started in 1987 and continued through 1999 (Feyrer *et al.* 2003, p. 283). Splittail have shifted their diet from prey items such as mysid shrimp to a diet increasingly focused on bi-valves, in particular the overbite clam. Opossum shrimp in splittail gut contents were reduced from 24 percent (historically) to 2 percent by 2003 (Feyrer *et al.* 2003, pp. 277-288; Kratville 2010, pers comm.). In the Estuary, clams, crustaceans, insect larvae, and other invertebrates also are found in the adult diet. Larvae feed mainly on plankton composed of small

animals (zooplankton), moving to small crustaceans and insect larvae as body size increases (Kurth and Nobriga 2001, EIP newsletter vol. 14, num.3, p. 41).

Splittail populations fluctuate annually, depending on spawning success, which is positively well-correlated with freshwater outflow and the availability of shallow water habitat with submerged vegetation (Daniels and Moyle 1983; Sommer *et al.* 1997). Sexual maturity is typically reached by the end of their second year. Splittail are a migratory species that travel upstream into freshwater floodplain habitat to spawn. The onset of spawning is associated with rising water levels, increasing water temperatures, and increasing day length. Peak spawning occurs from February through May, although records of spawning exist for late January to early July (Wang 1986). One temporally stable cue for splittail is the timing of the vernal equinox (Feyrer 2006, p. 221). Peak flow from the Central Valley enters the Estuary approximately at the same time as the vernal equinox (Feyrer 2006, p. 221) and these coinciding events commence splittail migration. In some years, most spawning may take place within a limited period of time. For instance, in 1995, a year of high spawning activity, most splittail spawned over a short period in April (Moyle *et al.* 2004, p. 16). Within each spawning season, older fish reproduce first, followed by younger individuals (Caywood 1974, p. 50).

Bailey (1994, p. 3) has documented that splittail eggs hatch in 3 to 5 days at 18.5° C, (65.3° F). Bailey (1994, p. 3) also found that at 5 to 7 days after hatching, the yolk sac is absorbed and the diet begins to include small rotifers. Splittail larvae remain in shallow, weedy areas close to spawning sites for 10 to 14 days and move into deeper water as they mature and swimming ability increases (Sommer *et al.* 1997, pp. 961-976). When the flood waters recede juveniles typically leave the flooded areas and move downstream in May, June, and July to rear in estuarine marshes (Moyle *et al.* 2004, p. 17). Splittail can be easily identified at 20 to 25 mm (0.8 to 1.0 in) total length (TL) and become fairly active swimmers at this time (Moyle *et al.* 2004, p. 17).

Abundance

History of abundance models and evaluations

An estimate of splittail abundance has never been performed; however, survey data have been used to construct indices of abundance that have been used in the past to assess population trends (Sommer *et al.* 2007, p 29; Moyle *et al.* 2004, p 7). In general, the applicability of survey data to a particular use arises from two factors: (1) How the data are collected; and (2) how the data are used to estimate or to index abundance. The key point with regard to the first factor is the degree to which the sample collected is representative of the sampled population. Gear type, configuration, and method of deployment all contribute to species, sizes, and life stages collected. Unequal vulnerability of different sizes of fish to a given sampling protocol results in systematic error in population estimation. Fish behavior, both between species and between life stages, also contributes to sampling error, as does habitat variation, because gear performance often differs among habitat types. The efficiency of open-water, or pelagic, sampling may be affected by physical factors such as flow velocity and turbidity, both in terms of gear performance and fish behavior.

Splittail are a benthic (near-bottom-dwelling) species, often occur in shallow edge habitat, and feed most actively in early morning (Moyle *et al.* 2004, p 8; Moyle 2002, p 148). Splittail would not be expected to be collected efficiently in surveys that do not sample channel edges and bottom habitats effectively. Further, while combining data from the various surveys provides reasonably good coverage of the geographic range of splittail, individual surveys are often fairly limited in geographic scope. All surveys suffer from selection biases due to the type of gear deployed and the method of deployment (Ricker *et al.* 1975, pp 70-73; 92). None of the surveys used to construct the indices used to monitor the relative abundance of splittail was designed specifically to sample splittail, and each is limited in some manner in its ability to adequately represent splittail population trends. Therefore, the data collected do not represent a quantitative estimate of population size.

The surveys and their limitations are described in the Service's Notice of Remanded Determination of Status for the Sacramento Splittail (68 FR 55139). Sommer *et al.* (2007, pp 29-30) and Moyle *et al.* (2004, pp 8-13) also explain some of the important limitations of the surveys with respect to splittail. A chart summarizing the surveys and their limitations is provided below.

TABLE 2. SUMMARY OF SPLITTAIL SAMPLING SURVEYS

Survey	Brief Description	Years	Pros	Cons
CDFG Fall Mid—Water Trawl	Designed to sample juvenile striped bass. 100 sampling sites: San Pablo Bay in the west to Rio Vista on the lower Sacramento River and to Stockton on the San Joaquin River	1967—present	Catches all splittail size classes	—Targets striped bass —Low adult catch rate —Sampling does not cover entire range —Does not sample benthos or shallow channel edges —Some years yield no splittail —Splittail are better able to see nets in recent years due to decreased turbidity
San Francisco Bay Mid—Water Trawl and Otter Trawl Survey	Samples west of the Delta seaward to south San Francisco Bay	1980—present	—Two types of sampling equipment and frequent sampling —Capture all size classes	—Does not cover entire range —Non—specific; targets entire pelagic or benthic community —Incomplete data between 1989—1999 —Splittail only caught in 5 percent or less of samples

TABLE 2. SUMMARY OF SPLITTAIL SAMPLING SURVEYS—Continued

Survey	Brief Description	Years	Pros	Cons
University of California at Davis (UC Davis) Suisun Marsh Otter Trawl	Long—term study of the ecology of the entire fish community of the marsh at 21 sites and 9 sloughs	1979—present	Samples all size classes	—Non—specific; targets entire fish community —Geographically limited —Larger fish less vulnerable to trawls
Chipps Island Survey	U.S. Fish and Wildlife Service conducts a sampling program for juvenile salmon in the deep water channel near Chipps Island, midwater trawl is pulled at the surface in 10 20—minute hauls per day during May and June	1976—present	—Samples well during high flow years —Good adult catch rates	—Designed to sample juvenile salmonids —Geographically limited —Samples near—surface waters only —High turbidity in sampling area
FWS Beach Seine Survey	Samples 23 stations around Delta with 15—m beach seine in low velocity areas near shoreline	1979—present	—Broadest geographical coverage of all surveys —Good adult catches	—Inconsistent from 1983—1992 —Focused on out—migrating juvenile salmon ——Low adult catch
Salvage Operations	The Central Valley Project (CVP) and State Water Project (SWP) operate fish screening facilities to divert fish away from the pump intakes into holding facilities where fish are counted, measured, and released.	1979—present	Highest number of splittail caught out of any survey for both adult and juvenile catches	—Geographically localized—mainly reflective of San Joaquin River production —Catches are result of entrainment and often cause mortality

Please refer to February 8, 1999, final listing rule (64 FR 5963) for a full discussion of methods used to estimate abundance in that rule. Please refer to the September 22, 2003, Notice of Remanded Determination of Status for the Sacramento Splittail (68 FR 55139) for a full discussion of methods used to estimate abundance for that document. In our January 6, 1994, proposed rule to list the Sacramento splittail as threatened (59 FR 862), we initially evaluated and analyzed splittail survey data using a method published by Meng and Moyle (1995, p. 541) in the Transactions of the American Fisheries Society. Meng and Moyle used a common data set from the years 1980–1992 to compare point estimates with the Mann-Whitney U-test. We used this same method during the development of our 1999 final listing rule (64 FR 5963, February 8, 1999), using abundance data provided and updated by CDFG, California Department of Water Resources (CDWR), and UC Davis. Using the aforementioned method, the 1999 finding concluded that the splittail had declined by 62 percent in abundance over the last 15 years.

In a document we published in the **Federal Register** on August 17, 2001 (66 FR 43145), we requested public comments to assist us in reanalyzing our splittail abundance data. In that document, we presented a stratified Mann-Whitney U-test, which represented an improvement on what essentially remained a Meng and Moyle (1995, pp. 538-549) statistical approach. Following careful consideration of comments we received from numerous respondents to this document, including those provided through the peer review process, we concluded that the abundance indices and Multiple Linear Regression (MLR) model jointly developed and submitted by CDFG and U.S. Bureau of Reclamation (USBR) in 2001 (hereafter referred to as the CDFG/USBR MLR Model) provided the best scientific data (method) available for statistically evaluating temporal trends of splittail abundance information. We used this CDFG/USBR MLR Model as the basis of our September 22, 2003, Notice of Remanded Determination of Status for the Sacramento Splittail (68 FR 55139), instead of the original Meng and Moyle (1995, pp. 540-542) methodology. We input 20 discrete sets of age-specific abundance monitoring data into the model. These data sets were obtained from the surveys described in Table 2 above. Running the model in a "worst case scenario" (alpha < 0.2 significance), we found nine significant downward-trending data sets and two significant upward-trending data sets, and we concluded that the population was in decline.

Current evaluation of models and abundance

In light of uncertainties in data for estimating splittail population abundance, alternative approaches for understanding population behavior and regulation have been developed. One such approach is the life history simulation model developed by T. C. Foin wherein splittail population characteristics can be explored and compared with known field biology to infer important life stage survival probabilities and potential conservation strategies (Moyle *et al.*, 2004, pp. 32-37). Life history simulation models can be parameterized to the extent possible using relevant field/survey information, and then used in a series of "what if" exercises to explore simulated population dynamics under selected conditions. Using the model in this way for sensitivity analysis allows the experimenter to discern which life stage or life stage characteristic is crucial to long-term simulated survival, for example, or how often "sub-optimal" conditions must occur for the simulated population to be at risk for extinction. Such population viability analyses (PVAs) can form part of the basis for the Act's listing decisions where sufficient life stage parameter estimates are well-known (Shaffer 1981, pp. 131-133; Meffe and Carroll 1994, pp. 181-182). In the Estuary such a model was used to confirm field observations that flood plain dynamics and subsequent spawning response by splittail populations were critical to long-term population persistence in the absence of other exogenous drivers of splittail mortality (Moyle *et al.* 2004, pp. 32-27).

In the present case of the Sacramento splittail, survey data appear sufficient to

point to supra-annual patterns of abundance (abundance changes over several or many years), but do not appear to support parsing into sub-annual or life-stage specific characterization of splittail population biology. Inaccuracies associated with intra-annual sampling and both relative and absolute gear inefficiencies make it very difficult to discern splittail population dynamics on a sub-annual basis. Life history traits of the splittail including their dependence on floodplain hydrology and seasonal flooding of riparian and floodplain lands make this species quite suited to exploration using population simulation approaches (Moyle *et al.*, 2004,pp. 13-18, 32).

The T. C. Foin splittail population simulation model (ST5) and related models have led to the following conclusions regarding Sacramento splittail population variability and longer-term population forecasts (Moyle *et al.*, 2004, pp. 32-37). Splittail populations are highly variable and driven in large measure by rainfall and flooding; high variability in splittail populations can be modeled focusing on reproductive effort in those years with substantial added floodplain inundation. Simulations indicate that several dry years in succession are not likely to imperil splittail populations. Despite downward trends in simulated populations of splittail, this model indicates that low numbers of splittail reproducing along river margins can sustain the population through long drought periods and that a long series of dry years is unlikely to drive the splittail to extinction (Moyle *et al.* 2004, pp. 36-37). However, a large-scale, regional catastrophe combined with low population might lead to stochastic extinction. Adult mortality considered in isolation does not appear to be driving the population dynamics of splittail in the Estuary or in the models. Periodic (i.e., a minimum of every 7 years) floodplain inundation seems essential to long-term population persistence. High variability is a fundamental property of splittail populations; therefore, little can be discerned regarding population status within a given survey year from annual indices of abundance.

The splittail population model ST5 and additional splittail models built in support of CALFED Science Program objectives use as a foundation biological characterization supplied by field biologists and species specialists (Moyle *et al.* 2004, pp.32-37). Noted in splittail life history is adaptation to "estuarine waters with fluctuating conditions" (Moyle 2002, p. 147). This includes the ability to respond to abrupt water level changes and the ability to utilize seasonally inundated floodplains for spawning. Sacramento splittail are highly fecund, with some large females reportedly able to produce over 100,000 eggs (Moyle 2002, p. 148). As an iteroparous (producing offspring in successive cycles), moderately long-lived (5 to 8 years) species with high reproductive potential, it is not surprising that splittail life history characteristics allow the species to persist even in the face of only moderately predictable conditions year-to-year. As long as favorable spawning conditions occur at a minimum of every 7 years, populations can remain at relatively low levels and rebound when favorable spawning conditions occur (Moyle 2002, pp. 34-38). Recent survey records provided via Interagency Ecological Program (IEP) survey efforts for the Sacramento splittail have shown this pattern (Meng and Moyle 1995, pp. 548; Sommer *et al.*, 1997;DWR 2010c, p. 16). This was demonstrated in 1995 when populations retained a high reproductive capacity after a substantial decline following several years of drought (Sommer *et al.* 1997, p. 971)., Due to the deficiencies in the survey data discussed above, we are unable to discern a trend in adult abundance. The young-of-year splittail population experiences a natural fluctuation in numbers due to drought cycles in the region.

Evaluation of Information Pertaining to the Five Threat Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 12–month finding, information pertaining to the Sacramento splittail in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12–month finding on the petition we considered and evaluated the best available scientific and commercial information.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

Factor A. The present or threatened destruction, modification, or curtailment of its habitat or range

Habitat Loss

The Bay Institute has estimated that intertidal wetlands in the Delta have been diked and leveed so extensively that approximately 95 percent of the 141, 640 hectares (ha)(350, 000 acres(ac)) of tidal wetlands that existed in 1850 are gone (The Bay Institute 1998, ch. 4, p. 17), and that 90 percent of the riparian forest and riparian wetlands of the Sacramento Valley have been cleared, filled, or otherwise eliminated. Diking, dredging, filling of wetlands, and reduction of freshwater flows through more than half of the rivers, distributary sloughs, and the Estuary for irrigated agriculture and urban use have widely reduced fish habitat and resulted in extensive fish losses (Moyle *et al.* 1995, p. 166-168). San Joaquin River flows have been degraded to a higher extent than flows in the Sacramento River (Feyrer *et.al.* 2007a, p. 1396).Limited spawning can take place in river and stream habitats, but the persistence of the splittail is now dependent on seasonal floodplains including the Yolo and Sutter bypasses and Cosumnes River.

Loss and degradation of shallow, near-shore habitat is a historic, current and future threat to the splittail. Riparian and natural bank habitats are features that historically provided splittail with spawning substrate, organic material, food supply, and cover from predators. Vast stretches of the Sacramento and San Joaquin Rivers, their tributaries, and distributary sloughs in the Delta have been channelized and much of the shallow nearshore habitat has been leveed and riprapped. The prevention of channel meandering by the placement of riprap is causing a continual loss of low

velocity shallow water breeding habitat (Feyrer *et. al.* 2005, p. 167).

Beneficial Actions Offsetting Adverse Effects

While habitat loss has occurred, a number of habitat restoration actions are also being undertaken.

*CALFED Habitat Restoration:*The CALFED Bay Delta Program (CALFED) leadership has recently transitioned from the CALFED Bay Delta Authority to the Bay Delta Stewardship Council. This changed the name and governing structure of the program, but did not change the 2000 Record of Decision (ROD) for CALFED or any goals or objectives of the CALFED plan.

The CALFED plan exists as a multi-purpose (water supply, flood protection, and conservation) program with significant ecosystem restoration and enhancement elements, The program brought together more than 20 State and Federal agencies to develop a long-term comprehensive plan to restore ecological health and improve water management for all beneficial uses of the Bay-Delta system. The plan specifically addresses ecosystem quality, water quality, water supply, and levee system integrity.

The CALFED Ecosystem Restoration Program (ERP) presented a strategic plan for implementing an ecosystem-based approach for achieving conservation targets (CALFED 2000a, pp. 1-3). The CDFG is the primary implementing agency for the ERP. The goal of ERP to improve the conditions for the splittail will remain whether the splittail is listed as threatened or endangered or not listed. In the CALFED process, the splittail's status could be adversely affected by program elements to: Increase water storage in the Central Valley upstream of the Delta; modify Delta hydrologic patterns to convey additional water south, and upgrade and maintain Delta levees. However, as noted previously CALFED has an explicit goal to balance the water supply program elements with the restoration of the Bay-Delta and tributary ecosystems and recovery of the splittail and other species. Because achieving the diverse goals of the program is iterative and subject to annual funding by diverse agencies, CALFED has committed to maintaining balanced implementation of the program within an adaptive management framework. Within this framework of implementation, it is intended that the storage, conveyance, and levee program elements would only be implemented in such a way that the splittail's status would be maintained and eventually improved.

CALFED has identified 29 specific species enhancement conservation measures for splittail (CALFED 2000b. There are more than 150 projects that benefit the splittail or its habitat in the plan and more than half of those have been completed to date (2010 ERP database spreadsheets). Key accomplishments of the ERP include investments in fish screens, temperature control, fish passage and habitat protection and restoration (CALFED 2007, p. 2).

Additional projects such as Cosumnes River floodplain restoration and Liberty Island restoration are ongoing. Major obstacles to the completion of these projects , especially the acquisition of land have been overcome. Although discussion of all 150 programs currently benefitting splittail will not be practical in this document, we have highlighted several projects that have played an important role in offsetting threats to the splittail into the foreseeable future.

Liberty Island lies at the southern end of the Yolo bypass. After years of active agricultural production on Liberty island, the levees were breeched in 1997 and the island was allowed to return to a more natural state (Wilder 2010, PowerPoint s. 4). The CALFED program funded the purchase of the island in 1999 by granting money to the Trust for Public Lands for the acquisition of the island (Wilder 2010, PowerPoint s. 5). Splittail are utilizing the flooded island and have been documented in a number of surveys including the beach seine survey in which they were the most abundant fish caught from August 2002 to July 2003 (Wilder 2010, PowerPoint s. 22; Liberty Island Monitoring Program 2005, p. 37; Marshall *et al.* 2006, p. 1). Splittail are utilizing the southern portion of the island more than the northern portion of the island (Webb 2009, p. 1). In 2007, the Delta Juvenile Fish Monitoring program was awarded $2.5 million from the CALFED program for the Breach III study at Liberty Island. Work has been initiated and results will assist agencies in understanding the ecological system and developing recommendations for future restoration projects (Hrodey 2008). There are currently plans to remove additional levees by Wildlands Corporation which has acquired a portion of Liberty Island that it plans to return to natural floodplain habitat. Wildlands Corporation's actions may be approved and initiated within the next year, but cannot be counted as a conservation measures at this time (Roper 2010, pers. comm.). When these actions are implemented, they are expected to further increase splittail spawning grounds on Liberty Island.

Restoration efforts have also been undertaken at the Cosumnes River Preserve (hereafter referred to as the Preserve) under management of the Bureau of Land Management (BLM), The Nature Conservancy, and a number of other agencies and private organizations. Restoration activities that benefit splittail include riparian enhancement and intentional breaching of levees to restore floodplain function. The Preserve opened 81 ha (200 acres) to flooding in October of 1995 by removing a 15.2 m (50 ft) section in a levee along the Cosumnes River (Cosumnes River Preserve Management Plan March 2008). Following floods in 1995 and 1997, the decision was made by the Preserve in coordination with the U.S. Army Corps of Engineers to not repair the portions of the levees breeched by the floods thus allowing for a more natural flood regime (Cosumnes River Preserve Management Plan March 2008, ch. 2 pp. 6-7). Levees have been breached in a total of five locations to allow flooding of a variety of habitats including marshes and sloughs (Crain *et al.* 2004, p. 126). Restoration is ongoing and splittail are likely to benefit from these efforts, as the area has also been described as among the most important floodplain habitats still available to the species (Moyle *et al.* 2004, p. 17). Splittail used the Preserve floodplains during both years of a study conducted in 1999 and 2001 (Crain *et al.* 2004, p. 140). Splittail larvae were present in 2001 when only a small portion of the floodplain in the study area was inundated. Although spawning was not observed, it is presumed to have occurred in the last week of March or the first week of April since larvae appeared shortly after. Larvae moved off the floodplain during cold-water flow pulses in the last week of April and the first week of May (Crain *et al.* 2004, p. 140).

Other Habitat Restoration Projects:

The Yolo Bypass Wildlife Area (Wildlife Area), located within the Yolo Bypass, currently encompasses 6,787 ha (16,770 ac). This area has increased substantially since CDFG's original acquisition of approximately 1180 ha (2,917 ac) in 1991. The added area has allowed restoration actions that benefit splittail spawning efforts to proceed by creating new seasonal floodplains (Yolo Bypass Wildlife Management Land Management Plan, 2008, ch.1).

In early 2002, the Sacramento River National Wildlife Refuge Complex (SRNWRC) began implementation of a Plan for Proposed Restoration Activities on the Sacramento River National Wildlife Refuge. The restoration

activities have resulted in the reestablishment or enhancement of 1707 ha (4, 218 ac) of the SRNWRC (Silveria 2010, pers. comm.). This restoration is expected to benefit splittail through improvement of vegetative conditions on floodplains. Restoration and enhancement involve the removal of crops, orchards, and related infrastructure (pumping units, barns, sheds, etc.) followed by replacement with native vegetation appropriate to each site. In addition to restoration efforts, levees have been removed at the Flynn and Rio Vista units and a levee has been breached at the La Barracna unit (Silveira 2010, pers. comm.). These efforts allow for a more natural floodplain regime and increase native vegetation that benefits splittail.

Summary of Factor A

Rip-rapping of river and stream habitat constitutes a potential threat to the Sacramento splittail. The implementation and magnitude of the CALFED, Central Valley Project Improvement Act (CVPIA) (discussed under *Factor D*) and other habitat restoration activities, which focus on the restoration of habitats that directly and indirectly benefit splittail go far beyond any foreseeable future habitat losses. The overall effect of habitat restoration activities is also expected to continue to be beneficial for splittail into the future.

Efforts undertaken in the past decade have benefited the species by restoring its habitat. There is presently sufficient habitat to maintain the species, and inundation frequency and duration in key areas is sufficient to provide spawning to maintain the species. Furthermore, habitat restoration activities that have been completed are currently being implemented and those planned for the future are adding to the available habitat for the species.

We conclude that the best scientific and commercial information available indicates that the Sacramento splittail is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B. Overutilization for commercial, recreational, scientific, or educational purposes

Recreational Fishing

Splittail were historically abundant enough to be harvested by Native Americans and commercial fisheries, although no studies on abundance were begun until 1963 (Moyle *et. al.* 2004, p. 7). Today, splittail are harvested for bait by the sport fishery and as a food source, but take is limited by the California Fish and Gave Commission to two individuals per day as further discussed under *Factor D*. The largest splittail may be the first to engage in the spawning migration (Caywood 1974; Moyle *et al.* 2004, p. 15). The early-season fishery potentially targets and removes females with high reproductive potential. The effect of this fishery in the Sacramento River may be relatively greater in dry years, when splittail spawning is largely confined to river margins where fishing effort is concentrated. Splittail is known to be an effective bait fish for striped bass and is commonly caught by anglers for this use (Moyle *et al.* 2004, p. 19). The splittail fishery is the smallest fishery targeted in the CDFG angler survey (SFRA 2008). At present, there is no evidence of any trend in the available data suggesting that larger fish are being disproportionally removed from the population or that the size structure of the splittail population has been altered by this small fishery. There is no indication that the intensity of fishing or bag limits will increase in the future.

Scientific Collection

Monitoring surveys conducted throughout the year, including the Fall Mid-Winter Trawl (FMWT), Summer Tow Net Survey (TNS), Beach Seine Survey, Chipps Island Trawl, Suisun Marsh Survey, and Spring Kodiak Trawl Survey (SKT) capture and record adult and juvenile splittail. These surveys sometimes result in the unintentional mortality of some individuals. Data from the last 12 years of surveys conducted by the Service are in Table 3.

TABLE 3. TAKE (COLLECTION AND RELEASE) AND MORTALITY BY U. S. FISH AND WILDLIFE SERVICE SURVEYS FOR 1999-2010.

Survey	Number Taken	Mortality
Chipps Island	6887	339
Mossdale	146,854	1,856
Service Beach Seine	207,137	2,394

An average of 383 splittail are killed every year in the course of conducting Service surveys. Adult splittail spawn up to 100,000 eggs per individual per fecundity event and the loss of a few thousand individuals from scientific collection over a 10 year period is not expected to have a significant effect at the population level. We have no information to indicate use of the species for other commercial, recreational, scientific, or educational purposes.

Summary of Factor B

The new CDFG regulation enacted in March 2010 limiting take of splittail to two individuals per day has eliminated any potential threat that fisheries may have posed. The best available scientific and commercial data shows that this current level of take does not adversely affect the splittail population or that this level of mortality will increase in the future.

Annual Service surveys result in an average of 383 splittail being killed each year. However, due to the high fecundity rate of splittail, the average yearly loss has not had a significant effect at the population level and the information obtain from the surveys is being used to monitor the splittail populations.

We conclude that the best scientific and commercial information available indicates that the Sacramento splittail is not now, or in the foreseeable future, threatened by the overutilization for commercial, recreational, scientific or educational.

Factor C. Disease or predation

Disease

The south Delta is fed by water coming from the San Joaquin River, where pesticides (e.g., chlorpyrifos, carbofuran, and diazinon), salts (e.g., sodium sulfates), trace elements (boron and selenium), and high levels of total dissolved solids are prevalent due to agricultural runoff (64 FR 5963, February 8, 1999). Of specific concern are the threats posed by heavy metals such as mercury, selenium, and pesticides. There is some possibility

that disease in splittail could be a function of increased contaminant loading and subsequent immune system depression. Disease related to contaminants is further discussed under *Factor E* below.

Splittail naturally carry parasites like most fish, but the effects of parasites such as anchor worms manifest primarily when fish are already stressed from other causes such as spawning (Moyle *et al.* 2004, p. 19). Post-spawn adult splittail and male fish in particular, are substantially weakened when migrating back to the estuary. We found no information to indicate disease is a threat to the species. We therefore, conclude that the best scientific and commercial information available indicates that disease does not constitute a significant threat to splittail now or in the foreseeable future.

Predation

Predators of splittail include striped bass (*Morone saxatilis*), largemouth bass (*Micropterus salmoides*), and other native and non-native piscivores (Moyle 2004, p. 18). In the past, we have considered threats of predation to be minor because striped bass had coexisted with splittail for decades and because CDFG stopped hatchery rearing and release of striped bass in 2001 (59 FR 862, 64 FR 5963). Striped bass populations have undergone a substantial decline starting in the mid 1980's shortly after the overbite clam was introduced (Kimmerer *et al.* 2008, p. 84). Furthermore, they are just one example of the many species impacted by the larger Pelagic Organism Decline (POD) that began in the beginning of the new millennium (Ballard *et al.* 2009, p. 1). Changes in the foodweb, toxic effects, export pumping and lowered habitat quality are all potential causes of the POD. If non-native striped bass populations increase, all size classes of splittail could be under greater threat of predation. However, as stated above, striped bass populations are in decline.

In contrast to striped bass, the abundance of largemouth bass has increased substantially in the Delta in the past three decades (Brown and Michniuk 2007, p. 195; Nobriga 2009, p. 112). The evidence suggests that largemouth bass have taken advantage of the proliferation of submerged vegetation throughout much of the Delta and the increasing water clarity that has come with it (Brown and Michniuk 2007, p. 195). Although, largemouth bass are a greater source of splittail mortality than they were several decades ago, populations of largemouth bass in critical rearing areas are low and predation levels appear to be minor. Also, the high reproductive nature of splittail life history has enabled it to overcome the predation that is occurring from largemouth bass.

Based on a review of the best scientific and commercial information available, we find that predation is not a significant threat to the splittail now or in the foreseeable future.

Summary of Factor C

We found that disease occurs at low levels in the population, but does not constitute a significant threat to the species. Predation by striped bass appears to be unchanged from past levels. It is currently not a significant threat to splittail populations and is not expected to increase in the future. Largemouth bass populations have increased in the Estuary in the past three decades, but populations of largemouth bass in critical rearing areas are low, and therefore predation levels appear to be minor. We conclude that the best scientific and commercial information available indicates that the Sacramento splittail is not now, or in the foreseeable future, threatened by disease or predation.

Factor D. The inadequacy of existing regulatory mechanisms

State Laws

The Porter Cologne Water Quality Control Act establishes the State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards that are responsible for the regulation of activities and factors that could degrade California water quality and for the allocation of surface water rights (California Water Code Division 7). In 1995, the SWRCB developed the Bay-Delta Water Quality Control Plan to establish water quality objectives for the Delta. This plan is implemented by Water Rights Decision 1641, which imposes flow and water quality standards on State and federal water export facilities to assure protection of beneficial uses in the Delta (FWS 2008, pp. 21-27). The various flow objectives and export restraints are designed, in part, to protect fisheries. Objectives that benefit splittail by increasing water availability and in turn available habitat include specific outflow requirements throughout the year, specific water export restraints in the spring, and water export limits based on a percentage of estuary inflow throughout the year. The water quality objectives are designed to protect agricultural, municipal, industrial, and fishery uses; they vary throughout the year and by the wetness of the year.

Assembly Bill (AB) 360, the State Delta Flood Protection Act, has a primary purpose of strengthening Delta levees with various "hard'" structures, including rip-rap. Habitat restoration components of AB 360, considered mitigation for concurrent State projects' impacts to aquatic and terrestrial ecosystems in the Delta, require improvement rather than a strict mitigation approach which results in an increased habitat benefit and a net increase in habitat.

The State Senate Bill (SB) 1086-funded Sacramento River Conservation Area Forum is an interagency group chartered to promote and guide protection and enhancement of riparian resources and fluvial function along the reach of the lower Sacramento River between Red Bluff and Colusa. The Nature Conservancy, working with the Sacramento River Conservation Area and local stakeholders, has restored more than 1214 ha (3,000 ac) to date (The Nature Conservancy Website, Sacramento River, 2010). These restoration efforts have replaced farmland with potential splittail spawning and rearing habitat.

California Environmental Quality Act (CEQA)

The California Environmental Quality Act (CEQA) requires review of any project that is undertaken, funded, or permitted by the State of California or a local government agency. If significant effects are identified, the lead agency has the option of requiring mitigation through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent on the discretion of the lead agency. The CEQA review process ensures that a full environmental review is undertaken prior to the permitting of any project within splittail habitat.

Streambed Alteration

Section 1600 of the California Fish and Game Code authorizes CDFG to regulate streambed alteration. The CDFG must be notified of and approve any work that substantially diverts, alters, or obstructs the natural flow or substantially changes the bed, channel, or banks of any river, stream or lake. If an existing fish or wildlife resource including the splittail may be substantially adversely affected by a project, CDFG must submit proposals to protect the species to the person

proposing to alter the streambed within 60 days (Section 1602 of the California Fish and Game Code).

Federal Laws

National Environmental Policy Act: The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires all federal agencies to formally document, consider, and publicly disclose the environmental impacts of major federal actions and management decisions significantly affecting the human environment. NEPA documentation is provided in an environmental impact statement, an environmental assessment, or a categorical exclusion, and may be subject to administrative or judicial appeal. However, the Federal agency is not required to select an alternative having the least significant environmental impacts, and may select an action that will adversely affect sensitive species provided that these effects are known and identified in a NEPA document. Therefore, we do not consider the NEPA process in itself to be a regulatory mechanism that is certain to provide significant protection for the splittail.

*Central Valley Project Improvement Act:*The Central Valley Project Improvement Act (CVPIA) (Public Law 102-575) signed October 30, 1992, amends previous authorizations of the Central Valley Project (16 U.S.C 695d-695j) to include fish and wildlife protection, restoration, and mitigation as project purposes having equal priority with irrigation and domestic water supply, and fish and wildlife enhancement having equal priority with power generation (Public Law 102-575, October 30, 1992).

Clean Water Act: The Clean Water Act (33 U.S.C. 1251 *et seq.*), established in 1977, is the primary federal law in the United States governing water pollution. The Environmental Protection Agency (EPA) which is responsible for administering the Clean Water Act has given the responsibility of issuing a "303 list" (impaired water body list) to the respective Regional Water Quality Control Board that has jurisdiction over the particular water bodies. Water bodies that do not meet applicable water quality standards are placed on the section 303(d) list of impaired water bodies and the State is required to develop a Total Maximum Daily Load Limit for the water body (TMDL). A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards.

San Joaquin Drain TMDL for Selenium

As discussed under Factor E, selenium has negative effects on splittail. The following paragraph discusses the regulatory mechanism in place to reduce selenium input into the Estuary. Selenium total maximum daily load limits have been established by the California Regional Water Quality Control Board (Waste Discharge requirement 5-01-234 2001, p. 12) for selenium discharged from the San Luis Drain. Selenium load limits are determined by wet or dry year classes and limits were incrementally lowered from 2994 kilograms (kg) (6600 pounds (lbs)) in 1996-1997 to 1604 kg (3236 lbs) in 2007-2008 (United States Bureau of Reclamation (USBOR) 2009, pp. 1-5). Following the implementation of these limits, selenium discharged from San Luis Drain was reduced from 3175 kg (7000 lbs) in 1996-1997 to 791 kg (1744 lbs) in 2007-2008 (USBOR 2009, pp. 1-5)). Although this will have limited immediate effect on reducing selenium concentrations in splittail habitat, it is a protective measure that will have a long-term effect on reducing selenium loads in the Estuary and reducing or stabilizing the threat of selenium to splittail in the future.

Lack of Total Maximum Daily Limits on contaminants at Wastewater Treatment Plants

As discussed under *Factor E*, ammonia has negative effects on splittail. The following paragraph discusses the lack of regulatory mechanism acting to reduce ammonia input into the Estuary. The Sacramento Regional Wastewater Treatment Plant SRWTP is responsible for 90 percent of the total ammonia load released into the Delta. Monthly loads of ammonia from the SRWTP released into the Sacramento River doubled from 1985 to 2005. Approximately 598 million liters (158 million gallons) per day were discharged from the SRWTP from 2001 to 2005 (Jasby *et al.* 2008, p. 15).

There are currently no regulations or limits on the amount of ammonia being discharged by waste water treatment plants that discharge into the Delta. The lack of Clean Water Act mechanisms limiting ammonia discharged from these plants constitutes a low magnitude threat to the splittail population. However, the EPA is currently updating freshwater ammonia criteria on ammonia discharged from the SRWTP (EPA 2009, pp. 1-46). On December 30, 2009 (74 FR 69086), the EPA announced the availability of draft national recommended water quality criteria for ammonia for the protection of aquatic life entitled, "Draft 2009 Update Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater." The EPA accepted public comments on that draft document until April 1, 2010 (75 FR 8698, February 25, 2010). The EPA is currently reviewing the comments and expects to begin enforcement of the criteria within 12 months. Ammonia and its detrimental effects on the splittail population are discussed under the contaminants section under *Factor E*.

California Fish and Game Commission Take Limit

The State of California Fish and Game Commission reduced a potential threat to splittail on March 1, 2010, when a new harvest limit on splittail was enacted through the addition of section 5.70 to Title 14 of the California Code of Regulations (CDFG2010, p. 1). CDFG now limits the take of splittail species to two individuals per person per day. Secondary data collected during creel surveys for salmon and striped bass suggest that in the past, a total catch of hundreds of adult fish may have been caught on a daily basis (Moyle *et. al.* 2004, pp. 6-13). The creel limit has reduced the impact of fishing on splittail.

Summary of Factor D

Federal and State regulations described above provide protection for the splittail and its habitat by limiting adverse affects from new projects, restoring habitat and limiting contaminants discharged into the Estuary. We acknowledge however that steps are currently being taken by the California Central Valley Regional Water Quality Control Board to enact new revised criteria on the ammonia that is discharged from the SRWTP. Ammonia may be affecting individuals within the population as discussed under Factor E, but we have no evidence that the current lack of regulatory mechanisms limiting ammonia discharges are having a significant population level effect on the splittail.

We conclude that the best scientific and commercial information available indicates that the Sacramento splittail is not now, or in the foreseeable future, threatened by inadequate regulatory mechanisms.

Factor E. Other natural or manmade factors affecting its continued existence

We have identified the risk of water export facilities, agricultural and power plant diversions, poor water quality, environmental contaminants, climate change and introduced species as

potential threats to the Sacramento splittail.

Water Export Facilities

The Central Valley Project (CVP) was devised to tame the flood waters of the Sacramento River and provide irrigation water for the Central Valley of California. The project today includes 20 dams, 800 km (500 mi) of aqueducts and up to 8.6 kilometers cubed (km^{3}) (7 million acre-feet (maf)) of water exported annually for agriculture, wildlife and urban uses (USBR Central Valley Project, 2009). The CVP's Jones Pumping Plant consists of five pumps with a permitted diversion capacity of 130 cubic meters per second (cms) (4, 600 cubic feet per second (cfs)). The pumping plant raises water into the Delta-Mendota Canal, which supplies water to much of the San Joaquin Valley. This intricate system of water diversion and storage has changed the historical hydrological features of the watershed systems and affected the many species that are dependent on them including the splittail. Reservoir and flood control operations inadvertently drain shallow water spawning habitat along river corridors and exacerbate stranding of splittail. Operations of Shasta and Trinity Dams and water diversions including the Tehama-Colusa, Corning, and Glenn Colusa canals, and the Red Bluff diversion dam further reduce instream flows. These reductions in water flow have resulted in the elimination of large tracts of spawning habitat for the splittail. Furthermore, dams may have reduced the distribution of the splittail by restricting movement to potential spawning grounds and creating migration obstacles. These dams and diversions have altered and eliminated habitat for splittail, and have on-going affects.

The State Water Project (SWP) consists of a network of dams, reservoirs, canals and diversion facilities. Oroville Dam, on the Feather River, and Lake Oreville, have a maximum operating storage of 3,537,580 acre-feet. The Banks Pumping Plant has a capacity of 291 cms (10,300 cfs), which is effectively limited by regulation to 203 cms (7,180 cfs). Water is conveyed via the Old and Middle River channels, resulting in a net (over a tidal cycle or tidal cycles) flow towards the pumping plants. When combined State and Federal water exports exceed San Joaquin River inflow, the additional water is drawn from the Sacramento River through the Delta Cross Channel, Georgiana Slough and Three-Mile Slough. Combined flow in Old and Middle Rivers is referred to as "OMR" flows while flow in the lower San Joaquin River is referred to as "QWEST."

Four major water diversion facilities exported between 4.85 and 8.7 km^3 (3.93 and 7.05 maf per year from the Delta during the years 1995 through 2005 (Kimmerer and Nobriga 2008, p 2). Of these, the State and Federal facilities exported between 4.7 and 8.4 km^3 (3.81 and 6.81 maf) averaging 7 km^3 (5.7 maf) every year (DWR 2010b, p. 10). The Barker Slough Pumping Plant, with a capacity of 175 cfs, diverts water from the Barker Slough, south of the city of Dixon, into the North Bay Aqueduct for delivery to Napa and Solano Counties. Each of the ten pump bays is screened to exclude fish one inch or larger. The Old River intake for the Contra Costa Water District is located on Old River near State Route 4. It has a positive-barrier fish screen and a pumping capacity of 250 cfs. It supplies water to Contra Costa Canal and to Los Vaqueros Resovoir for use in the East Bay area.

The State Water Resources Control Board's revised Decision 1641 established an expert-to-inflow operational objective that allow the SWP and CVP pumps to divert from 35 percent to 65 percent of the Delta inflow (SWRCB 2000). From July through January, the objective is 65 percent and from February through June, the objective is 35 percent, to protect fish and wildlife beneficial uses. The State Board also established additional water quality objectives that may further limit export pumping. Both pumping stations are equipped with their own fish collection facilities that divert fish into holding pens using louver-bypass systems to protect them from being killed in the pumps.

Operation of the CVP and SWP water export facilities directly affects fish by entrainment into their diversion facilities. Splittail are relocated if entrained. These salvaged fish are then loaded onto tanker trucks and returned to the western Delta downstream (Aasen 2009, p. 36). The movement of fish can result in mortality due to stress, moving procedures, or predation at locations where the fish are moved too. It is unknown how many fish survive this process, but mortalities could be high due to overcrowding in the tanks and predation at drop-off points. Splittail females migrating upstream to spawn are transported back downstream by truck if entrained and could potentially be forced to start their migration again. It is speculated that this could result in their removal from the spawning population for that year (Moyle *et al.* 2004, p. 20).

The fish collection facilities entrain a great number of splittail in hydrologically wet years (approximately 5 million splittail in 1995, 3 million in 1998 (Moyle *et al.* 2004, p 21), and 5.5 million in 2006 (Aasen 2007, p. 49)) when spawning on the San Joaquin River and other floodplains results in a spike in population numbers. However, entrainment is low during hydrologically dry years when recruitment is low (1,300 splittail in 2007 (Aasen 2008, p. 55) and about 5,000 in 2008 (Aasen 2009, p. 43)). These figures show the high annual variability of reproductive success. Research has shown no evidence that south Delta water exports have a significant effect on splittail abundance although that does not mean that entrainment never affects the species (Sommer *et al.* 2007, p. 32). Most entrained individuals tend to be young of the year migrating to optimal downstream rearing habitat, although some migrating adults do get entrained (Sommer *et al.* 1997, p. 973). If distribution of age 0 individuals was to shift toward the export pumps in a dry year with low reproductive output, there could be substantial effect on that year-class (Sommer *et al.* 1997, p. 973). However, this would only constitute a potential threat to that particular year class and still does not represent a significant threat to the overall population since it would occur only during a dry year. The pumping facilities do not represent a significant threat to the splittail because loss of substantial number of fish tends to occur during wet years in which the species is experiencing a high reproductive output.

Agricultural Diversions for Irrigation

Fish including splittail can become entrained in agricultural water diversions. This entrainment can result in injury or mortality. The diversion of water flows by agricultural pumping can also alter natural flow regimes and impede migration. Screening of agricultural diversions has been a common practice in recent years in order to conserve and restore populations of anadromous fishes in the Central Valley of California. There are over 3,700 diversions on the Sacramento and San Joaquin Rivers and their tributaries, and the Sacramento-San Joaquin Delta and Suisun Marsh. Over 2,300 of these diversions are located in the Sacramento-San Joaquin Delta, with over 350 in Suisun Marsh. Of these 3,700 existing diversions, over 95 percent are currently unscreened (CDFG 2010).

Under both the CALFED Bay-Delta Program and the Central Valley Project Improvement Act there have been significant efforts to screen agricultural diversions in the Central Valley and the Sacramento-San Joaquin Delta, particularly the larger unscreened diversions over 4.24 cms (150 cfs) on the Sacramento River. Entrainment of splittail at diversions is reduced if fish screens are installed at diversions within splittail habitat areas.

Currently, all of the unscreened diversions on the Sacramento River main stem over 4.24 cms (150 cfs) have been screened or are currently proposed to be screened. There are a number of large unscreened diversions over 4.24 cms (150 cfs) on the San Joaquin River. Many of these larger diversions will be considered for screening as part of the San Joaquin River Restoration Program. The Sacramento-San Joaquin Delta region is the location of the majority of unscreened diversions, with most of these diversions under 1.41 cms (50 cfs) (Meier 2010, pers. comm.).

CALFED's Ecosystem Restoration Program includes a program to consolidate and screen the remaining small agricultural diversions in the Delta, and the Sacramento and San Joaquin rivers. The NOAA Fisheries Restoration Center has also begun to fund small fish screen projects in the Sacramento River within the range of the splittail.

The amount of entrainment that may occur at the remaining unscreened diversions is not well-known, and efforts to determine the effect of entrainment on splittail have been limited. In July of 2001 and 2002, Nobriga *et al.* sampled fish entrained within a 61 cm (24 in) diameter pipe at the CDWR Horseshoe Bend Diversion facility (Nobriga *et al.* 2004, p. 1). They collected only one splittail during two sampling periods, finding entrainment to be exceptionally low (Nobriga *et. al.* 2002, p. 35-44). 115, 000 m^3 of water passing through an unscreened diversion was sampled over a 69 hour period (Nobriga *et al.* 2004, pp. 1-16). Another study at the Morrow Island Distribution System showed that the diversions there took 666 splittail young-of-the-year-individuals, but only nine individuals of age one or older (Enos 2010, p. 14). After sampling 2.3 million m^3 (81.2 million ft^3) of water, it was concluded that entrainment of special status species including the splittail was exceptionally low (Enos 2010, p. 17). In analyzing these results, it is helpful to compare this take to the 5million to 6 million splittail that can be entrained at the south Delta water export pumps in a single year. Research has shown no evidence that south Delta water exports have a significant effect on splittail abundance (Sommer *et al.* 2007, p. 32). Splittail adults can yield up to 100,000 eggs in a single spawning event, therefore the loss of thousands or even a million young-of-year is not expected to effect the longterm population viability of the species. Furthermore, splittail may not be as vulnerable to agricultural diversions as other fish species are because adult splittail migrate during winter to early spring when agricultural diversion operations are at a minimum.

We do not consider entrainment by agricultural diversions to be a significant threat to splittail. Additionally, these effects from agricultural diversions are expected to decrease in the future as additional diversions continue to be screened.

Power Plant Diversions

Two power plants located near the confluence of the Sacramento and San Joaquin rivers pose an entrainment risk to splittail: the Contra Costa Power Plant and the Pittsburg Power Plant. The intakes for the cooling water pumps of these power plants are located in close proximity to splittail rearing habitat (Moyle *et al.* 2004, p. 20). The maximum combined non-consumptive intake of cooling water for the two facilities is 91.7 cms (3,240 cfs), which can exceed 10 percent of the total net outflow of the Sacramento and San Joaquin rivers. Thermal and chemical pollution in the forms of raised water temperature and chlorine discharges may also have a detrimental effect on splittail (USFWS 2008, pp. 173-174). However, power plant operations have been substantially reduced since the 1970s, and the plants are now either kept offline, or are operating at very low levels, except as necessary to meet peak power needs. Due largely to this reduction in the operation of the power plants and their associated pumping for cool water, we do not consider the operation of these power plants to constitute a significant threat to the splittail population. We have no indications of future plans to use these pumps more frequently and therefore, do not consider these operations to be a threat in the future.

Water Quality and Environmental Contaminants

Although recent research funded by CALFED and carried out in a large part by UC Davis has shed some light on the dynamics and impacts of contaminants entering the Delta system, the overall effects of these contaminants on ecosystem restoration and species health are still poorly understood. All major rivers that are tributaries to the Estuary are exposed to large volumes of agricultural and industrial chemicals that are applied in the Central Valley watershed (Nichols *et al.* 1986, pp. 568-569), as well as chemicals originating in urban runoff that find their way into the rivers and Estuary. In addition, re-flooding of the Sutter and Yolo Bypasses and the use of other flooded agricultural lands by splittail for spawning can result in agricultural-related chemical exposures.

A majority of the Delta has been placed on the Clean Water Act's 303d list of impaired waterbodies due to the documented presence of polychlorinated biphenyls (PCBs), organophosphate pesticides, other legacy pesticides, and some metals – particularly mercury (CVRWQCB 2006, pp. 5-11). These contaminants can have adverse effects on fish (i.e., splittail), but the magnitude of effects are dependent upon: The chemical form of the contaminant in question; the contaminant's bioavailability under certain water quality parameters (i.e., hardness, pH, etc.); the nature of the response being measured in the fish (acute toxicity, bioaccumulation, reproduction, etc.); and the nature/status of the individual fish (age, weight, health, etc.).

All life stages of splittail are potentially exposed to varying amounts and mixtures of chemical contaminants in the Delta and associated water bodies. Acid mine drainage has been a serious environmental problem in the northern portion of the Sacramento River Basin (Alpers *et al.* 2000a, p.4; b, p. 5). Several streams are listed as impaired because of high concentrations of metals such as cadmium, copper, lead, and zinc. Metals concentrations in previous years have been toxic to fish in the upper Sacramento River near and downstream from Redding (Alpers *et al.* 2000a, p 4; b, p. 5). Recent mitigation efforts at one of the more contaminated sites in the Spring Creek drainage near Shasta Lake have significantly lowered concentrations of metals in the Sacramento River, and no toxic effects to fish were observed during the course of this investigation (Alpers *et al.* 2000a, p.3; b, p. 2). However, elevated levels of metals such as copper in streambed sediment can still be measured in the upper Sacramento River Basin downstream from Redding (MacCoy and Domagalski, 1999, p. 35). Copper and other metals may still affect aquatic organisms in upper portions of contributing watersheds of the Delta. However, five potential contaminant threats have been identified as a

concern specifically with respect to the splittail: (1) selenium, (2) mercury, (3) organophosphates, (4) pyrethroids, and (5) ammonium/ammonia. A summary of each identified contaminant threat is provided below. In part, these contaminant threats are of concern because they may be focused, to varying degrees, on habitat features and biological characteristics tentatively identified as particularly relevant to splittail conservation.

Selenium

The primary risk posed by selenium is a direct result of its propensity to cycle through the food web, its dominant exposure pathway, and its ability to cause reproductive impairment in fish (Lemly 1999, p. 150-151; Lemly 2002, p.47). The primary source of selenium coming into the Delta system enters through the San Joaquin watershed in the form of agricultural run-off via the San Luis Drain (Luoma *et al.* 2008, p. 63). Recent studies on selenium toxicity in aquatic food chains have generally reached the conclusion that a water-based criterion is not suitable due to "...temporal [and spatial] changes in concentrations, speciation, and rates of transfer between water, sediment and organisms..." (Hamilton 2004, p. 8). Since the primary route of exposure to selenium is via the diet, and selenium is highly bioaccumulative, these differences can mean that a concentration of selenium in water that results in adverse effects in one location may not result in adverse effects to the same species in another location. Thus, the current recommendation (USEPA 2004, p. 82; Chapman 2007, p. 21; Hamilton 2002, p. 95; 2004, p. 22) for the appropriate media for regulation of selenium in the aquatic environment is not water, but rather tissue.

To examine the potential adverse effect levels of selenium on splittail, Teh *et al.* (2004, pp. 6085-6087) fed juvenile splittail organic selenium for 9 months in the laboratory. From this experiment, Teh *et al.* (2004, pp. 6087-6090) derived a no observed adverse effects level (NOAEL) and lowest observed adverse effects level (LOAEL) for deformities in juvenile splittail of 10.1 and 15.1 mg/kg-dry weight (dw) in muscle tissue and 23.0 and 26.8 mg/kg-dw in liver tissue, respectively. However, Rigby *et al.* (2010, p.77) performed a logistic regression using data from Teh *et al.* (2004, pp. 6087-6090) to derive a more precise estimate of the threshold for selenium toxicity in splittail and derived EC_{10} values of 0.9 mg/kg-dw in feed, 7.9 mg/kg-dw in muscle, and 18.6 mg/kg-dw in liver for juveniles. The derived EC_{10} values by Rigby *et al.* (2010, p. 79) represent the predicted selenium concentration at which deformities would be observed in 10 percent of the juvenile population.

In a laboratory setting, research by Teh *et al.* (2004, p. 6092) has shown that the prevalence of deformities among juvenile splittail in the laboratory increase at dietary concentrations greater than 6.6 mg/kg-dw while concentrations of 26.0 mg/kg-dw and greater significantly decrease body weight, total length, and condition factors of juvenile splittail. This may be due to the liver's inability to metabolize and excrete biochemicals due to its reaction to high selenium intake (Teh *et al.* 2004, p. 6092).

In field settings, selenium concentrations analyzed from tissues of adult splittail captured in the Suisun Bay/Marsh area show elevated concentrations in muscle ranging from 4 to 5 mg/kg (5 ppm), and liver concentrations ranging as high as 20 mg/kg (20 ppm) (Stewart *et al.* 2000, p. 1). The median selenium liver g/g-dwconcentrations in splittail collected from Suisun Bay are about 13 (13 ppm) (Stewart *et al.* 2004, p. 4523). Although deformities typical of selenium exposure including lordosis (spinal deformities) have been observed in splittail collected from Suisun Bay (Stewart *et al.* 2004, p. 4524), the known data on muscle and liver concentrations in splittail adults are below the EC_{10} values derived by Rigby *et al.* (2010, pp. 76-79).

Current threshold tolerances of selenium exposures by splittail may be higher than other species that use upper portions of the water column (Teh *et al.* 2004, pp. 6087-6090). However, laboratory and field studies cited above lead us to conclude that although selenium is considered elevated within the Delta, selenium exposures, although important, are not having a significant population-level effect on the species.

Bioaccumulation of selenium by splittail in the Estuary is a potential concern because the diet of adult splittail consists of bivalves (including Asiatic clam and overbite clam), amphipods, cladocerans, harpacticoid copepods, mysids, and detritus (Moyle *et al.* 2004, p. 22). Asiatic and overbite clams are benthic filter feeders that take up and accumulate selenium (Stewart 2004, p. 4522). The relationship between the bioaccumulation of selenium in the overbite clam and its predation by splittail may be significant because subsequent to the clam invasion, splittail shifted their diet from prey items such as estuarine copepods to a diet increasingly focused on bivalves, in particular, overbite clams (Feyrer *et al.* 2003, p. 285).

The recent increased reliance of splittail on overbite clams as a food source may be a risk factor for increased selenium accumulation in splittail. Concentrations of selenium in overbite clams in the San Francisco Bay Estuary rose three fold from the mid 1980's to 1997. Some of this rise may have been a result of high run-off during the wet years of 1995-1997 (Linville 2002, p. 56-59) when the survey was concluding. In the San Francisco Bay, selenium concentrations in Asiatic and overbite species range from 2 to 9 and 5 to 20 mg/kg-dw, respectively (Stewart *et al.* 2004, p. 4522; Presser and Luoma 2006, p. 48) compared with other native diet items of amphipods and mysids which range from 1 to 3 mg/kg-dw (Stewart *et al.* 2004, p. 4522). These concentrations exceed the previously discussed dietary EC_{10} of 0.9 mg/kg-dw derived by Rigby *et al.* (2010, p.78). However, the EC_{10} value developed by Rigby *et al.* (2010, p. 78) reflects adverse effects upon juveniles from dietary exposures. In Suisun Marsh adult splittail gut contents are predominantly detritus (Feyrer *et al.* 2003, p. 281). Feeding behavior of splittail in Suisum Marsh suggest they are more dependent upon detritus food sources which would likely expose them to lower concentrations compared of selenium to bivalve and amphipod diet sources.

Moyle *et al.* (2004, p. 17) hypothesized that success of juvenile downstream migration is strongly linked to the size that juvenile splittail achieve prior to exiting the spawning areas. It was suggested that a minimum size of 25 mm (1 in) greatly enhances success of downstream migration. Moyle presented data demonstrating statistically-significant declining growth rates. The apparent declines in growth rates observed in Suisun Marsh splittail between 1980 and 1995 by Moyle *et al.* (2004, p. 14) were correlated to the invasion of the Estuary by the overbite clam, and the subsequent shift of splittail to an overbite clam-dominated diet. Moyle *et al.* (2004, pp. 14-15) suggested that this trend might reflect cachexia (contaminant-induced weight loss despite calorically sufficient dietary intake) which is a classic symptom of non-lethal selenium poisoning. However, Moyle *et al.* (2004, p. 30) also suggested this decline in growth rates may reflect poorer energetics from shifting to a non-mysid shrimp-dominated diet.

Steps have been taken to reduce the input of selenium into the Estuary (see discussion under *Factor D*) and selenium loads discharged from the San

Joaquin drainage have been reduced over the last decade. In addition, the predominant source of selenium in the Delta (i.e., irrigation drainage from the San Joaquin River watershed) is somewhat removed from areas containing important spawning habitat for the species (Sacramento River watershed). Furthermore, studies on the effects of the overbite clam on splittail abundance have been inconclusive. Feyrer *et al.* found that changes in the food web have had effects on the diets of older splittail (2003, pp. 278-285), but Kimmerer found no evidence that the splittail decline was directly related to the decline in opossum shrimp (2002, pp. 51-52). Therefore, we have no conclusive scientific data finding that the splittail growth rates are the result of any selenium induced bioaccumulation mechanism. While there is scientific information that indicates overbite clams do accumulate selenium, there is no indication that the bioaccumulation of selenium in splittail as the result of eating these bivalves has resulted in a population decline of the species. Therefore, we conclude that selenium does not constitute an immediate threat to the splittail through all or a part of its range at this time or in the foreseeable future. However, the potential long-term chronic threat that selenium may present to splittail condition and health cannot be discounted when combined with other potential water quality stressors and should be examined in more detail in the future.

Mercury

The Sacramento River watershed was the site of significant mining activity during the 19th century, including hard rock and hydraulic gold mining (primarily in the Sierra Nevada), mercury mining in the Coast Range (primarily to support gold mining), and hard rock mining for copper, silver, and other metals in portions of the Sierras and northern Coast Range. California's Coast Range represents one of the world's five major mercury mining areas (Jasinski 1995, p. 151). Historic hydraulic gold mining and gold dredging beginning in the 1850's in mountains upstream of the Delta set in motion a continual stream of mercury flowing into the Estuary from the Sacramento watershed that is still having residual effects today (Healy 2008, p. 23).

Analytical data indicate that mercury concentrations in aquatic biota in the San Joaquin River are exceeding screening thresholds and may pose ecological and human health risks (Davis *et al.* 2000, pp. 9-16). Laboratory studies by Deng *et al.* (2008, p. 200-202) found dietary mercury and a combination of mercury and selenium caused damage to liver, kidney and gill tissue of splittail after four weeks of exposure. Although liver glycogen depletion and kidney tubular dilation were observed by the Deng *et al.* study, these lesions did not seem to pose a direct threat to the survival of the splittail larvae (2008, p. 202). Because splittail require floodplain inundation to reproduce, they need habitats like the Yolo Bypass and the Cosumnes River floodplain. The reliance on these regions for reproduction creates a potential risk for eggs and juveniles to be exposed to mercury contamination. However, field studies regarding mercury toxicity to splittail eggs and juveniles are lacking.

Regarding risks from bioaccumulation of mercury via the food chain pathway, several research groups are currently addressing mercury accumulation in the Delta food web. However, no systematic study exists of mercury distributions in the food web of the Bay. Bioaccumulation processes depend on the amount of mercury in surficial sediments, the water quality at the sediment/water interface, and local food web dynamics.

Methylmercury is the most important form of mercury in the aquatic environment with regard to accumulation by biota and transfer through the food web. Methylmercury is produced through addition of a methyl group to Hg2+, a process referred to as methylation. The precise mechanism for entry of methylmercury to the food chain is unknown. However, this initial step is critical, because concentrations of mercury in plankton can be about 10,000-fold higher than in water (Krabbenhoft 1996, p. 2). After this initial step, methylmercury concentrations increase approximately 0.5 log units per trophic level (Watras and Bloom 1992, p.1316), suggesting that each successive trophic level derives methyl-Hg from a progressively more concentrated source (i.e. the previous trophic level), in a process known as biomagnification. In this process consumers retain and further concentrate much of the methylmercury of their prey and subsequently pass this on to the next trophic level. Species at high trophic positions in the aquatic food web, such as predatory fish, attain concentrations that are approximately a million times higher than concentrations in water. Because methylmercury biomagnifies, trophic position is one of the primary factors influencing observed tissue concentrations.

Given that splittail are fairly low in trophic status and feeding guilds in the Estuary, the likelihood of accumulating and biomagnifying mercury from the food web is low. One study has linked elevated mercury to the Cosumnes River floodplain and the Yolo Bypass (Slotten *et al.* 2000, p. 44), which are both primary spawning grounds for splittail. However, this study found no increased levels of mercury in lower trophic level biota that occurred in these floodplains (Slotten *et al.* 2000, p. 44). Although laboratory studies have shown mercury to have adverse effects to splittail individuals and there are increased risks of mercury exposures in splittail spawning grounds, the Slotten study did not find that these mercury levels transferred into the food web and additional field studies regarding mercury toxicity to splittail are lacking.

We have considered mercury as a possible threat to the splittail, but there is limited information on the effects of mercury on splittail population dynamics. Therefore we have determined that mercury and its potential for bioaccumulation and/or biomagnifications does not constitute a significant threat to splittail now or in the foreseeable future.

Organophosphates

Organophosphate pesticides such as diazinon, chlorpyrifos, and malathion are toxic at low concentrations to some aquatic organisms. Several areas of the Delta, particularly the San Joaquin River and its tributaries, are listed as impaired under the Clean Water Act due to elevated levels of diazinon, chlorpyrifos, and other pesticides. Organophoshates enter agricultural drainage mainly in stormwater runoff because it is sprayed on orchards during the rainy winter season. The environmental fate of chlorpyrifos and diazinon are not well understood. Previous work shows that chlorpyrifos is adsorbed strongly onto sediment particles, reducing the aqueous concentration (Karen *et al.* 1998, p.1584). The fate of adsorbed chlorpyrifos is not known. For chlorpyrifos dissolved in water, volatilization, photolysis, and hydrolysis are major removal mechanisms (Howard, 1999; Racke, 1993). The role of biodegradation in chlorpyrifos removal is not well understood. Giddings *et al.* (1997) did find that the degradation of chlorpyrifos in water followed a first-order decay model (p. 2360). The environmental fate of diazinon is less known, but it is more soluble than chlorpyrifos and undergoes pH-dependent decomposition in water (Drufovka *et al.* 2008, p. 295).

Some species of zooplankton are affected by diazinon concentrations as low as 0.35 µg/L (Amato *et al*, 1992, p. 214). From 1988 to 1990, the Central Valley Regional Water Quality Control Board conducted an aquatic toxicity survey in the San Joaquin Valley. Surface water samples collected from certain reaches of the San Joaquin River watershed during this survey were acutely toxic to the water flea, *Ceriodaphnia dubia* (Foe and Connor 1991). The cause of toxicity was not determined but was attributed to pesticides in general. Further study was conducted in the Valley during the winter of 1991–92, and the resultant toxicity was attributed to the presence of chlorpyrifos and diazinon (Foe and Sheipline, 1993; Foe, 1995; Kuivila and Foe, 1995, p. 1149). Recognizing toxic concentrations of organophosphates can occur in tributaries to the San Joaquin and Sacramento River when agricultural areas contribute storm runoff, toxic concentrations rarely occur in the Sacramento River itself (MacCoy *et. al* 1995).

Although organophosphate pesticides commonly used in agricultural areas have been shown to be present in Delta waters and their tributaries at concentrations toxic to aquatic organisms (Werner *et al.* 2000, p. 226), little is known about the sensitivity of Sacramento splittail to these chemicals. Previous investigations of larval striped bass (*Morone saxatilis*) in the Delta indicated many larvae had been exposed to toxic compounds, potentially leading to slower growth and increased mortality rates (Bennett *et al.* 1995). It is possible that these contaminants also contribute to mortality and potentially affect juvenile splittail recruitment. Teh *et al.* (2005) conducted 96–hour acute toxicity tests on 7–day-old splittail larvae to determine the level of toxicity of orchard runoff water containing organophosphorus pesticides and observe potential biological effects. Spliital larvae were then transferred to clean water for three months to assess the survival, growth, histopathological abnormalities, and heat stress proteins. The results of although splittail larvae survived the 96 h exposure, Teh *et al.* (2005) observed exhibited reduced survival and growth and showed signs of cellular stress even after a three month recovery period.

Sublethal effects may play a more important role than acute mortality, but there is a lack of studies to identify and quantify sublethal responses to pesticides in splittail. In addition, although several studies have demonstrated the acute and chronic toxicity of two common dormant spray insecticides, diazinon and esfenvalerate, in other fish species (Barry *et al.* 1995, Goodman *et al.* 1979, Holdway *et al.* 1994, Scholz *et al.* 2000, Tanner and Knuth 1996), little work has been done integrating acute toxicity with biomarkers of exposure. Sublethal exposure to insecticides is expected to cause a wide range of responses (biomarkers) in individuals ranging from genetic to reproductive anomalies. The addition of sublethal responses to routine acute toxicity testing may provide advanced warning of potentially significant environmental impacts and risks associated with organophosphate pesticides and prevent underestimation of effects on splittail populations. However, based upon the limited data available, we do not consider organophosphates to be a significant threat to the splittail population at this time. Although residual organophosphates will continue to be present in the ecosystem and site specific exposures will occur in localized areas that may affect individuals, the reduction of organophosphates discharged into the Delta due to EPA restrictions in recent years has greatly reduced the potential threat that organophosphates may have posed in the past (Luoma 2008, p. 64).

Pyrethroids

Pyrethroid use in the Central Valley has steadily increased since 1991 and reached an annual use of 80, 740 kilograms (kg) (178,000 pounds (lbs)) in 2003 (Oros and Werner 2005, p 11). Many farmers have switched from organophosphate-based insecticides to pyrethroid-based insecticides (which adhere to soil more strongly) due to a decision by the EPA to phase out organophosphates due to their toxicity to humans (Luoma 2008, p. 64). Pyrethroids have a high absorption rate, andlow water solubility; they rapidly absorb to soil and organic matter (Werner 2004, p. 2719). Although pyrethroids bioaccumulate, food web exposure is not considered a significant route of exposure to fish (Hill 1985). The primary mode of transport for pyrethroids in aquatic systems is the adsorption of pyrethroids to surfaces of clay and soil particles that are suspended in the water column (Oros and Werner 2005, p 24). This combination of properties lends itself to accumulation of this substance in areas such as the Yolo Bypass.

All synthetic pyrethroids are potent neurotoxins that interfere with nerve cell function by interacting with voltage-dependent sodium channels as well as other ion channels, resulting in repetitive firing of neurons and eventually causing paralysis (Bradbury and Coats 1989, pp. 377-378; Shafer and Meyer, 2004). Pyrethroids are toxic to most aquatic invertebrates and fish, in many cases more toxic than the organophosphates they are replacing with LD50 values for aquatic organisms below 1 ppb (Smith and Stratton, 1986). The LD50 is the dose required to kill half the members of a tested population after a specified test duration. Aquatic insects are more sensitive to pyrethroids than fish, however, mollusks are relatively insensitive (Clark *et al.*, 1989). Acute effects of pyrethroids on aquatic insects could reduce available food resources for splittail. However, the magnitude of this potential effect is unknown and has not been studied.

Chronic exposures to pyrethroids can have significant impacts for immune function, reproductive success and survival for fish and their food organisms. Histopathological lesions in the liver were observed in splittail shortly (1 week) after 96–hour exposure to sublethal concentrations of organophosphate and pyrethroid insecticides. Fish recovered from these lesions, but showed high (delayed) mortality rates, grew slower and showed signs of cellular stress even after a 3 month recovery period (Teh *et al.* 2004b, p. 246).

Sub-lethal toxicity studies specific to splittail are limited but data exists for other fish species. One pyrethroid, esfenvalerate, exhibited both larval survival and immune effects in two fish species. Delayed spawning and reduced larval survival of bluegill sunfish (*Lepomis macrochrius*) were observed following two applications of 1 ppb of esfenvalerate (Tanner and Knuth 1996, pp. 246-250). Exposures of 0.08 ppb esfenvalerate dramatically increased the susceptibility of juvenile Chinook salmon (*Oncorhynchus tshawytscha*) to Infectious Hematopoietic Virus (Clifford *et al.* 2005, pp. 1770-1771).

We conclude that although pyrethroids have been shown to have potential chronic to sub-lethal effects on individuals, there is no evidence to suggest that splittail exposures to pyrethroids in the Estuary are having a significant effect at the population level. Therefore we have determined that pyrethroids do not represent a substantial threat to splittail now or in the foreseeable future.

Ammonium

The effect of ammonia on aquatic organisms depends on its form. Ammonia is un-ionized, and has the formula NH3. Ammonium is ionized, and has the formula $NH4^+$. The major

factors determining the proportion of ammonia or ammonium in water are water pH and temperature. This is important as the unionized NH3 is the form that can be toxic to aquatic organisms while NH4 is the form documented to interfere with uptake of nitrates (NO3) by phytoplankton (Dugdale *et al.* 2007, Jassby 2008). The chemical equation that drives the relationship between ammonia and ammonium is:

$$NH_3 + H_2O \longleftrightarrow NH_4^+ + OH^-$$

When the pH is low, the reaction is driven to the right, and when the pH is high, the reaction is driven to the left. When temperature is high, the reaction is driven to the left and when temperature is low the reaction is driven to the right. Ammonia enters the Delta ecosystem through discharge from wastewater treatment plants, nitrogenous fertilizers, and atmospheric deposition. The largest source of ammonia entering the Delta ecosystem is the Sacramento Regional Wastewater Treatment Plant (SRWTP), which accounts for 90 percent of the total ammonia load released into the Delta. Monthly loads of ammonium from the SRWTP released into the river have doubled from 1985 to 2005 resulting in 598 million liters (158 million gallons) per day discharged from the SRWTP during 2001–2005 (Jasby *et al.* 2008, p. 15).

Ammonia can be toxic to aquatic organisms and its acute and chronic effects are dependent on both pH and temperature. Ammonia is an oxygen demanding substance requiring oxygen for nitrification and could contribute to dissolved oxygen depletion in receiving waters. Effects of elevated ammonia levels on fish range from irritation of skin, gills, and eyes to reduced swimming ability and mortality (Wicks *et al.* 2002, p. 67). In addition to direct effects on fish, ammonia in the form of ammonium may alter the food web by adversely impacting phytoplankton and zooplankton dynamics in the Estuary ecosystem. Ammonia can be toxic to several species of copepods important to larval and juvenile fishes; ammonium may impair primary productivity by reducing nitrate uptake in phytoplankton (Dugdale *et al.* 2007, pp. 27-28).

A conceptual research framework has been prepared to improve understanding of the role of anthropogenic ammonia in the Bay-Delta ecosystem (Meyer *et al.* 2009, pp. 3-14). No studies to date address the effects of ammonia on splittail specifically. However, concerns related to synergistic effects from ammonia and other contaminants on splittail and other fish species in the Sacramento River have been raised. One study conducted at the University of California Davis Toxicology Laboratory did not observe levels toxic to delta smelt, or two of its food organisms, in the Sacramento River downstream of SRWTP. However, treated effluent was found to be more chronically toxic than Sacramento River water seeded with ammonium chloride to equal concentrations, suggesting that additional toxicants are present in SRWTP effluent (Werner 2009, p. 21).

EPA is currently updating freshwater ammonia criteria that will include new discharge limits on ammonia (EPA 2009, pp. 1-46). There is no projected date for its adoption but a National Pollution Discharge Elimination System (NPDES) permit for the SRWTP is being prepared by the California Central Valley Regional Water Quality Control Board for public notice in the fall of 2010. The NPDES permit is expected to include new ammonia limitations which will reduce loadings to the Delta.

Although ammonia/ammonium is identified as a contaminant that is likely having a negative impact on the Estuary and may chronically or sub-lethally affect individual splittail within the population, there is no evidence that ammonia is having a population level effect on the species or will in the foreseeable future.

Summary of Contaminants

Most fish including splittail can be especially sensitive to adverse effects in their larval or juvenile stages when exposed to contaminants. Given splittail biology, adverse effects would be more likely to occur where sources of contaminants occur in close proximity to spawning and /or rearing habitats (i.e., floodplains, rivers and tributaries). Splittail are benthic feeders (feed on the bottom of water column) and are more susceptible than other fish to sediment contamination. They also face greater exposure to urban and agricultural runoff which tends to be concentrated in shoals where splittail reside (Moyle *et al.* 2004, p. 23).

Laboratory studies have shown certain contaminants to potentially have adverse effects on individual splittail. Field studies have shown that the contaminants of concern are elevated in the Delta and co-occur in areas important for splittail conservation. Although negative impacts to individual splittail from contaminants are suspected and have been shown on a limited basis, the overall extent of these impacts to the population remains largely unknown without further study and investigation. No information to date has conclusively shown that each of the contaminants identified above have a significant effect on splittail at the population level. In addition, several efforts are being undertaken to improve estuarine habitat and reduce the amount of contaminants discharged into the system. Therefore, we do not consider the contaminants of concern, as described above, to constitute an immediate threat to the species at this time or in the foreseeable future.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) has concluded that warming of the climate is unequivocal (2007, p. 5), and that temperature increase is widespread over the globe and is greater at northern latitudes (Soloman *et al.* 2007, p. 37). However, future changes in temperature and precipitation will vary regionally and locally, with some areas remaining unaffected or even decreasing in temperature.

Between 1995 and 2006, 11 of the 12 years have been the warmest on record (Soloman *et al.* 2007, p. 36). Over the next 20 years, climate models estimate that the Earth's average surface temperature will increase about 1.4 °C (0.8 °F). During the past decade, the average temperature in California, like that of much of the globe, was higher than observed during any comparable period of the past century (Soloman *et al.* 2007, pp. 31-32). Nighttime air temperatures in California have increased 0.18 °C (0.33 °F) per decade since 1920 while daytime temperatures have increased 0.05 °C (0.1 °F) per decade since 1920 (CEC 2009, p. 10).

By IPCC estimates for 2070-2099, California temperatures are expected to rise 1.6 to 2.7 °C (3.0 to 5.5 °F) under a low emissions scenario and 4.4 to 5.8 °C (8.0 to 10.5°F) under a high emissions scenario. However, recent studies have revealed that emissions are rising faster than even the most aggressive high emission scenarios used by IPCC in these calculations (CEC 2009 p. 41). Thus temperatures in the State are expected to rise faster than predicted unless global actions are taken to reduce emissions (CEC 2009 p. 41).

Similar to other California cyprinids, the splittail exhibits a high thermal tolerance. Acclimated fish can survive temperatures up to 33 °C (91.4 °F) for short periods of time (Young and Cech 1996, p. 670). Temperatures resulting from climate change in the next 50 years are not expected to stress splittail beyond their temperature range. Splittail have historically adapted to changes in the Delta system through

migratory behavior and it is likely that they will continue to adapt and adjust their spawning and rearing grounds to areas with optimal temperature conditions (Moyle *et al.* 2004, p. 38).

Changes in precipitation are less certain than temperature; climate models project more frequent heavy precipitation events, separated by longer dry spells, especially in the western United States (IPCC 2007, p. 15). In California, snowfall in higher elevations has been increasing while snowfall in lower elevations has been decreasing (CEC2009, p. 16). This has led to an overall decrease in run-off of 19 percent in the San Joaquin Basin and 23 percent in the Sacramento Basin between the months of April to July over the last 100 years, meaning more runoff is coming in earlier months (CEC 2009, p. 17). Overall, California snowpack is predicted to decrease by 20 to 40 percent by the end of the century (CEC 2009, p. 44). However, due to the unpredictable nature of climate change, we are uncertain how the amount of run-off may vary over time and therefore we have no scientific evidence that potential drought conditions resulting from climate change pose a threat to the splittail.

Global sea level has risen at an average rate of 1.8mm (.07 inches) per year from 1961 to 2003, and an average rate of 3.1 mm (.12 in) year from 1993 to 2003 (IPCC 2007, p. 49). In California, sea level has risen about 18 cm (7 in) in the last century (CEC 2009, p. 24), which is similar to global sea level rise. The 2007 IPCC report modestly estimates that sea levels could rise by 0.18 to .58 m (0.6 to 1.9 feet) by 2100, but Rahmstorf (2007, p. 369) suggests that depending on the warming scenario employed, global sea level rise could increase by over 1.2 m (4 ft) in that time period (CEC 2009, p. 49). Even if emissions were halted today, oceans would continue to rise and expand for centuries because of their efficient heat storing abilities (CEC 2009, pp. 49-50). Current estimates put sea level rise at 20 to 50 cm (8 to 19 in) by 2050, which is likely to contribute to the flooding of at least some Delta islands (Knowles 2010, pers. comm.).

The San Francisco estuary will be more susceptible to sea-level rise due to its narrow bays and channels and because it already lies below or at sea level (Moyle *et al.* 2004, p. 38). Many of the Delta islands used for agriculture have been drained and armored with levees for flood protection and groundwater level maintenance. These reclamation and agricultural activities have caused island surface levels to subside due to rapid decomposition of their water logged peat soils. Many of the central and western Delta islands have experienced the most subsidence, now lying at 3 to 7.6 m (10 to 25 ft) below sea level (Ingebritsen *et al.* 2000, p. 2). These islands are at a high level risk from sea level rise because, as islands subside and water levels rise, levee banks are experiencing greater hydrostatic force, thereby increasing the risk of their failure.

Earthquake fault models also show a high degree of risk of a significant seismic event that could affect the islands in the central and western Delta (Mount *et al.* 2005, p. 13). Failure of the levees on some or all of these islands, as a result of liquefaction of the unstable soils that make up the levees' foundations during an earthquake, could turn part or the entire Delta into a brackish bay in the future. The encroaching ocean would increase salinity levels in the central and western Delta, with the result that the range of splittail would likely be curtailed to some location upstream of the confluence of the Sacramento and San Joaquin rivers.

Due to the divergence of two splittail population segments, one population is exposed to higher salinities in the Napa and Petaluma river systems for at least part of its life cycle (Feyrer *et al.* 2010, p. 12). This population may be better able to adapt to increased salinity levels that sea level rise may bring. Splittail have an unusually high salinity tolerance and populations have shown great resilience in waters with variable salinities (Moyle *et al.* 2004, p. 38; Young and Chech 1996, p. 673). Abundance indices soared in 1995 and 1998, in response to wet hydrological years following a decade of predominantly dry conditions, showing the resilience of this species. One problem climate change may pose to splittail is the reduced spawning habitat due to deeper water (Moyle *et al.* 2007, p. 38). However, new spawning habitat that may be created as a result of flooding will help to accommodate splittail spawning in the event of rising ocean levels. Liberty Island (discussed under *Factor A*) is one example of the benefits that island flooding could have on splittail if correctly managed. Under predicted future flooding conditions, splittail could spawn in the Sutter Bypass and rear in the Delta. Splittail have adapted to changes in the ecosystem through their migratory behavior (Moyle 2004, p. 38) and may continue to do so in the future.

Introduced Species

Copepods (*E. affinis, Pseudodiaptomus forbesi*), a major prey item for splittail, have declined in abundance in the Delta since the 1970s (Kimmerer and Orsi 1996, p. 409). Starting in about 1987, declines were observed in the abundance of phytoplankton (Alpine and Cloern 1992, p. 951). These declines have been partially attributed to grazing by the overbite clam (*Corbula amurensis)* (Kimmerer *et al.* 1994, p. 86) which became abundant in the Delta in the late 1980s. Asiatic clams (*Corbicula fluminea*) can exceed 200,000 per square meter (m2) and overbite clam abundance can exceed 10,000 per m2 (Kimmerer *et al.* 2008, p. 82). Because the overbite clam consumes copepod larvae as it feeds, it not only reduces phytoplankton biomass but also competes directly with splittail for food (Kimmerer *et al.* 1994, p. 87). It is believed that these changes in the estuarine food web negatively influence pelagic fish abundance, including splittail abundance. In the Delta, phytoplankton production has declined 43 percent between 1975 and 1995 (Jasby *et al.* 2002, p. 703). The correlation of phytoplankton decline with the appearance of the overbite clam leads us to believe that the overbite clam is overgrazing the system.

Three non-native species of copepods (*Sinocalanus doerrii, Pseudodiaptomus forbesi, and Pseudodiaptomus marinus*) became established in the Delta between 1978 and 1987 (Carlton *et al.* 1990, pp. 81-94), while native *Eurytemora affinis* populations have declined since 1980. It is not known whether these non-native species have displaced *E. affinis* or whether changes in the estuarine ecosystem now favor *S. doerrii* and the two *Pseudodiaptomus* species. Meng and Orsi (1991) reported that *S. doerrii* is more difficult for larval striped bass to catch than native copepods because S. *doerrii* is fast swimming and has an effective escape response. It is not known whether this difference in copepod swimming and escape behavior has affected the feeding success of young splittail.

Limnoithona tetraspina (no common name) is a nonnative copepod that began increasing in numbers in the delta in the mid 1990s, about the same time that *P. forbesi* began declining (Bennett *et al.* 2005, p. 18). *L. tetraspina* is now the most abundant copepod species in the low salinity zone (Bouley and Kimmerer 2006, p. 219), and is likely an inferior prey species for splittail because of its smaller size and superior predator avoidance abilities when compared to *P. forbesi* (Bennett *et al.* 2005, p. 18; Baxter *et al.* 2008, p. 22).

Splittail have shifted their diet to utilize non-native species. Although the

non-native copepods and bivalves discussed above have altered the food web in the Delta ecosystem, we have no compelling evidence to suggest that this has led to a decline in the splittail population. Please refer to the bioaccumulation section for a full analysis of the effects on splittail due to a shift in prey base from native species to the overbite clam.

Chinese mitten crabs (*Eriocheir sinensis*) could reach concentrations sufficient to intermittently impede the operation of fish screens and salvage facilities, thus reducing the effectiveness of splittail salvage and repatriation efforts. The US Bureau of Reclamation has installed a device, known as "Crabzilla" to remove Chinese mitten crab from their CVP fish salvage facility. However, Chinese mitten crabs have not appeared in large numbers at either of the fish salvage facilities in recent years. As a result of the apparent decline of this nonnative species subsequent to their initial appearance in the Delta, along with the measures taken at the CVP fish salvage facility, the existence of the Chinese mitten crab in the Delta is not a current threat to splittail.

Of some concern is the presence of Brazilian pondweed (*Egeria densa*) and water hyacinth (*Eichhornia crassipes*), both of which tend to form dense near-shore and slough-wide mats of vegetation that serve as retreat, foraging, and ambush sites for splittail predators. These vegetation mats also may divert upstream- and downstream-migrating splittail into channels rather than the more-productive bankside habitat by creating an obstacle (Moyle *et al.* 2004, p. 29).

Summary of Factor E

In summary, splittail are not significantly threatened by water export facilities, agricultural and power plant diversions, poor water quality, environmental contaminants, climate change, or introduced species.

Operation of the CVP and SWP water export facilities directly affects fish by entrainment into their diversion facilities. CVP and SWP dams and diversions changed the historical hydrological features of the watershed systems, have altered and eliminated habitat for splittail, and may have reduced the distribution of the splittail by restricting movement to potential spawning grounds and creating migration obstacles. Entrainment at SWP and CVP pumps has not been demonstrated to affect splittail at the population level because loss of substantial numbers of fish tends to occur during wet years in which the species is experiencing a high reproductive output. CALFED's Ecosystem Restoration Program (discussed under Factors A and E, above) has been successful in restoring habitat for the splittail and reducing threats from entrainment at water diversion sites.

Splittail can become entrained in agricultural water diversions resulting in injury or mortality. Under both the CALFED Bay-Delta Program and the Central Valley Project Improvement Act, there have been significant efforts to screen agricultural diversions in the Central Valley and the Sacramento-San Joaquin Delta, and studies have found splittail entrainment to be exceptionally low. We do not consider entrainment by agricultural diversions to be a significant threat to splittail.

Two power plants located near the confluence of the Sacramento and San Joaquin rivers pose an entrainment risk to splittail. The intakes for the cooling water pumps of these power plants are located in close proximity to splittail rearing habitat (Moyle *et al.* 2004, p. 20). Thermal and chemical pollution may also have a detrimental effect on splittail (USFWS 2008, pp. 173-174). However, due largely to the reduction in the operation of the power plants and their associated pumping for cool water, we do not consider the operation of these power plants to constitute a significant threat to the splittail population. We have no indications of future plans to use these pumps more frequently and therefore do not consider these operations to be a threat in the future.

Laboratory studies have shown certain contaminants to be detrimental to individual splittail and the co-occurrence of splittail with contaminants has been documented. Although negative impacts to individual splittail from contaminants have been shown, the overall extent of such cases, and impacts to the population as a whole, remain largely undocumented. No studies to date have shown contaminants to have a significant effect on splittail at the population level. Bioaccumulation of selenium and mercury in the overbite clam is occurring and the overbite clam is a substantial prey item for splittail. However, we have no evidence that the bioaccumulation of selenium or mercury is having a detrimental effect on splittail at the population level or will in the foreseeable future.

Climate change in California is expected to bring increased temperatures, changes in precipitation and run-off, and increased salinity levels associated with sea level rise. These changes may restrict splittail range or reduce spawning habitat. However, splittail exhibit high thermal salinity tolerances and are known to adapt to changes in the Delta through migratory behavior. In addition, new spawning habitat may be created as a result of flooding. We have no scientific evidence that potential drought conditions resulting from climate change pose a threat to the splittail.

Introduced species are having an effect on the food web and ecology of the Estuary. Bivalves such as the overbite clam have displaced native food sources of the splittail. However, splittail have shifted their diets to utilize non-native food sources. Although the non-native copepods and bivalves discussed above have altered the food web in the Delta ecosystem, we have no compelling evidence to suggest that this has led to a decline in the splittail population.

We conclude that the best scientific and commercial information available indicates that the Sacramento splittail is not now, or in the foreseeable future, threatened by other natural or manmade factors affecting its continued existence.

Finding

As required by the Act, we considered the five factors in assessing whether the Sacramento splittail is endangered or threatened throughout all or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Sacramento splittail. We reviewed the petition information available in our files, reviewed other available published and unpublished information, and consulted with recognized Sacramento splittail experts and other Federal, State, and tribal agencies, including the California Department of Fish and Game and the U.S. Bureau of Reclamation.

We identified and evaluated the risks of the present or threatened destruction, modification, or curtailment of the habitat or range of the Sacramento splittail. The rate of habitat loss in the Estuary that occurred the 1900's is no longer occurring today and efforts undertaken in the past decade have benefited the species by restoring its habitat. There is presently sufficient habitat to maintain the species; inundation frequency and duration in key areas is sufficient to provide spawning to maintain the species. The implementation and magnitude of the CALFED, CVPIA (discussed under Factor D) and other habitat restoration activities, which focus on the restoration of habitats that directly and

indirectly benefit splittail are greater than any foreseeable future habitat losses. The overall effect of habitat restoration activities is also expected to continue to be beneficial for splittail into the foreseeable future. Based on a review of the best scientific information available, we find that the present or threatened destruction, modification, or curtailment of Sacramento splittail habitat or range (*Factor A*) is not a significant threat to the splittail now or in the foreseeable future.

The new CDFG regulation enacted in March 2010 limiting take of splittail to two individuals per day has eliminated any potential threat that fisheries may have posed. There is no indication that the current level of scientific take adversely affects the splittail population, and there is no indication that the level of mortality will increase in the future. Based on a review of the best scientific information available, we find that overutilization for commercial, recreational, scientific, or educational purposes (*Factor B*) is not a significant threat to the Sacramento splittail. We found disease occurs at low levels in the population, but does not constitute a significant threat to the species (*Factor C*). Predation by striped bass appears to be unchanged from past levels, is currently not a significant threat to splittail populations, and is not expected to increase in the future. Largemouth bass populations have increased in the Estuary in the past three decades, but populations of largemouth bass in critical rearing areas are low, therefore predation levels appear to be minor. Based on a review of the best scientific information available, we find that disease and predation (*Factor C*) are not significant threats to the Sacramento splittail, now or in the foreseeable future.

Federal and State regulations provide protection for the splittail and its habitat by limiting adverse effects from new projects, restoring habitat and limiting contaminants discharged into the Estuary. Based on a review of the best scientific information, we find that a lack of regulatory mechanisms (*Factor D*) does not constitute a significant threat to the Sacramento splittail population now or in the foreseeable future.

Based on the best available science, we find that other natural or manmade factors affecting the continued existence of the splittail (as described under *Factor E*) have not been shown to be significant threats to the splittail at this time. Furthermore, there is no evidence to suggest that these factors will increase and become threats to the splittail in the foreseeable future. Splittail are not threatened by water export facilities, agricultural and power plant diversions, poor water quality, environmental contaminants, climate change, or introduced species (*Factor E*). Entrainment at SWP and CVP pumps has not been demonstrated to affect splittail at the population level. CALFED's Ecosystem Restoration Program (discussed under *Factors A and E* above), the CVPIA, and the provisions of the OCAP BOs, have been successful in reducing threats from entrainment at water diversion sites. Under both the CALFED Bay-Delta Program and the Central Valley Project Improvement Act, there have been significant efforts to screen agricultural diversions in the Central Valley and the Sacramento-San Joaquin Delta, and studies have found splittail entrainment to be exceptionally low. Therefore, we do not consider entrainment by agricultural diversions to be a significant threat to splittail. Due to reduction in the operation of two power plants and their associated pumping for cool water, we do not consider the operation of these power plants to constitute a significant threat to the splittail population. We have no indications of future plans to use these pumps more frequently and therefore do not consider these operations to be a threat in the future.

Laboratory studies have shown certain contaminants to be detrimental to individual splittail and the co-occurrence of splittail with contaminants has been documented. Although negative impacts to individual splittail from contaminants have been shown, the overall extent of such cases, and impacts to the population as a whole, remain largely undocumented. No studies to date have shown contaminants to have a significant effect on splittail at the population level. Bioaccumulation of selenium and mercury in the overbite clam is occurring and the overbite clam is a substantial prey item for splittail. However, we have no evidence that the bioaccumulation of selenium or mercury is having a detrimental effect on splittail at the population level or will in the foreseeable future.

The existing data fails to show a significant long term decline of the species. Natural fluctuations of population levels do not constitute an overall decline in the species, but rather show a pattern of successful spawning during wet years followed by reduced spawning during dry years. The model deployed in this finding simulates the species fluctuations and is compatible with known life history traits of the species. Population levels are directly correlated with inundation of floodplains and simulation models predict that these habitats must flood at a minimum of every 7 years for the species to persist in sufficient numbers to maintain a robust population level (Moyle *et al.* 2004, p. 38). We have no evidence to show that the frequency of inundation events on floodplains will decrease to the point that these events will not be sufficient to maintain robust population levels. Therefore, based on the best available data, we do not find an overall declining trend in the species' population.

Although global warming will change hydrography in the Delta, predictions do not foresee an imminent reduction in flooding of the Yolo Bypass. Splittail have continually adapted to changes in the ecosystem including salinity variation and we have no evidence to show that this will not continue to be the case. The Yolo and Sutter Bypasses and the Cosumnes River floodplain are serving as refuge for the species and there is no evidence that these areas will not continue to do so in the future. These floodplains are currently being expanded through public and private partnerships including CALFED ERP, CVPIA, Cosumnes River Preserve restoration efforts, and the acquisition and restoration of Liberty Island.

Our review of the best available scientific and commercial information pertaining to the five threat factors, does not support a conclusion that there are independent or cumulative threats of sufficient imminence, intensity, or magnitude to indicate that the Sacramento splittail is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. Therefore, listing the Sacramento splittail as endangered or threatened is not warranted at this time.

Distinct Vertebrate Population Segments

After assessing whether the species is endangered or threatened throughout its range, we next consider whether a distinct vertebrate population segment (DPS) exists and meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened).

Under the Service's DPS Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of

Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the taxon to which it belongs;

(2) The significance of the population segment to the taxon to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened).

In this analysis, we will evaluate whether the San Pablo population of splittail is a DPS. This analysis is being conducted because recent studies by Baerwald *et al.* (2007) have revealed genetic variation between the San Pablo and Delta populations of splittail. The San Pablo population of splittail represents a fraction of the overall splittail population. For the purposes of this analysis, splittail individuals that spawn in the Napa and Petaluma rivers will be referred to as the San Pablo population and individuals that spawn in other rivers including the Sacramento, San Joaquin and Cosumnes rivers will be referred to as the Delta population.

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The data used to determine genetic differences between two splittail populations were collected in 2002 and 2003 and first published in (Feyrer *et al.* 2005, pp. 164-167) to show upstream distribution limits of splittail. Young of the year splittail individuals were collected from the Napa, Petaluma, Cosumnes, Sacramento and San Joaquin rivers and salinities were recorded at these sites. Individuals collected from the farthest upstream locations on the rivers were chosen for genetic analysis in an attempt to ensure that they were collected in the natal rivers in which they were spawned (Baerwald *et al.* 2007, p. 160).

Baerwald *et al.* (2007) used 13 microsatellite markers to genetically distinguish 489 young-of-the-year splittail collected from these five drainage areas (2007, pp. 160-161). Two genetically distinct populations were found, one in the Napa/Petaluma (San Pablo population) drainages and one in the greater Central Valley drainages (Delta population) (Baerwald *et al.* 2007, p 162). Microsatellite markers are neutrally inherited. Neutrally inherited genes come from the mother and are always passed on to the next mother, where as the fathers genes may or may not be passed on. The most likely reason for finding a statistical difference in gene frequencies is isolation of spawning populations (Israel and Baerwarld *et al.,* 2010, pers. comm.). Both splittail populations use Suisun Bay as rearing habitat in the nonspawning season; however Suisun Marsh was used as foraging ground almost exclusively by the Delta population (Baerwald *et al.* 2008, p. 1341). The majority (88 percent) of individuals collected foraging in Suisun Marsh assigned to the Delta population; however, less association was seen in individuals in the Ryer and Chipps Islands with 54 to 74 percent assigning to the Delta population (Baerwald *et al.* 2008, p. 1341). Although some overlap in foraging grounds was observed, these populations largely maintain themselves in different habitats and possess different genetic make-ups.

Thus, these studies demonstrate that the San Pablo population segment, composed of individuals from the Napa and Petaluma rivers, is markedly separate from the Delta population segment composed of individuals from the Sutter Bypass and Sacramento, Cosumnes and San Joaquin rivers as a consequence of genetic variation (Baerwald *et al.* 2007, pp. 164-165). Baerwald *et al.* noted that their results appear to be correlated with differences in salinities between spawning grounds and migration routes. Our analysis of the peer reviewed work done by Baerwald *et al.* (2007 and 2008) leads us to conclude that the San Pablo population is discrete under the Service's DPS policy.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSes be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon.

Salinity concentrations were recorded between April and July in 2002 and 2003 on the Sacramento, San Joaquin, Napa, and Petaluma rivers at various locations where splittail were collected. Salinity concentrations on the Petaluma River averaged 13.0 ppt in 2002 and 6.0 ppt in 2003. Napa River salinity concentrations averaged 5.0 ppt in 2002 and 0.0 ppt in 2003. The San Joaquin and Sacramento rivers averaged 0.0 ppt for both years (Baerwald *et al.* 2008, p. 165). Sacramento and San Joaquin rivers never contained salinity concentrations higher than 1.0 ppt. Salinity concentrations on the Napa River ranged between 0.0–8.5 ppt while Petaluma River salinity concentrations ranged between 5.5–14.1 ppt (Feyrer *et al.* 2010, p. 8). It is speculated that high salinities are creating a barrier between these populations that is only broken during high outflow years (Feyrer *et al.* 2010, p. 11). This barrier likely occurs

in the area of Carquinez Straight between Suisun Bay and San Pablo Bay.

Napa River populations mostly associate with the San Pablo population although a small number of individuals caught in 2003 when the salinity was 0.0 ppt on the Napa River associated with the Delta population. The presence of the Delta population in the Napa River in 2003, when the salinity was 0.0 ppt and absence in 2002 when salinities were higher may reflect the Delta population's limited ability to tolerate high salinities for spawning.

The data we have clearly shows that the Napa and Petaluma rivers had higher salinities than other areas of the Delta where the splittail persists for the 2 years that surveys were conducted. However, we feel that 2 years of data are not sufficient to conclude that this constitutes a unique ecological setting that is persistent over time. A larger data set covering more years is needed to assess the salinities of these rivers particularly at splittail spawning grounds before we can conclude the range of the San Pablo population constitutes a unique ecological environment. Therefore, we are lacking convincing evidence that shows the San Pablo population persists in an unusual or unique ecological setting that contributes significantly to the taxon at this time.

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

The San Pablo population segment is on the western edge of the species range and only constitutes a small portion of the species range. Loss of this population would not create a gap in the remainder of the species range because the San Pablo population does not provide for connectivity with other portions of the range. Therefore, we conclude that loss of this population would not represent a significant gap in the range of the species.

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range.

This criterion does not apply to the San Pablo splittail population because it is not a population segment representing the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range.

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Under the DPS policy we measure the evidence for potential biological and ecological significance to the species as a whole, as reflected by marked differences in its genetic characteristics. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics is provided in the Baerwald *et al* study. (2007, p. 166). These genetically distinct populations may be driven by the strong selective pressure separating out species that are salinity tolerant from those that are susceptible to salinity effects (Baerwald *et al.* 2007, p. 165). We conclude that the San Pablo population of splittail meets this criterion of the DPS policy because it differs markedly from other populations in its genetic characteristics.

Determination of Distinct Population Segment

Based on the best scientific and commercial information available, as described above, we find that under the Service's DPS policy, the San Pablo population segment is discrete and is significant to the taxon to which it belongs. Evidence that the San Pablo splittail is biologically and ecologically significant from other populations of splittail is based on the evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. Because the San Pablo population segment is both discrete and significant, it qualifies as a DPS under the Act.

Distinct Population Segment Five-Factor Analysis

Since the San Pablo population segment qualifies as a DPS, we will now evaluate its status with regard to its potential for listing as endangered or threatened under the five factors listed in section 4(a) of the Act. The majority of the factors affecting the species throughout its range also affect the San Pablo DPS of splittail. These factors can be found in the five factor analysis conducted for the entire range of the splittail found above. Our evaluation of the San Pablo DPS follows.

Factor A. The present or threatened destruction, modification, or curtailment of its habitat or range

Habitat Loss

Rapid development within the San Pablo DPS' range began with the discovery of gold in the Sierra Nevada foothills in the 1850s. Hydraulic mining operations contributed huge amounts of sediment to San Pablo Bay. For the next hundred years, the marshes were filled, diked, or drained to support the bay's development as a major center of commerce. About 85 percent of the historic tidal marshes of San Pablo Bay have been altered, negatively affecting the ability of the remaining tidal marshes to accept winter rainfall and purify water in the bay.

Beneficial Actions Offsetting Adverse Effects

Since the 1960s, State and government agencies, non-profit organizations, and local grassroots organizations have made efforts to protect and restore San Pablo Bay. The San Pablo Bay National Wildlife Refuge was established in 1974 and currently protects over 13, 000 acres of wildlife habitat. Largely comprised of thousands of acres of tidelands leased from the California State Lands Commission, the refuge's ultimate plans include protection and conservation of more than 8,094 ha (20,000 ac) of critical wildlife in northern San Pablo Bay (FWS Brochure 2001, pp. 1-6). Additional efforts are underway to protect and restore the bay. The San Pablo Bay Preservation Society is currently working to acquire land on San Pablo point (*http://www.pointsanpablo.org/*) and the friends of San Pablo Bay NWR have helped to establish a nursery that is being used to re-vegetate tidal wetlands.

Although the historic loss of floodplains has detrimentally affected the species in the past, current laws and protections including the creation of the San Pablo Bay National Wildlife Refuge have largely eliminated future losses of floodplain to the splittail. Many of the natural floodplains in the Napa and Petaluma rivers are still intact and provide optimal spawning grounds to splittail. The San Pablo DPS is much closer to the ocean than the Delta DPS and is largely influenced by a tidal system. Fresh water input into the system is essential to provide proper salinity levels. Over the past 100 years, fresh water input has been reduced by diversions and water barriers. Although, this reduction in fresh water flow has changed salinity concentrations in the Napa and Petaluma rivers, we have no evidence to suggest that it has had a significant effect on the population level of the species.

Recent Abundance Data Trends

On June 1, 2010, splittail individuals encompassing both young-of-the-year (less than 1 year in age) and age one

were captured in the Petaluma River (Sommer *et al.* unpublished, pp. 1-3). The presence of splittail from two different age classes makes it likely that splittail successfully spawned in the Petaluma River in 2010 (a relatively wet year) and 2009 (a critically dry year). This shows that splittail are persisting in the Petaluma River. In addition, all 10 of the fish captured in the survey belonged to the San Pablo population of splittail. During this survey, fish were collected at two out of three survey sites. During previous surveys in the Petaluma River, splittail were captured at one out of three sites (Feyrer *et al.* 2005, p. 162).

We have no evidence at this time to suggest that the San Pablo population of splittail is in decline. The accepted range of the species in the Napa and Petaluma rivers has increased as new surveys have found presence of splittail in areas where they were previously not believed to be in the mid-1990's (Sommer *et al.* 2007, p. 28).

Summary of Factor A

Although there has been substantial loss of habitat historically, present and future loss of habitat is expected to be minimal due to current land protections including the San Pablo Bay National Wildlife Refuge. Efforts undertaken in the past decade have benefited the species by restoring its habitat. There is presently sufficient habitat to maintain the species, inundation frequency and duration in key areas is sufficient to provide spawning to maintain the species. We conclude that the best scientific and commercial information available indicates that the San Pablo DPS of Sacramento splittail is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B. Overutilization for commercial, recreational, scientific, or educational purposes

Recreational Fishing

Take of splittail due to fisheries is a potential threat rangewide to the species and this threat is not expected to be any different for the San Pablo DPS. Please refer to *Factor B* in the rangewide analysis for a full discussion of take due to recreational fishing. Take due to recreational fishing is not considered to be a substantial threat to the San Pablo DPS of splittail at this time.

Scientific Collection

Take and fatalities attributed to scientific sampling in areas occupied by the San Pablo population of splittail are far less than the rangewide take of the species. There have only been 10 known surveys of the San Pablo DPS splittail in the last 10 years. These include five U.S. Army Corp of Engineers' surveys (2001 and 2002), three surveys conducted by Feyrer *et al.*(2002, 2003 and 2010) and one study by the Napa Creek Floodplain Project (2007). There were a total of 4 splittail captured in 2001 (USACE 2002), 79 captured in 2002 (USACE 2002), 48 captured in 2003 (USACE 2004), 326 captured in 2004 (USACE 2004), and 305 captured in 2005 (USACE 2006) by the Army Core of Engineers. None of the fish captured by the Corps were kept. The amounts of Yyung-of-the-year captured in the Feyrer *et al.* studies were: 112 in the Napa River and 45 in the Petaluma River in 2002, and 62 in the Napa River and 171 in the Petaluma River in 2003 (Feyrer *2010*, pers. comm.*)*. During a short gill net study in 2003, Feyrer *et. al.* collected 108 adult splittail (Feyrer *2010,* pers. comm.*)*. A total of 13 splittail were captured in 2010. All of the splittail taken in the Feyrer *et al.* studies were preserved for genetic analyisis. There were seven splittail caught in the Napa Creek Floodplain Project study in June of 2007 (Turner 2007). Female splittail can lay up to 100, 000 eggs in a single spawning event and the take of several hundred individuals is not expected to effect the population at the species level. Therefore, scientific take is not considered to be a significant threat to splittail at this time, however, scientific studies regarding the San Pablo population of splittail have been kept to a minimum to be sure not to threaten the limited number of individuals present in this population (Feyrer *et al.* 2010, pers. comm.)

Summary of Factor B

The new CDFG regulation enacted in March 2010 limiting take of splittail to two individuals per day has eliminated any potential threat that fisheries may have posed. There is no indication that the current level of scientific take adversely affects the splittail population, and there is no indication that the level of mortality will increase in the future. We conclude that the best scientific and commercial information available indicates that the San Pablo DPS of the Sacramento splittail is not now, or in the foreseeable future, threatened by overutilization for commercial, recreational, scientific or educational purposes.

Factor C. Disease or predation

Disease

Disease is a potential threat to splittail rangewide including in the San Pablo Bay and the potential threat of disease is expected to be the same in scope and intensity as it is in the overall range of the population. Please refer to *Factor C* in the range wide analysis for a full discussion of the effects of disease on splittail. Based on a review of the best scientific information available, we find that disease is not a significant threat to the San Pablo Bay population of splittail now or in the foreseeable future.

Predation

The salinity level in San Pablo Bay and the Napa and Petaluma rivers serves as a barrier to potential predators of the San Pablo DPS of splittail. Predators such as largemouth bass and catfish are not able to tolerate the high salinity environment present in the area of the San Pablo Bay population. The only substantial predator of splittail that is able to reside in this environment is the striped bass (Nobriga 2010, pers. comm.).

Based on a review of the best scientific information available, we find that predation is not a significant threat to the San Pablo Bay population of splittail now or in the foreseeable future.

Summary of Factor C

We found disease occurs at low levels in the population, but does not constitute a significant threat to the species. Because the potential threat of predation on the San Pablo DPS of splittail is expected to be less than the potential threat on the overall population due to a salinity barrier, we conclude that predation is not a significant threat to the San Pablo population now or in the foreseeable future. We conclude that the best scientific and commercial information available indicates that the San Pablo Bay DPS of the Sacramento splittail is not now, or in the foreseeable future, threatened by disease or predation.

Factor D. The inadequacy of existing regulatory mechanisms

State Laws

State laws acting as existing regulatory mechanisms are expected to provide the same protections to the San Pablo Bay DPS of splittail as they do to the entire range of the species because the laws are uniform throughout the State of California. Please refer to *Factor D* in the rangewide analysis for a full discussion of the State laws acting as

existing regulatory mechanisms to provide protections to the splittail.

Federal Laws

Federal laws acting as existing regulatory mechanisms are expected to provide the same protections to the San Pablo Bay DPS of splittail as they do to the entire range of the species because the laws are uniform throughout the United States. Please refer to *Factor D* in the rangewide analysis for a full discussion of the Federal laws acting as existing regulatory mechanisms to provide protections to the splittail.

Summary of Factor D

Federal and State regulations described in the analysis of the entire species range provide protection for the splittail and its habitat by limiting adverse affects from new projects, restoring habitat and limiting contaminants discharged into the Estuary. Although the Act does not directly regulate actions in splittail habitat, the provisions in the Act that apply to other listed species benefit the splittail. We conclude that the best scientific and commercial information available indicates that the San Pablo DPS of the Sacramento splittail is not now, nor in the foreseeable future, threatened by inadequate regulatory mechanisms.

Factor E. Other natural or manmade factors affecting its continued existence

We have identified the risk of water export facilities, agricultural and power plant diversions, poor water quality, environmental contaminants, climate change, or introduced species as potential threats to the San Pablo DPS of splittail.

Water export facilities

Water export facilities (CVP and SWP pumps) and power plant diversions which were analyzed in the range wide splittail finding are not located within the range of the San Pablo DPS and therefore do not represent potential threats to the San Pablo DPS. Water export facilities do not exist in the area of the San Pablo DPs and therefore are not considered to be a substantial threat to splittail now or in the foreseeable future.

Agricultural Diversions for Irrigation

Agricultural diversions are a potential threat range wide to splittail including in the area occupied by the San Pablo DPS. The majority of agricultural diversions in the Napa River are utilized by wineries for the production of grapes. Wine production in the Napa Valley is a multimillion dollar industry. There are a total of 1200 agricultural diversions in Napa County. Of these, there are 99 active diversions in the Napa River itself and they are primarily attributed to wine production (California integrated water quality systems 2010, p. 1). Splittail populations are persisting in the Napa and Petaluma Rivers and we have no data to show that agricultural diversions are a significant threat to the continued existence of the species at the population level now or in the foreseeable future.

Power Plant Diversions

There are no power plant diversions within the range of the San Pablo DPS of splittail. The Contra Costa Power Plant and the Pittsburg Power Plant (discussed in the rangewide analysis) are not a factor because they are located outside of the range of the San Pablo DPS of splittail. Power plant diversions are not expected to be a threat to the San Pablo population of splittail now or in the foreseeable future.

Water Quality and Environmental Contaminants

The Napa River exhibits a high eutrophication rate and has been placed on California List of Impaired Water Bodies (303(d) list) because nutrients, pathogens and sedimentation. The Petaluma River is on the California List of Impaired Water Bodies (303(d) list) for possessing high elevations of diazinon, nutrients, and sedimentation. The primary symptom of excessive nutrient loading in this watershed is dense algae growth. Eutrophication occurs when high nutrient levels increase growth of plant and algal matter resulting in dissolved oxygen removal from the system when the plants die and begin to decompose (Wang *et al.* 2004, p. 10).

Efforts are underway by State water resource staff to address many nutrient sources including faulty septic systems, agricultural and urban runoff, and livestock through regulatory programs. These programs will address multiple pollutants, including pathogens, nutrients, and sediment. The Napa County resource conservation district has ongoing restoration efforts including native plant re-vegetation, road improvements, fish barrier removal, upland habitat improvements, and stream and wetland restoration. A Napa sustainable winegrowing group is active in educating wine growers on the benefits of reducing pesticide use and promoting soil health through erosion control.

Although the Napa and Petaluma rivers do exhibit a high amount of nutrients, we have no evidence at this time to suggest that nutrient loading is causing a decline in the San Pablo DPS of splittail at the population level now or that it will in the foreseeable future. The known range of the species in the Napa and Petaluma rivers has increased as new surveys have found presence of splittail in areas where they were previously not believed to be found in the mid 1990's (Sommer *et al.* 2007, p. 28).

Effects from selenium, mercury, organophosphates, pyrethroids and bioaccumulation on the San Pablo DPS are expected to be comparable to the effects that these potential threats are having on the overall population of splittail. These contaminants are dispersed throughout the estuary and we have no evidence to suggest that there is a higher concentration of these contaminants in the range of the San Pablo DPS than in the entire range of the species. Please refer to *Factor E* in the range wide analysis for a full discussion of the effects of contaminants on splittail. Based on a review of the best available scientific and commercial data, we conclude that contaminants are not a significant threat to splittail at the population level now or in the foreseeable future.

Climate Change

Climate change is a potential threat to splittail range wide including in the San Pablo Bay and the potential threat of climate change is expected to be the same in scope and intensity as it is in the overall range of the species. Please refer to *Factor E* in the range wide analysis for a full discussion of the effects of climate change on splittail. Based on a review of the best scientific information available, we find that climate change is not a significant threat to the San Pablo Bay population of splittail now or in the foreseeable future.

Introduced Species

Introduced species are a potential threat to the splittail rangewide and the effects of introduced species on the San Pablo DPS are expected to be similar to the effects on the species range-wide. However, several introduced species mentioned in the range-wide analysis will not be present in the San Pablo Bay. The invasive *Corbula amurensis* has become established in San Pablo Bay (USGS 2010); no records exist for *Corbicula fluminea*, which is physiologically capable of becoming established in the freshwater portions of the Petaluma and Napa rivers. *Corbicula fluminea* is not expected to be present in the San Pablo Bay because it is a

freshwater clam. Largemouth bass are not expected to be present in San Pablo Bay because they are a freshwater species.

Brazilian pondweed and water hyacinth are also not expected to be present in this brackish environment because they are freshwater plants. We are lacking any studies on introduced species present in the Napa and Petaluma rivers. Although the non-native copepods and bivalves discussed in the rangewide analysis have altered the food web in the Delta ecosystem, we have no compelling evidence to suggest that this has led to a decline in the splittail population. Therefore, we do not consider introduced species to be a significant threat to splittail now or in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the San Pablo DPS of the Sacramento splittail is not now, nor in the foreseeable future, threatened by other natural or manmade factors affecting its continued existence.

Finding

As required by the Act, we considered the five factors in assessing whether the San Pablo DPS of Sacramento splittail is endangered or threatened. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the San Pablo DPS.

The rate of habitat loss in San Pablo Bay that occurred the 1900's is no longer occurring today and efforts undertaken in the past decade have benefited the species by restoring its habitat. There is presently sufficient habitat to maintain the species: inundation frequency and duration in key areas is sufficient to provide spawning to maintain the species. Based on a review of the best scientific information available, we find that the present or threatened destruction, modification, or curtailment of splittail habitat or range (*Factor A*) is not a significant threat to the San Pablo DPS throughout all or a part of its range.

The new CDFG regulation enacted in March 2010 limiting take of splittail to two individuals per day has eliminated any potential threat that fisheries may have posed. There is no indication that the current level of scientific take adversely affects the San Pablo DPS, and there is no indication that the level of mortality will increase in the future. Based on a review of the best scientific information available, we find that overutilization for commercial, recreational, scientific, or educational purposes (*Factor B*) is not a significant threat to the San Pablo DPS now or in the foreseeable future.

We found disease occurs at low levels in the population, but does not constitute a significant threat to the species (*Factor C*). Predation by striped bass appears to be unchanged from past levels and is currently not a significant threat to the San Pablo DPS. Other freshwater predators are absent from the San Pablo Bay due to elevated salinity levels. Based on a review of the best scientific information available, we find that disease and predation (*Factor C*) are not significant threats to the San Pablo DPS in all or a significant portion of its range, now or in the foreseeable future.

Federal and State regulations provide protection for the San Pablo DPS and its habitat by limiting adverse effects from new projects, restoring habitat and limiting contaminants discharged into the Estuary. Based on a review of the best scientific information, we find that a lack of regulatory mechanisms (*Factor D*) does not constitute a significant threat to the San Pablo DPS.

Based on the best available science, we find that other natural or manmade factors affecting the continued existence of the San Pablo DPS described in *Factor E* have not been shown to be significant threats to the San Pablo DPS at this time. Furthermore, there is no compelling evidence to suggest that these factors will increase and become threats to the San Pablo DPS in the foreseeable future. The San Pablo DPS is not threatened by water export facilities, agricultural and power plant diversions, poor water quality, environmental contaminants, climate change, or introduced species (*Factor E*).

The existing data fails to show a significant long-term decline of the San Pablo DPS. The accepted range of the species in the Napa and Petaluma rivers has increased as new surveys have found presence of splittail in areas where they were previously not believed to be in the mid-1990's (Sommer *et al.* 2007, p. 28).Therefore, based on the best available data, we do not find an overall declining trend in the species' population.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the San Pablo DPS is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened). Therefore, we find that listing the San Pablo DPS as an endangered or threatened species is not warranted at this time.

Significant Portion of the Range Analysis

Having determined that the splittail does not meet the definition of an endangered or threatened species, we must next consider whether there are any significant portions of the range where the splittail is in danger of extinction or is likely to become endangered in the foreseeable future.

We have analyzed the potential for the San Pablo DPS to make up a significant portion of the species range by looking at areas where there may be a significant concentration of threats. We evaluated the San Pablo DPS in the context of whether any potential threats are concentrated in one or more areas of the projected range, such that if there were concentrated impacts, those splittail populations might be threatened, and further, whether any such population or complex might constitute a significant portion of the species range. In the case of the San Pablo DPS, we conclude that the potential threats to the species are uniform throughout the DPS. After reviewing the range of the species, we find that no areas have a significant concentration of threats such that a significant portion of the range analysis on them would be necessary.

We do not find that the Sacramento splittail is in danger of extinction now, or is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the Sacramento splittail as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Sacramento splittail or the markedly separate San Pablo DPS to our San Francisco Bay Delta Fish and Wildlife Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the Sacramento splittail and encourage its conservation. If an emergency situation develops for the splittail or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited in this finding is available on the Internet at *http://www.regulations.gov* and upon request from the San Francisco Bay Delta Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this notice are the staff members of the San Francisco Bay Delta Fish and Wildlife Office, Sacramento, California.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 24, 2010

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–24871 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 75, No. 194

Thursday, October 7, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 4, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Broadband Initiatives Program—Rural Libraries, Technical Assistance and Satellite Grants.

OMB Control Number: 0572–0145.

Summary of Collection: The American Recovery and Reinvestment Act of 2009 appropriated $2.5 billion of budget authority for establishing the Broadband Initiatives Program (BIP) which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In its second and final Notice of Funds Availability, Rural Utilities Service (RUS) created three new categories for funding, Rural Libraries, Technical Assistance and Satellite grants. This information collection consists of the required reporting requirements for the BIP for Rural Libraries, Technical Assistance and Satellite Grants.

Need and Use of the Information: Each applicant for a grant will complete one application form. RUS will use the information collected from the application form to evaluate whether an applicant is eligible for funding. RUS also intends to use information collected from the application form to evaluate the applicant's progress toward completion of the objectives for which the funding was obtained.

Recipients of grants will need to submit a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including (a) the name of the project or activity; (b) a description of the project or activity; (c) an evaluation of the completion status of the project or activity; (d) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (e) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with Recovery Act funds. In addition, detailed information on any subcontracts or sub-grants awarded by the Awardee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006.

Description of Respondents: Business or other for-profit.

Number of Respondents: 22.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 246.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–25311 Filed 10–6–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Technical Advisory Committees for Trade in Tobacco, Cotton, Peanuts and Planting Seeds, and Grains, Feed and Oilseeds; Restructure and Realignment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Secretary of Agriculture (Secretary), in coordination with the United States Trade Representative (USTR), is considering modifying the existing structure of both the Agricultural Technical Advisory Committees (ATAC) for Trade in Tobacco, Cotton, Peanuts and Planting Seeds (TCPPS) and in Grains, Feed and Oilseeds (GFO). The Secretary is also soliciting comments as to whether or not there are current interests not adequately represented in the Agricultural Trade Advisory Committee System.

DATES: Comments are due on or before November 8, 2010. The proposed changes will become effective upon the renewal of charters for the Agricultural Technical Advisory Committees for Trade scheduled to occur in mid-2011. At that time new members will also be added to the committees.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding: (a) The changes to the GFO and TCPPS committee structures or (b) whether or not there are currently interests not adequately represented in the Agricultural Trade Advisory Committee System, may be sent by electronic mail to *Lorie.Fitzsimmons@fas.usda.gov* and *Steffon.Brown@fas.usda.gov.* Comments submitted via U.S. mail should be

addressed to: The Office of Negotiations and Agreements, Foreign Agricultural Service (FAS), USDA, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250, or by fax to (202) 720–0340. The Office of Negotiations and Agreements may be reached by telephone at (202) 720–6219, with inquiries directed to Lorie Fitzsimmons and Steffon Brown.

SUPPLEMENTARY INFORMATION:

Introduction

The ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). The purpose of these committees is to advise the Secretary and the USTR concerning agricultural trade policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. government.

Proposed Committee Changes

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), FAS gives notice that the Secretary and USTR are considering removing representation of the planting seeds industry from the Tobacco, Cotton, Peanuts and Planting Seeds (TCPPS) ATAC and adding representation of the planting seeds sector to the Grains, Feed and Oilseeds (GFO) ATAC. The justification for this structural change is that many of the issues that the GFO committee addresses, such as genetically modified organisms, new technologies and international negotiations, are common within the U.S. planting seeds industry. The proposed changes will result in the Tobacco, Cotton and Peanuts (TCP) ATAC and the Grains, Feed, Oilseeds, and Planting Seeds (GFOPS) ATAC.

Background

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiating objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations;
- Five general policy advisory committees, including the Agricultural Policy Advisory Committee; and,
- Twenty-eight technical advisory committees, including the ATACs.

As to the technical advisory committees, Section 135(c)(2) of the Trade Act (19 U.S.C. 215) provides that: The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, USTR and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

USTR and USDA are seeking comments regarding whether all appropriate interest in the sectors represented by the ATACs are being represented by the current membership of the ATACs, and if not, what additional interest should be represented.

Requirements for Submission: Public comments via e-mail should be addressed to *Lorie.Fitsimmons@fas.usda.gov* and *Steffon.Brown@fas.usda.gov.* Comments submitted via U.S. mail should be addressed to: The Office of Negotiations and Agreements, FAS, USDA, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250.

Dated: September 28, 2010.

Suzanne Hale,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–25240 Filed 10–6–10; 8:45 am]

BILLING CODE 3410–10–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, October 13, 2010, 9:30 a.m. (local time), 3:30 a.m. (EDT).

PLACE: Radio Free Europe/Radio Liberty Headquarters, Editorial Room 4–34, Vinohradska 159A, 100 00 Prague 10, Czech Republic.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The BBG will be considering Board By-Laws, a Calendar Year 2011 meeting schedule, Strategy and Budget Committee recommendations, and a Governor's trip report. The meeting is open to the public—but due to space limitations via Webcast only—and will be streamed on the BBG's Web site at *http://www.bbg.gov*. The meeting will also be made available on the BBG's Web site for on-demand viewing by 9:30 a.m. EDT.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–25473 Filed 10–5–10; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Drivers' Awareness of and Response to Significant Weather Events and the Correlation of Weather to Road Impacts.

OMB Control Number: None.

Form Number(s): N/A.

Type of Request: Regular submission (request for approval of a new information collection).

Number of Respondents: 1,200.

Average Hours per Response: 6 minutes.

Burden Hours: 120.

Needs and Uses: This project is a joint effort of the University of Utah (U of U), NOAA's National Weather Service (NWS), the Utah Department of Transportation (UDOT), and NorthWest Weathernet (NWN) to investigate and understand the relationship between meteorological phenomena and road conditions, as well as public understanding and response to available forecast information. The events which impact the Salt Lake City metro area during the winter of 2010– 2011 will be examined. Through the administration

of a targeted survey, important details will be gathered regarding: (a) The information that drivers possessed prior to and during a storm, including knowledge of observed and forecast weather conditions; (b) sources of weather and road information; (c) any modification of travel and/or commute plans, based on event information; (d) anticipation and perception of storm impacts and severity; and (e) perception and behavioral response to messages conveyed by the NWS and UDOT, along with their satisfaction of information provided. Analyses of the information gathered will focus on driver knowledge, perceptions, and decisionmaking. Ultimately, the results of this survey will provide insight on how the Weather Enterprise may more effectively communicate hazard information to the public in a manner which leads to improved response (*i.e.,* change travel times, modes, etc.). With a sufficient level of behavior change, it should be possible to improve safety and reduce the costs associated with weather-related congestion and associated delays. Additionally, the project will shed light upon the interrelationship between meteorological phenomena, road conditions, and their combined impact on travel.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–25234 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Expanded Vessel Monitoring System Requirement in the Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 6, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Renko, (206) 526–6110 or *Becky.Renko@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a renewal of a currently approved information collection.

NOAA has established large-scale depth-based management areas, referred to as Groundfish Conservation Areas (GCAs), where groundfish fishing is prohibited or restricted. These areas were specifically designed to reduce the catch of species while allowing healthy fisheries to continue in areas and with gears where little incidental catch of overfished species is likely to occur. Because NOAA needs methods to effectively enforce area restrictions, certain commercial fishing vessels are required to install and use a vessel monitoring system (VMS) that automatically sends hourly position reports. Exemptions from the reporting requirement are available for inactive vessels or vessels fishing outside the monitored area. The vessels are also required to declare what gear will be used.

To ensure the integrity of the GCAs and Rockfish Conservation Areas (RCA), a pilot VMS program was implemented on January 1, 2004. The pilot program required vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use VMS transceiver units while fishing off the coasts of Washington, Oregon and California. On January 1, 2007, the VMS program coverage was expanded to include all open access fisheries in addition to the limited entry fisheries.

A change request to expand the available fishery declarations will be published as part of a final rule, RIN 0648–AY68, in late 2010. As stated in the proposed rule for RIN 0648–AY68 (75 FR 53380, August 31, 2010), the public reporting burden for the changes to the declaration reporting system are not expected to change the public reporting burden.

II. Method of Collection

The installation/activation reports are available over the Internet. Due to the need for the owner's signature, installation reports must be faxed or mailed to NMFS. Hourly position reports are automatically sent from VMS transceivers installed aboard vessels. Exemption reports and declaration reports are submitted via a toll-free telephone number.

III. Data

OMB Control Number: 0648–0573.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 1,500.

Estimated Time per Response: VMS installation: 4 hours; VMS maintenance: 4 hours; installation, exemption and activation reports: 5 minutes each; and declaration reports: 4 minutes.

Estimated Total Annual Burden Hours: 8,581.

Estimated Total Annual Cost to Public: $2,900,250.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–25243 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008–2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2010, the Department of Commerce ("Department") published its preliminary results of review of the antidumping order on chlorinated isocyanurates from the People's Republic of China ("PRC").[1] This review covers the period June 1, 2008, through May 31, 2009. The final results of review are currently due no later than October 12, 2010.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

On September 17, 2010, the Department published a notice extending the time limit for the final results of this administrative review by 30 days, *i.e.,* until October 12, 2010.[2] The Department now finds that it is not practicable to complete the final results of the administrative review of chlorinated isocyanurates from the PRC before the current deadline due to complicated surrogate value issues, including the most appropriate methodology for valuing labor, for the final results. We find that additional time is needed to complete these final results. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of the administrative review by an additional 30 days. As a result, these final results are due on Wednesday, November 10, 2010, 180 days after the date on which the preliminary results were published.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 1, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25301 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 27302 (May 14, 2010) ("*Preliminary Results*").

[2] *See Chlorinated Isocyanurates from the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 75 FR 56988 (September 17, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840, A–549–822]

Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2009–2010 Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

Background

On April 7, 2010, the Department of Commerce (the Department) published a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, and Thailand covering the period February 1, 2009, through January 31, 2010. *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice of Initiation of Administrative Reviews,* 75 FR 17693 (Apr. 7, 2010).

On July 9, 2010, the Department selected respondents for individual examination in the India and Thailand reviews and issued questionnaires to them.[1] *See* the July 9, 2010, memoranda from Elizabeth Eastwood to James Maeder entitled, "2009–2010 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review," and "2009–2010 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review." We received responses to these questionnaires in August and September 2010.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period. The deadline for the preliminary results of these administrative reviews is currently November 1, 2010.[2] The Department determines that completion of the preliminary results of these reviews within the statutory time period is not practicable because it is examining: (1) An allegation of a particular market situation for the respondents in Thailand; and (2) a cost allegation from the petitioner for Apex Exports in India.

[1] The Department rescinded the administrative review of certain frozen warmwater shrimp from Brazil on June 10, 2010. *See Certain Frozen Warmwater Shrimp from Brazil: Notice of Rescission of Antidumping Duty Administrative Review,* 75 FR 32915 (June 10, 2010).

[2] The original due date for the preliminary results, October 31, 2010, is a Sunday.

The Department thus requires additional time to conduct its analysis for each of these reviews. Therefore, in accordance with section 751(a)(3)(A) the Act, we are extending the time period for issuing the preliminary results of these reviews until March 1, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 1, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25306 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–834]

Purified Carboxymethylcellulose From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 15, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Mexico. *See Purified Carboxymethylcellulose From Mexico: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 33775 (June 15, 2010) (*Preliminary Results*). The review covers one producer/exporter, Quimica Amtex, S.A. de C.V. (Amtex). The period of review (POR) is July 1, 2008, through June 30, 2009. We invited interested parties to comment on our *Preliminary Results.* The Department received comments concerning our *Preliminary Results* from Amtex only. Based on our analysis of the comments received, we have made one change in the margin calculations. Therefore, the final results differ from the *Preliminary Results.* The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 2010, the Department published the preliminary results of this review in the **Federal Register.** *See Preliminary Results.* We invited interested parties to comment on the *Preliminary Results.* Since the *Preliminary Results,* we received a case brief from respondent Amtex on July 15, 2010. *See* "Purified Carboxymethylcellulose from Mexico—A–201–834 (Administrative Review 7/1/2008–6/30/2009): Case Brief," dated July 15, 2010, at 1–2 (Amtex Case Brief). No brief was received from petitioner, Aqualon Company (a division of Hercules Incorporated), nor did petitioner file a rebuttal to Amtex's case brief.

Amtex originally reported the quantity unit of measure for some of its U.S. sales as "2," indicating sales in pounds. *See* Amtex's Section C Questionnaire Response dated October 29, 2010, at pages C–53 to C–56. For such sales, Amtex contends, the Department should adjust for packing expenses using per-pound amounts. *See* Amtex Case Brief at 1–2. In its case brief, Amtex alleged that the Department had failed to make a conversion from kilograms to pounds for those sales originally reported in pounds in the U.S. market database when adjusting for packing expenses. *Id.*

Scope of the Order

The merchandise covered by the order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

Based on our analysis of Amtex's comments, we have made one change to the margin calculations. After analyzing the databases and the programming used in the *Preliminary Results,* we agreed with Amtex's contention concerning the conversion of packing costs reported in pounds. Therefore, we added one line of programming to the comparison market program stipulating that if the quantity unit reporting is in pounds (*i.e.,* "2"), then an adjustment to the comparison market program is appropriate. *See* Memorandum to the File from Mark Flessner, Case Analyst, through Robert James, Program Manager, entitled "Purified Carboxymethylcellulose from Mexico: Final Determination Analysis Memorandum for Quimica Amtex, S.A. de C.V.," dated September 27, 2010. Because the only comments received dealt with the singular programming issue, we have not included a separate Issues and Decisions memorandum to accompany this notice of final results.

Final Results of Review

The final weighted-average dumping margin for the period July 1, 2008, through June 30, 2009, is as follows:

Producer/exporter	Weighted-average margin (percentage)
Quimica Amtex, S.A. de C.V	0.83

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review. *See* 19 CFR 356.8(a).

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68

FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation if there is no rate for the intermediate company or companies involved in the transaction.

Cash Deposit Requirements

Further, the following deposit requirements will be effective for all shipments of purified carboxymethylcellulose from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rates for Amtex will be the rate shown above; (2) for previously-investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the "all others" rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose from Mexico,* 70 FR 28280 (May 17, 2005). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 27, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25300 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Second Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce ("the Department") initiated the second sunset review of the countervailing duty order ("CVD") on stainless steel sheet and strip in coils from the Republic of Korea ("Korea") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of the CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice.

DATES: Effective Date: October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds or David Goldberger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6071 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department initiated the second sunset review of the CVD order on stainless steel sheet and strip in coils from Korea pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews,* 75 FR 30777 (June 2, 2010). The Department received a notice of intent to participate from the following domestic interested parties: AK Steel Corporation; Allegheny Ludlum Corporation; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; United Auto Workers, Local 3303; and United Auto Workers, Local 4104 (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic producers of stainless steel sheet and strip in coils in the United States and certified unions representing workers in the domestic industry producing stainless steel and strip in coils in the United States.

The Department received an adequate substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD order.

Scope of the Order

The merchandise subject to the CVD order consists of stainless steel sheet and strip in coils from Korea. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is classified in the Harmonized Tariff

Schedule of the United States ("HTS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated September 30, 2010, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room 7046 of the main Commerce building. The issues include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail, and the nature of the subsidy. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the following weighted-average percentage rates:

Manufacturers/exporters/producers	Weighted-average subsidy rate (percent)
Hyundai Steel Company—(formerly known as INI/BNG and as Inchon)	0.54
Dai Yang Metal Company	0.67
Taihan	4.64
All Others	0.63

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25304 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Stainless Steel Plate in Coils From South Africa: Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce ("the Department") initiated the second sunset review of the countervailing duty order ("CVD") on stainless steel plate in coils from South Africa pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and an inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of the CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6071 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department initiated the second sunset review of the CVD order on stainless steel plate in coils from South Africa pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews,* 75 FR 30777 (June 2, 2010). The Department received a notice of intent to participate from the following domestic interested parties: Allegheny Ludlum Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Steelworkers) (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as a domestic producer of stainless steel plate in coils in the United States and a certified union representing workers in the domestic industry producing stainless steel plate in coils in the United States.

The Department received an adequate substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the CVD order.

Scope of the Order

The merchandise subject to the CVD order consists of stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing.

Excluded from the scope of the order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated September 30, 2010, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room 7046 of the main Commerce building. The issues include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail, and the nature of the subsidy. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the following weighted-average percentage rates:

Manufacturers/exporters/producers	Weighted-average subsidy rate (percent)
Columbus Stainless	3.95
All Others	3.95

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25305 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825, A–588–845, A–580–834, A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Germany, Japan, the Republic of Korea, and Taiwan: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce (the Department) initiated second sunset reviews of the antidumping duty orders on certain stainless steel sheet and strip in coils from Germany, Italy, Japan, the Republic of Korea (Korea), Mexico, and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for the Germany, Japan, Korea, and Taiwan antidumping duty orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2).[1] As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: David Cordell or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0408, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 2, 2010, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on certain stainless steel sheet and strip in coils from Japan, Germany, Italy, Korea, Taiwan, and Mexico, pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 75 FR

[1] With respect to the antidumping duty orders on certain stainless steel sheet and strip in coils from Mexico and Italy, the Department is conducting full sunset reviews.

30777 (June 2, 2010) (*Notice of Initiation*).

The Department received a notice of intent to participate from the AK Steel Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union; United Auto Workers Local 3303; and United Auto Workers Local 4104 (collectively, "petitioners" or "domestic interested parties") within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed domestic interested party status under sections 771(9)(C) and (D) of the Act stating that they are either producers in the United States of a domestic like product or certified unions which are representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.

The Department received adequate substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the antidumping duty orders on certain stainless steel sheet and strip in coils from Germany, Japan, Korea and Taiwan. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on certain stainless steel sheet and strip in coils from Germany, Japan, Korea, and Taiwan.

Scope of the Orders

For purposes of the orders, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to the orders is currently classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, 7220.90.00.80.

Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the orders is dispositive. Excluded from the scope of the orders are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm, and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d). Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors. Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length. Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the orders. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the orders. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of the orders. This product is defined as a non-magnetic stainless steel manufactured to

[2] "Arnokrome III"' is a trademark of the Arnold Engineering Company.

American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the orders. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the orders. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6] Also excluded from the orders is a permanent magnet iron-chromium-cobalt stainless steel strip containing, by weight, 13 percent chromium, 6 percent cobalt, 71 percent iron, 6 percent nickel and 4 percent molybdenum. The product is supplied in widths up to 1.27 cm (12.7 mm), inclusive, with a thickness between 45 and 75 microns, inclusive. This product exhibits magnetic remanence between 400 and 780 nWb, and coercivity of between 60 and 100 oersteds. This product is currently supplied under the trade name "SemiVac 90."

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the "Issues and Decision Memorandum for the Final Results of Expedited Second Sunset Reviews of the Antidumping Duty Orders on Certain Stainless Steel Sheet and Strip in Coils from Germany, Japan, the Republic of Korea, and Taiwan" from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo are the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain stainless steel sheet and strip in coils from Germany, Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
Germany:	
TKN	13.48.
All-Others Rate	13.48.
Japan:	
Kawasaki Steel Corporation/ JFE Steel Corporation.	40.18.
Nippon Steel Corporation	57.87.
Nisshin Steel Co., Ltd.	57.87.
Nippon Yakin Kogyo	57.87.
Nippon Metal Industries	57.87.
All-Others Rate	40.18.
Korea:	
POSCO	2.49.
Taihan	58.79.
Daiyang (DMC)	5.44.
All-Others Rate	2.49.
Taiwan:	
Tung Mung/Ta Chen	15.40.
Tung Mung	Excluded.
YUSCO/Ta Chen	36.44.
YUSCO	21.10.
All-Others Rate	12.61.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 30, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–25299 Filed 10–6–10; 8:45 am]

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[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* October 7, 2010.

SUMMARY: The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on uncovered innerspring units from the People's Republic of China ("PRC"), received on August 20, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is February 1, 2010, through July 31, 2010. The request was filed on behalf of Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory ("Quan Li") and Foshan Yongnuo Import & Export Co. Ltd ("Yongnuo"). Quan Li is the producer of subject merchandise and Yongnuo is the exporter. Therefore, subject merchandise that is produced by Quan Li and exported by Yongnuo is the subject of this NSR. In this instance, Yongnuo's sale of subject merchandise was made during the POR specified by the Department's regulations but the shipment entered four days after the end of that POR. The Department finds that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department has extended the POR for the new shipper review of Yongnuo by four days.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–0116.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on uncovered innerspring units from the PRC was published in the **Federal Register** on February 19, 2009. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) ("*Antidumping Duty Order*"). On August 20, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(c), the Department received a NSR request from Yongnuo. Yongnuo's request was properly made during August 2010, which is the semi-annual anniversary of the *Antidumping Duty Order.* Quan Li certified that it is the producer and Yongnuo certified that it is the exporter of the subject merchandise upon which the request was based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Quan Li and Yongnuo certified that they did not export subject merchandise to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Quan Li and Yongnuo certified that, since the initiation of the investigation, they have never been affiliated with any Chinese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Yongnuo also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Yongnuo submitted documentation establishing the following: (1) The date on which Yongnuo first shipped subject merchandise for export to the United States and; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

When the sale of the subject merchandise occurs within the POR specified by the Department's regulations but the entry occurs after the POR, the specified POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR and that under "appropriate" circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319–27320 (May 19, 1997).

For purposes of initiation, Department accepts the invoice dated within the POR as evidence that Yongnuo had a sale to the United States during the POR. However, the Department will consider further the proper date of sale in the context of this new shipper review and whether that sale occurred during the POR.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR 351.214(d)(1), we find that the request submitted by Yongnuo meets the threshold requirements for initiation of a new shipper review for shipments of uncovered innerspring units from the PRC produced by Quan Li and exported by Yongnuo. The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Yongnuo, which will include a section requesting information with regard to its export activities for separate rates purposes. The review will proceed if the response provides sufficient indication that Yongnuo is not subject to either *de jure* or *de facto* government control with respect to its export of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Yongnuo in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Quan Li certified it produced the subject merchandise, and Yongnuo certified that it exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Quan Li and Yongnuo only for subject merchandise which Quan Li produced and Yongnuo exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: September 29, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25239 Filed 10–6–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests for new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China,* 64 FR 8308 (February 19, 1999). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating antidumping duty NSRs of Guangxi Hengyong Industrial & Commercial Dev. Ltd., (Hengyong) and Zhangzhou Hongda Import & Export Trading Co., Ltd. (Hongda). The period of review (POR) of these NSRs is February 1, 2010 through July 31, 2010.

DATES: *Effective Date:* October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–2924, (202) 482–4947, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China,* 64 FR 8308 (February 19, 1999). Thus, the antidumping duty order on certain preserved mushrooms from the PRC has a February anniversary month. On August 31, 2010, the Department received requests for NSRs from Hengyong and Hongda.

In its request for review Hongda identified itself as the exporter of the subject merchandise, and Fujian Haishan Foods Co., Ltd. (Haishan) as the producer. In contrast, Hengyong identified itself as the exporter of the subject merchandise, and its affiliated branch supplier Hengyong Industrial and Commercial Dev. Ltd. Hengxian Food Division (collectively, "Hengyong") as the producer. The Department determined that both requests contained certain deficiencies and requested that both respondents correct their submissions. *See* September 23, 2010 letters from Robert James, Program Manager, to Hengyong and Hongda, respectively. In accordance with the Department's requests, Hengyong and Hongda corrected the deficiencies in their initial submissions in revised submissions dated September 24, 2010. For the purpose of initiating these NSRs, the Department determines that Henyong's and Hongda's original submissions were timely filed.

Pursuant to the requirements set forth in section 751(a)(2)(B)(i) of the Act and 19 CFR 351.214(b)(2), Hengyong, Hongda, and Haishan certified that (1) they did not export subject merchandise to the United States during the original period of investigation (POI) (*see* section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i) & (ii)); (2) since the initiation of the investigation they have never been affiliated with any company that exported subject merchandise to the United States during the POI, including those companies not individually examined during the investigation (*see* section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A)); and (3) their export activities were not controlled by the central government of the PRC (*see* 19 CFR 351.214(b)(2)(iii)(B)). Additionally, in accordance with 19 CFR 351.214(b)(2)(iv), Hengyong and Hongda submitted documentation establishing the following: (1) The date on which they first shipped subject merchandise to the United States; (2) the volume of their first shipments; and (3) the date of their first sales to unaffiliated customers in the United States. They also certified they had no shipments to the United States during the period subsequent to their first shipments.

Initiation of Reviews

Based on information on the record and in accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we find the requests Hengyong and Hongda submitted meet the statutory and regulatory requirements for initiation of NSRs. *See* Memoranda to the File through Richard Weible, "Request for AD New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China (A–570–851)," dated September 29, 2010. Accordingly, we are initiating a NSR of the antidumping duty order on certain preserved mushrooms from the PRC manufactured and exported by Hengyong, and a NSR on certain preserved mushrooms from the PRC manufactured by Haishan and exported by Hongda. These reviews cover the period February 1, 2010 through July 31, 2010. We intend to issue the preliminary results of these reviews no later than 180 days after the date on which these reviews are initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i).

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews,* 75 FR 10214, 10215 (March 5, 2010). Accordingly, we will issue questionnaires to Hengyong and Hongda that will include a separate rates section.[1] These reviews will proceed if these responses provide sufficient indication that Hengyong and Hongda are not subject to either *de jure* or *de facto* government control with respect to their exports of preserved mushrooms. However, if Hengyong and Hongda do not demonstrate eligibility for separate rates, they will be deemed not to have met the requirements of section 751(2)(B)(i) of the Act and 19 CFR 351.214(b)(2)(i), and therefore not separate from the PRC-wide entity. We will therefore rescind the NSRs. *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Review,* 74 FR 15698 (April 7, 2009).

We will instruct the CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject

[1] Both companies did provide information regarding their eligibility for separate rates in their requests for review.

merchandise produced and exported by Hengyong and for certain entries produced by Haishan and exported by Hongda in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

These initiations and this notice are issued and published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: September 29, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–25303 Filed 10–6–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ49

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (GMFMC) will convene public meetings.

DATES: The meetings will be held October 25–29, 2010.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, 4914 Constitution Ave., Baton Rouge, LA 70808.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Thursday, October 28, 2010

The Council meeting will begin at 1:30 p.m.

1:30–1:45 p.m.—The council will review the agenda and approve of the minutes.

1:45 p.m.–2 p.m.—The Council will receive a presentation titled "Fisheries 101".

2 p.m.–2:30 p.m.—The Council will receive a U.S. Navy Environmental Impact Statement Presentation.

2:30 p.m.–5:30 p.m.—The Council will receive public testimony on exempted fishing permits (EFPs), if any; a Final Regulatory Amendment for Red Snapper TAC in 2011 and 2012; a Final Framework Action for Greater Amberjack; and hold an open public comment period. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Friday, October 29, 2010

8:30 a.m.–4:45 p.m.—The Council will review and discuss reports from the committee meetings as follows: Reef Fish; Administrative Policy; Shrimp Management; Data Collection; SEDAR Selection; Sustainable Fisheries/Ecosystem; Habitat; Budget/Personnel; Spiny Lobster/Stone Crab; Mackerel Management and Law Enforcement.

4:45 p.m.–5 p.m.—Other Business items will follow.

The Council will conclude its meeting at approximately 5 p.m.

Committees

Monday, October 25, 2010

1 p.m.–2 p.m.—Closed Session—Full Council—The Budget/Personnel Committee and full Council will discuss personnel issues.

2 p.m.–2:15 p.m.—Closed Session—Full Council—The SEDAR Selection Committee and full Council will appoint participants to the SEDAR 22 Yellowedge/Tilefish Review workshop and receive a report of the Steering Committee meeting.

2:15 p.m.–2:30 p.m.—The SEDAR Selection Committee and full Council will receive a report of the Steering Committee meeting.

2:30 p.m.–5:30 p.m.—The Sustainable Fisheries/Ecosystem Committee will discuss the options paper for the Generic Annual Catch Limit/Accountability Measures Amendment; crew size limit on For-Hire Vessels when fishing commercially; discuss Reef Fish Permit Earned Income Requirement, and receive a report on Deepwater Horizon Input on Subsea Sampling Plan.

-Recess-

Tuesday, October 26, 2010

8:30 a.m.–10 a.m.—The Administrative Policy Committee will discuss revisions to the Administrative Handbook.

10 a.m.–11 a.m.—The Shrimp Management Committee review the "Status and Health of the Shrimp Stocks for 2009"; review the "Stock Assessment Report for 2009—Gulf of Mexico Shrimp Fishery"; review "A Biological Review of the Tortugas Pink Shrimp Fishery through December 2009"; receive a final report of shrimp effort in 2009 and a preliminary report on shrimp effort in 2010; and discuss Latent Permits.

11 a.m.–12:30 p.m.—The Data Collection Committee will discuss a fish tag system for recreational grouper and receive a report on Summary of SEAMAP/Deepwater Horizon Fishery Independent Data Collection Workshop; receive a summary of the National SSC Workshop.

2 p.m.–5 p.m.—The Reef Fish Management Committee will discuss Final Framework Action for Greater Amberjack; discuss Final Regulatory Amendment for Red Snapper TAC in 2011 and 2012; discuss IFQ share transfers between sectors; discuss the pros and cons of regionalized management; discuss the Pros and Cons of Management Based on Numbers vs. Pounds of Fish; and discuss the IFQ Finance Program.

-Recess-

Wednesday, October 27, 2010

8:30 a.m.–11:30 a.m.—The Reef Fish Management Committee will continue to meet.

1 p.m.–2 p.m.—The Budget/Personnel Committee will receive a year-to-date 2010 budget review.

2 p.m.–3 p.m.—The Spiny Lobster Management Committee will review draft Amendment 10 to the Spiny Lobster FMP and an analysis to repeal the Stone Crab FMP.

3 p.m.–3:30 p.m.—The Habitat Protection Committee will receive a final report on Essential Fish Habitat update.

3:30 p.m.–4 p.m.—The Mackerel Management Committee will discuss the scoping document for King Mackerel Latent Permits; receive a report on Amendment 18, and potentially select public hearing locations.

-Recess-

Immediately Following Committee Recess—There will be an informal open public question and answer session on Gulf of Mexico Fishery Management issues.

Thursday, October 28, 2010

8:30 a.m.–12 pm—The Joint Law Enforcement Committee/GMFMC Law Enforcement Advisory Panel/GSMFC Law Enforcement Committee will meet to discuss state and federal law enforcement activities, review future plans and potentially provide advice on the enforceability of measures currently being considered by the council.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 4, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25279 Filed 10–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 9/23/2010 THROUGH 10/01/2010

Firm name	Address	Date accepted for investigation	Products
Compass Components, Inc	48502 Kato Road, Fremont, CA 94538	9/30/2010	The firm manufactures and distributes a variety of passive and electro-mechanical component parts.
Knickerbocker Machine Shop, Inc. dba Alloy Stainless Products Co.	611 Union Boulevard, Totowa, NJ 07512	9/30/2010	The firm manufactures threaded and socket welded stainless steel, high nickel alloy and other nonferrous alloy pipe fittings to standard specifications and custom designs.
PD–LD, Inc	30–B Pennington-Hopewell Road, Pennington, NJ 08534.	9/30/2010	The firm manufactures and packages active laser products including transceivers, communications components, and non-communications transmitters.
Pearce Foundry West, Inc	2190 Greenwood Street, Memphis, TX 79245.	9/24/2010	The firm manufactures components of cast steel products.
Pequea Machine, Inc	200 Jalyn Drive, P.O. Box 399, New Holland, PA 17557.	9/27/2010	The firm manufactures farm machinery and equipment.
Superior Tire & Rubber Corporation	1818 Pennsylvania Avenue West, Warren, PA 16365.	9/24/2010	The firm is a designer and manufacturer of solid polyurethane and rubber industrial wear products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: October 1, 2010.

Bryan Borlik,

Director, TAA for Firms.

[FR Doc. 2010–25343 Filed 10–6–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ48

Pacific Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) will hold public hearings on development of community fishing association (CFAs) provisions for its groundfish trawl catch share plan, which was adopted through Amendments 20 and 21 to the groundfish FMP and is scheduled for implementation at the start of 2011. The Council will address this issue at its November 3–9, 2010 Council meeting, in Costa Mesa, CA.

DATES: The hearings will be held on October 25, 27, and 28, 2010.

ADDRESSES: Hearing locations will be in Eureka, CA, Portland, OR, and Monterey, CA. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: These public hearings are being held as part of Council scoping of follow-on actions (trailing actions) for the groundfish trawl catch share program which, pursuant to the Secretary of Commerce's approval of Amendments 20 and 21 to the West Coast Groundfish Fishery Management Plan, is scheduled to be implemented January 1, 2011. The Council has prioritized four issues for scoping at its November 3–9, 2010 meeting, among which is the issue of whether to provide CFAs with an exception to quota share control limits. During the public hearing, comment will be solicited on the control limit exception for CFAs as well as other CFA provisions that might be added to the trawl rationalization program. Comment is sought on both alternatives and impacts to consider. At its November 2010 meeting, the only CFA issue the Council will be scoping is whether to provide CFAs with an exception to the control limit, however, other provisions for CFAs that are identified through these public hearings may be prioritized for later trailing actions.

The agenda for the November 2010 Council meeting will be published in a subsequent **Federal Register**, prior to the actual meeting. Additional information on the hearings, including the exact locations, will be posted on the following page of the Council Web site: *http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-20/*.

Schedule for Public Hearings

Public hearings will be held to receive comments on Council development of catch share program provisions for CFAs on the following dates, times and locations:

October 25, 2010 (7 p.m.): Eureka, CA.

October 27, 2010 (2 p.m.): Portland, OR.

October 28, 2010 (2 p.m.): Monterey, CA.

These hearings are exclusively for the purpose of receiving public comment on CFA alternatives for the groundfish trawl catch share program. No formal actions will be taken at the hearings.

Special Accommodations

The hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: October 4, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25278 Filed 10–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0140]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete four systems of records.

SUMMARY: The Defense Information Systems Agency proposes to delete four systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 8, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, Room 3C843 Pentagon, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

The Defense Information Systems Agency proposes to delete four systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

SYSTEM ID NUMBERS AND NAMES:

KEUR.05, Classified Container Information Forms (February 22, 1993; 58 FR 10562).

K240.06, Classified Container Information on Form (SF 700) (February 22, 1993; 58 FR 10562).

KPAC.01, Classified Container Information Form DA 727 (February 22, 1993; 58 FR 10562).

KDCE.03, DA Form 727 Classified Container Information File 503–02 (February 22, 1993; 58 FR 10562).

REASON:

These records are covered under system of records notice K890.13, Security Container Information (September 22, 2010; 75 FR 57740).

[FR Doc. 2010–25315 Filed 10–6–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Broad Spectrum of Patents for Exclusive, Partially Exclusive, or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to the following listing of patents. Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Principle inventor	United States Patent No.	Patent title
Young	7,602,997	Method of super-resolving images.
Zhou	7,609,971	Electro optical scanning multi-function antenna.
Allen	7,629,080	Electrode materials for electrochemical cells.
Hill	7,631,567	Systems and methods for collecting particles from a large volume of gas into a small volume of liquid.
Tunick	7,634,393	Technique for coupling meteorology to acoustics in forests.
Pulskamp	7,642,692	PZT MEMS resonant Lorentz force magnetometer.
Kecskes	7,645,350	High-density metallic glass alloys.
Hoffman	7,646,797	Use of current channeling in multiple node laser systems and methods thereof.
Conroy	7,650,710	Article with enhanced resistance to thermochemical erosion, and method for its manufacture.
Scanlon	7,656,749	Systems and methods for analyzing acoustic waves.
Darwish	7,655,944	Systems and methods for estimating thermal resistance of field effect transistor structures.
Meyers	7,660,533	Quantum Fourier transform based information Transmission system and method
Edelstein	7,656,159	Locating stationary magnetic objects.
Edelstein	7,655,996	MEMS structure support and release mechanism.
Conroy	7,669,358	Dynamic process for enhancing the wear resistance of ferrous articles.
Redman	7,675,610	Photon counting, chirped AM LADAR system and related methods.
Videen	7,701,638	Spherically shaped optical beamsplitter.
Zhu	7,700,508	Low conductivity and high toughness tetragonal phase structured ceramic thermal barrier coatings.
Hull	7,701,196	Methods for detecting and classifying loads on AC lines.
Jiang	7,695,601	Electrochemical test apparatus and method for its use.
Ly	7,692,592	High power two-patch array antenna system.
Edelstein	7,707,004	Locating ferromagnetic objects in a single pass.
Gupta	7,733,484	Hyperspectral scene projection/generation systems and methods.
Mackie	7,734,122	Multimode interference device with side input/output ports.
Bender	7,730,839	Interfacial stress reduction and load capacity enhancement system.
Touchet	7,737,225	High performance elastomeric compound.
Zhu	7,740,960	Multifunctionally graded environmental barrier coatings for silicon-base ceramic components.
Nair	7,739,938	Gas generator launcher for small unmanned aerial vehicles (UAVs).
Hoffman	7,751,109	Electro-optic shutter.
Hoffman	7,756,175	Pumped semiconductor laser systems and methods.
Nguyen	7,796,829	Method and system for forming an image with enhanced contrast and/or reduced noise.
Meyers	7,805,079	Free-space quantum communications process operative absent line-of-sight.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRD–ARL–DP–P/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–25352 Filed 10–6–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for the San Juan Creek and Tributaries Flood Risk Management Study, Orange County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers will prepare an EIS to support the San Juan Creek, South Orange County, Feasibility Study. The purpose of this feasibility study is to evaluate flood risk management alternative measures along the lower portions of San Juan, Trabuco, and Oso Creeks. The San Juan Creek Watershed encompasses approximately 176 square miles of southern Orange County and western Riverside County in southern California. The Orange County Public Works Department is the local sponsor for this study.

The study area extends along approximately 10.5 miles of San Juan Creek from the Pacific Ocean to the southern end of Ronald W. Casper's Wilderness Park, at the confluence of Bell Canyon Creek; Trabuco Creek from its confluence with San Juan Creek north approximately 9.5 miles to its confluence with Tijeras Creek; and Oso Creek from its confluence with Trabuco Creek northwest approximately 4.5 miles to just north of Oso Parkway. The communities of San Juan Capistrano, Mission Viejo, Laguna Hills, Laguna Niguel, Dana Point, Rancho Santa Margarita, Ladera Ranch, and Las Flores are located within the study boundary.

DATES: A scoping meeting is scheduled for October 27, 2010, 6 p.m. to 9 p.m.

ADDRESSES: The scoping meeting will be held at the San Juan Capistrano Community Center, 25925 Camino del Avion, San Juan Capistrano, CA 92675.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Campos, the Environmental Coordinator at: U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RL, c/o Gail Campos, P.O. Box 532711, Los Angeles, CA 90053–2325. Phone and e-mail contacts are: Ms. Gail Campos at 213–452–3874 and *gail.m.campos@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authorization.* The proposed study is authorized by a resolution of the Committee on Public Works; House of Representatives dated May 8, 1964, which reads as follows:

"Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the reports on (a) San Gabriel River and Tributaries, published as House Document No. 838, 76th Congress, 3d Session; (b) Santa Ana River and Tributaries, published as House Document No. 135, 81st Congress, 1st Session; and (c) the project authorized by the Flood Control Act of 1936 for the protection of the metropolitan area in Orange County, with a view to determining the advisability of modification of the authorized projects in the interest of flood control and related purposes."

2. *Background.* San Juan Creek is approximately 27 miles long, from the Cleveland National Forest in the Santa Ana Mountains to the Pacific Ocean at Doheny State Beach near Dana Point Harbor. The riverine corridor ranges from channelized segments with highly impacted environments with little vegetation, to segments in which there has been little change from the natural ecosystem.

Trabuco Creek originates in the Santa Ana Mountains and flows for about 25 miles before the confluence with San Juan Creek. The lower several miles of Trabuco Creek have been channelized for flood risk management and erosion control within the City of San Juan Capistrano. The remainder of the Trabuco Creek channel remains in a relatively natural condition.

Oso Creek originates in the foothills of the Santa Ana Mountains and flows for a distance of 13.5 miles before the confluence with Trabuco Creek. The lower 4.5 miles of Oso Creek include armored channel reaches, culverts, grade controls and drop structures, bridge crossings and detention basins.

In response to the study authority, an interim watershed feasibility study was prepared in August 2002. This study will incorporate the prior data related to applicable problems, opportunities and evaluations for the downstream portions of the watershed.

3. *Objectives.* The planning objectives for this study are:

- To reduce the risk of flood damages in lower portions of the watershed along San Juan, Oso and Trabuco Creeks.
- To address stream bank erosion and channel instability in the lower portions of San Juan, Trabuco and Oso Creeks.
- To maintain habitat values in the study area to the extent practicable.

An iterative plan formulation and evaluation process will be documented in consideration of a range of potential flood risk management and channel stabilization alternatives.

4. *Scoping Process.* Participation by affected federal, state and local resource agencies, Native American groups and concerned interest groups/individuals are encouraged to participate in the scoping process. Public participation is critical in defining the scope of analysis in the EIS, identifying significant environmental issues in the EIS, providing useful information such as published and unpublished data, personal knowledge of relevant issues and recommending mitigation measures to offset potential impacts from proposed actions. Additionally, the time and location of the public scoping meeting will be advertised in letters, public announcements and news releases.

Potential impacts associated with the proposed action will be evaluated. Resource categories that will be analyzed include: physical environment, geology, biological resources, air quality, water quality, recreational usage, aesthetics, cultural resources, transportation, noise, hazardous waste, socioeconomics and safety.

Those interested in providing information or data relevant to the study can furnish this information by writing to the points of contact indicated above or by attending the public scoping meeting. A mailing list will also be established so pertinent data may be distributed to interested parties.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–25351 Filed 10–6–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board on Coastal Engineering Research.

Date of Meeting: October 25–26, 2010.

Place: Atlanta Airport Marriott Gateway, 2020 Convention Center Concourse, Atlanta, GA 30337.

Time: 3 p.m. to 6:15 p.m. (October 25, 2010). 8:30 a.m. to 3 p.m. (October 26, 2010).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to COL Gary E. Johnston, Executive Secretary, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: The Board provides broad policy guidance and review of plans and fund requirements for the conduct of research and development of research projects in consonance with the needs of the coastal engineering field and the objectives of the Chief of Engineers.

Proposed Agenda: The afternoon of October 25, the Executive Session is devoted to (1) Review old business; (2) continue a climate change dialogue from the previous Board meeting; and (3) hear and discuss a presentation concerning IOOS.

On Tuesday, October 26, there will be (1) An Engineer Research and Development Center update on the oil spill response; (2) updates on coastal engineering oriented research and development activities to include navigation, flood and coastal, and environmental; (3) discussion of the Board on Coastal Engineering Research and the Environmental Advisory Board; (4) discussion of Regional Sediment Management including the history, the program, and policy; and (5) discussion of the next full meeting.

The meeting is open to the public, but since seating capacity of the meeting

room is limited, advance notice of intent to attend is required.

Gary E. Johnston,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 2010–25354 Filed 10–6–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Teleconference

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 7122, Washington, DC 20006.

ACTION: Notice of open teleconference meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and information related to members of the public making third-party oral comments at the meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda items for the upcoming teleconference meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), which is scheduled for November 8, 2010, and provides information for members of the public wishing to attend the meeting and/or make oral comments during the meeting. The notice of this teleconference meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act (HEA).

The NACIQI teleconference meeting will be held on Monday, November 8, 2010, beginning at 4 p.m. and ending as late as 5:30 p.m., Eastern Standard Time. The proposed agenda for this teleconference meeting is to elect a chair and vice-chair, and conduct other administrative business related to meeting planning and procedures.

Space for the teleconference meeting is limited, and you are encouraged to register early if you plan to attend. To register to attend the teleconference meeting and not make any oral comments, e-mail the Accreditation Division staff at *aslrecordsmanager@ed.gov* and enter "Registration for NACIQI Teleconference Meeting" in the subject line of the e-mail message. In the body of the e-mail message, please include your name, title, affiliation, mailing address, e-mail address, Web site (if available), and telephone and fax numbers. To register to attend the teleconference meeting and request to make oral comments during the meeting, e-mail the Accreditation Division staff at *aslrecordsmanager@ed.gov* and enter "Registration for NACIQI Teleconference Meeting and Request To Make Oral Comments" in the subject line of the e-mail message. In the body of the message, please include your name, title, affiliation, mailing address, e-mail address, and Web site (if available), and telephone and fax numbers, and provide a brief explanation of no more than five sentences that summarizes your anticipated comments. The deadline for the teleconference meeting registration is Monday, November 1, 2010.

A total of ten minutes will be allotted for public comment. Only the first ten commenters who respond in accordance with this notice as reflected in the time and date of e-mail receipt will be assured an opportunity to speak, and each commenter will be allotted no more than one minute. The Department will inform any requesters not selected to speak in advance of the meeting.

Individuals who will need accommodations for a disability in order to attend the teleconference meeting should contact Cathy Sheffield at (202) 219–7011 or e-mail at *aslrecordsmanager@ed.gov* no later than Monday, November 1, 2010. The teleconference site is accessible to individuals with disabilities.

NACIQI'S Statutory Authority and Functions: The NACIQI is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Access to Records of the Teleconference Meeting: The Department will record the teleconference meeting and post the official report of the teleconference meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing the *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006. Telephone: (202) 219–7011 or e-mail: *Melissa.Lewis@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister*. 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 1–866–512–1830; or in the Washington, DC area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2010–25313 Filed 10–6–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Number EERE–BT–PET–0024]

Energy Conservation Program for Consumer Products: Commonwealth of Massachusetts Petition for Exemption From Federal Preemption of Massachusetts' Energy Efficiency Standard for Residential Non-Weatherized Gas Furnaces

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Denial of a Petition for Waiver from Federal Preemption.

SUMMARY: This notice announces the U.S. Department of Energy's (DOE) denial of a petition filed by the Commonwealth of Massachusetts seeking an exemption from Federal preemption of certain energy conservation standards affecting residential non-weatherized natural gas furnaces.

DATES: A request for reconsideration of the denial must be received by DOE not later than November 8, 2010.

ADDRESSES: A request for reconsideration must be submitted, identified by docket number EERE–BT–PET–0024, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: MAExemptPetition@ee.doe.gov.* Include either the docket number EERE–BT–PET–0024, and/or "Massachusetts Petition" in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding. For detailed instructions on submitting comments and additional information on the proceeding, *see* section II. C of this document (Submission of Comments).

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *www.regulations.gov.* In addition, electronic copies of the Petition are available online at DOE's Web site at the following URL address: *http://www.eere.energy.gov/buildings/appliance_standards/state_petitions.html.*

FOR FURTHER INFORMATION CONTACT: Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892, or *e-mail: Mohammed.Khan@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8145, *e-mail: Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Notice
II. Background
  A. Applicable Legal Standard
  B. Previous Preemption Waiver Requests
III. Massachusetts' Petition Summary
IV. DOE Analysis and Discussion
  A. Massachusetts Has More Heating Degree-Days than the National Average
  B. Massachusetts Has Higher Gas Rates than the Nation as a Whole
  C. Massachusetts Residential Heating Loads Compete with Power Plant Loads
  D. The High Percentage of Rental Housing Creates Market Barriers
  E. Massachusetts Has a Unique Set of Statutes and Policies Promoting Increased Energy Efficiency and Reductions in Greenhouse Gas Emissions
  F. Potential Impacts on Manufacturers
  G. Potential Impacts on Consumers from Installation Issues
  H. Current Energy Conservation Standards Rulemaking and the Consensus Agreement
V. Conclusion
VI. Denial
VII. Approval of the Office of the Secretary

I. Summary of Notice

This notice addresses a petition received by the U.S. Department of Energy (DOE) regarding a request from the Commonwealth of Massachusetts ("Massachusetts," "the Commonwealth," or, in context, "the State") for a waiver from Federal preemption of a State law pertaining to the energy efficiency of a certain type of consumer product. Specifically, Massachusetts sought an exemption to permit it to set a minimum efficiency level for non-weatherized natural gas furnaces that would exceed the stringency prescribed by the minimum Federal level set by DOE. After carefully considering the Commonwealth's request, supporting materials accompanying the request, submitted comments, and the current rulemaking activities underway that would be likely to have a direct impact on the issues raised in the petition, DOE is declining to grant this request.

II. Background

On October 6, 2009, DOE received a petition from Massachusetts (dated October 1, 2009) seeking a preemption waiver to permit it to impose a 90-percent annual fuel utilization efficiency ("AFUE") requirement on all natural gas furnaces sold within the State. (Commonwealth of Massachusetts, No. 4.1) AFUE is a thermal efficiency measurement used to rate combustion equipment such as furnaces and represents the actual season-long average efficiency of a particular piece of equipment. Under the Energy Policy and Conservation Act of 1975, as amended (EPCA), any local or state regulation concerning the energy efficiency or energy use of a product covered under EPCA is preempted if DOE has established an energy conservation standard for that product. States may seek a waiver from preemption provided that certain criteria are met. *See* 42 U.S.C. 6297(d)(5). In this instance, if DOE were to grant the waiver, all non-weatherized natural gas furnaces sold in Massachusetts would need to satisfy a 90-percent AFUE level starting three years after the publication of the decision by DOE (*i.e.,* approximately October 2013). (The three-year lead time is a statutory requirement under 42 U.S.C. 6297(d)(5) that can be extended to a period of five years if DOE determines that retooling, redesign, or distribution burdens merit the additional time.) The current Federal standards require that these products satisfy an AFUE level of 78%. 10 CFR 430.32(e).

In support of its petition, Massachusetts provided supplemental information, including a report prepared by Optimal Energy, Inc. ("the Optimal Report"). This supplemental information consisted of the relevant text setting out the furnace efficiency requirements that the Commonwealth proposed to adopt, the Commonwealth's energy plan, a projected forecast of natural gas furnace sales, an analysis of the Commonwealth's energy situation, and the projected impacts of other, non-regulatory-based alternatives. DOE published a notice announcing the receipt of this petition and to solicit public comment. 75 FR 4548 (Jan. 28, 2010). As required under EPCA, the agency provided the public with a reasonable opportunity to provide comments (in this instance, 60 days) and a subsequent rebuttal period of 30

days, which closed on July 7, 2010. 75 FR 32177 (June 7, 2010).

The agency received comments from 19 different organizations and the Commonwealth of Massachusetts. Commenters included local governments (the City of Boston, including separate comments filed by the City of Boston's Environmental and Energy Services, and the City of Cambridge), energy and consumer advocacy groups (joint and individual comments filed by Environment Northeast (ENE), the Consumer Assistance Council, the Massachusetts Consumers' Council, the Massachusetts Consumers' Coalition, and the Massachusetts Public Interest Research Group (MASSPIRG); Conservation Law Foundation; Appliance Standards Awareness Project (ASAP); National Consumer Law Center (NCLC); Northeast Energy Partnership (NEEP); Massachusetts Climate Action Network; and the Massachusetts Union of Public Housing), industry organizations (Air-Conditioning, Refrigeration, and Heating Institute (AHRI) and American Gas Association (AGA)), utilities (Bay State Gas Company; Berkshire Gas; Nationalgrid; the New England Gas Company; NSTAR Electric Gas; and Unitil), and others (the Cape Light Compact) (an inter-municipal regional energy services organization). The agency has reviewed and docketed these materials. *See http://www.regulations.gov* (search under "DOE" and enter "PET–0024").

In general, energy and consumer advocacy groups, as well as local governments and utility companies, supported the petition. These commenters stated their collective belief that Massachusetts faces "unusual and compelling" energy-related circumstances due to its geography, climate, and energy markets. (ENE, No. 6 at pp. 1–2; the Consumer Assistance Council, the Massachusetts Consumers' Council, the Massachusetts Consumers' Coalition, and MASSPIRG, No. 7 at pp. 2–3; Bay State Gas Company, No. 8 at pp. 2–3; the Conservation Law Foundation, No. 11 at pp. 2–3; NEEP, No. 13 at pp. 2–3; the Massachusetts Climate Action Network, No. 14 at pp. 2–3; the Cape Light Compact, No. 15 at p. 1–2; the City of Bost on, No. 16 at pp. 1–2; the City of Cambridge, No. 17 at p. 1; the Massachusetts Union of Public Housing, No. 18 at pp. 1–2; the City of Boston Environmental and Energy Services, No. 20 at pp. 1–2; Nationalgrid, No. 26.1 at pp. 1–2; NCLC, No. 25 at pp. 1–3; Unitil, No. 24.1 at pp. 1–2; Berkshire Gas, No. 27 at pp. 1–2; NSTAR Electric Gas, No. 28 at pp. 1–2; and the New England Gas Company, No. 29 at p. 1)

AHRI and AGA opposed the petition. AHRI held the view that the Massachusetts waiver fails to satisfy the waiver justification criteria set forth in EPCA and presented a variety of arguments in response to Massachusetts' claims. (AHRI, No. 9 at pp. 2–6) Specifically, AHRI noted that: (1) DOE should proceed with the current energy conservation standards rulemaking for residential furnaces and adopt the consensus agreement presented to DOE by certain industry and energy-efficiency organizations; (2) Massachusetts does not have unusual or extreme climates; (3) Massachusetts does not have any projected shortage of natural gas; (4) more stringent furnace standards for Massachusetts should not be allowed to override preemption of the Federal standards; and (5) the petition overstates the energy savings that would result from granting the waiver request and does not consider the high percentage of condensing furnaces already shipped to Massachusetts. (AHRI, No. 9 at pp. 3–4)

In addition, AHRI questioned whether the waiver petition applied to other types of residential heating equipment, including oil-fired furnaces, gas-fired boilers, and oil-fired boilers. Specifically, AHRI pointed out that the petition refers to the Commonwealth's furnace efficiency regulation, which AHRI believes encompasses other product classes of residential furnaces. (AHRI, No. 9 at p. 1) DOE notes that the petition centers on a 90-percent AFUE standard for natural gas furnaces. Consequently, based on the discussion presented in the petition, DOE believes that the petition applies only to this one particular product class of residential furnaces.

Similarly, AGA also opposed the petition. It asserted that DOE should deny the petition and proceed with the current energy conservation standards rulemaking for residential furnaces as the more appropriate means to address the issues raised by AGA in response to the petition. AGA specifically pointed out the potential impacts to Massachusetts consumers seeking to replace their furnaces and noted that consumers would likely face additional costs to vent the condensing furnace to permit safe operation in the field. (AGA, No. 12 at pp. 2–4) Implied in this comment is AGA's view that using a condensing furnace system is the only way for a furnace manufacturer to meet a 90-percent AFUE level. (A condensing furnace system is one that recovers more heat from the combustion products such that the water vapor in the exhaust condenses.)

A. Applicable Legal Standard

To obtain a waiver from Federal preemption, a State must meet the specified criteria laid out in 42 U.S.C. 6297(d)(1). In particular, a State must face "unusual and compelling" State or local energy interests in order to obtain a preemption waiver. For purposes of meeting this requirement, a State needs to demonstrate that these interests are "substantially different" in nature or magnitude from those prevailing in the United States generally and that the costs, benefits, burdens, and reliability of energy savings that would result from the State regulation make that regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production. (42 U.S.C. 6297(d)(1)(C)) By statute, these factors are to be evaluated within the context of the State's energy plan and forecast. *Id.*

B. Previous Preemption Waiver Requests

DOE previously addressed preemption waiver issues in two contexts. The first dealt with a waiver request related to standards for residential clothes washers. *See* 71 FR 78157 (Dec. 28, 2006) (denying a California petition seeking a waiver from preemption for standards related to residential clothes washers). The second instance involved amended energy conservation standards for furnaces and boilers. *See* 71 FR 59204, 59209–10 (Oct. 6, 2006) (notice of proposed rulemaking addressing the preemption waiver factors and noting the possibility of contiguous States availing themselves of the preemption waiver provision to help establish standard levels tailored to their particular circumstances while helping to lessen manufacturer burdens) and 72 FR 65136, 65150–52 (Nov. 19, 2007) (final rule declining to develop separate standards based on geography due to an absence of statutory authority but explaining how multiple contiguous States could use the waiver process to create a regionally-based standard). In both instances, the agency explained how a petitioning State could help demonstrate that it meets the statutory criteria to obtain a waiver from preemption.

In the case of the California petition, the State sought a waiver to enable it to set more stringent standards for residential clothes washers. DOE denied that petition, citing three primary reasons: (1) The petition did not provide DOE with sufficient information to enable the agency to promulgate a final rule that would comply with the

scheduling requirements prescribed under EPCA; (2) the petition did not establish by a preponderance of the evidence that the State faced unusual and compelling circumstances as contemplated under the statute; and (3) other interested parties who commented on the petition sufficiently demonstrated by a preponderance of the evidence that the State's regulation would likely result in the unavailability of a class of residential clothes washers in California. Although the State filed suit over this denial and DOE's decision was ultimately vacated, *see California Energy Comm'n* v. *DOE,* 585 F.3d 1143 (9th Cir. 2009), the Court in that case did not address whether the information furnished by the State, if evaluated, would have satisfied the statutory criteria. *See id.* at 1153.

DOE also addressed the application of waivers in its 2007 rulemaking considering amended energy conservation standards for furnaces. That rulemaking occurred prior to the enactment of the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007), which granted DOE with the authority to establish geographically-based regional standards for furnaces. EISA 2007, sec. 306(a). In the 2007 rulemaking, DOE explained that in evaluating a State's supporting evidence, the agency would consider whether regional climatic effects would have a significant impact on the technological feasibility and economic justifiability of a particular energy conservation standard. DOE noted that those states having higher-than-average, population-weighted heating degree days "would seem to have the best prospects" for demonstrating the presence of "unusual and compelling" interests required under EPCA. 71 FR at 59209. DOE also offered other examples of how a State might be able to satisfy these criteria. *Id.* at 59210. Possible factors included identifying the saturation of homes with products that already satisfy the higher standard being sought and the existence of any subsidies and other incentives currently offered by the State and to show how mandatory regulations would be preferable to these current programs.

Additionally, DOE explained that States seeking a waiver would need to address the extent of potential impacts on manufacturers—specifically, the likelihood of cost increases of manufacturers, distributors, and others. The agency noted that one way of addressing this requirement would be to show how current shipments to the petitioning State already vary from current DOE-prescribed efficiency levels. *Id.*

Through its accompanying attachments, Massachusetts provided supplemental information to help support its view that it faces unusual and compelling circumstances. These attachments, along with the accompanying petition, attempted to address each element noted above.

III. Massachusetts' Petition Summary

The Massachusetts petition makes several points in favor of a waiver from Federal preemption.

First, the petition claims that Massachusetts experiences more heating degree days than the nation as a whole. A heating degree day (HDD) is an index that reflects the demand for energy required to heat a home or business. HDDs compare the average outdoor temperature to a standard of 65 degrees Fahrenheit. The heating requirements for a particular structure at a specific location are directly proportional to the number of HDDs at that location. The more extreme the temperature, the higher the degree-day number and the more energy needed for in-door space heating. Massachusetts contends that it exceeds the national average of HDDs by approximately 50%. (Mass. Petition, No. 4 at 4)

Second, the petition contends that the rates of natural gas prices within the Commonwealth are higher than the Nation as a whole. According to its supplemental information, natural gas price rates in Massachusetts are approximately 20% higher than the median and average prices found throughout the United States as a whole. (Mass. Petition (Attachment D), at 3–4).

Third, the petition states that its residential heating loads compete with power generation loads. In other words, the demand for residential heating faces competition from the demands of natural gas-fired electric generators. In the Commonwealth's view, because natural gas supplies are scarce, in part, because Massachusetts depends on natural gas to produce electricity, the amount of gas available for residential heating is limited by the demands of electricity generating plants. These demands would then cause residential consumers to face the prospect of potentially higher prices as utilities that rely on natural gas use this fuel in increased amounts to generate electricity.

Fourth, the petition argues that Massachusetts has a higher percentage of rental housing than the rest of the United States. In its view, this fact creates market barriers that prevent the introduction of more efficient furnaces. As a result, those individuals who rent their residences are less likely to benefit from the introduction of more efficient furnaces (*e.g.* lower utility bills) because of their higher costs when compared to less efficient (but Federally-compliant) furnaces and the unwillingness of owners to pay these initial up-front costs. In effect, Massachusetts argues that without the mandatory introduction of more energy efficient furnaces, these consumers, who are more likely to be price sensitive to utility price increases than individuals who own their residences, will be more likely to face increased utility costs as natural gas prices rise.

Fifth, the petition notes that the statutory framework and policies put into place by Massachusetts, which are designed in part to promote increased energy efficiency and reduce greenhouse gas emissions, have helped to create "unusual and compelling interests" because a decrease in natural gas consumption is necessary to help satisfy these State-imposed requirements. Examples of these requirements cited by Massachusetts include its Global Warming Solutions Act (2008 Mass. Acts, Ch. 298) and Clean Communities Act (2008 Mass. Acts, Ch. 169). These laws, among other things, required Massachusetts to take steps to improve energy efficiency and, in collaboration with other States, to reduce greenhouse gas emissions. In short, Massachusetts asserts that it needs a 90-percent AFUE standard to help it meet its own self-imposed obligations under these laws.

IV. DOE Analysis and Discussion

In its petition for waiver, Massachusetts cited five "interests/characteristics" to bolster its claim of "unusual and compelling interests." These five areas are addressed below with the most recent statistics compiled from the Energy Information Administration's (EIA) State Energy Data System (SEDS). *See http://www.eia.doe.gov/emeu/states/_seds.html.* DOE used the EIA data to makes its comparisons because EIA collects the same data for all states, including Massachusetts, which allows for consistent cross-comparisons between individual States and national averages.

A. Massachusetts Has More Heating Degree-Days Than the National Average

DOE agrees that Massachusetts generally experiences more heating degree-days (HDDs) than the national average. In 2008, Massachusetts experienced 38-percent more heating degree-days than the national average.

The petition points to the Optimal Report and notes that "there is a direct correlation between HDD and fuel use." However, even with 38-percent more HDDs, Massachusetts residential natural gas customers consumed only 7 percent more natural gas per household than the national average. By comparison, in the same year, Connecticut experienced 30-percent more HDDs than the national average, and its residents consumed 17 percent more natural gas on a per residential customer basis. While Massachusetts generally experiences more HDDs than the U.S. average, the available data indicate that the weather has far less influence on its residential natural gas use than in neighboring states. In fact, the EIA data indicate that less than half (44 percent) of Massachusetts homes rely on natural gas for space heating. Massachusetts ranks 25th highest in natural gas use per residential customer, and 15th highest in total gas consumed by residences. These factors suggest that energy efficiency, among other factors, results in Massachusetts residents using natural gas much less intensively than states with similar climates.

B. Massachusetts Has Higher Gas Rates Than the Nation as a Whole

DOE agrees with Massachusetts in that the natural gas rates seen by consumers are higher than the U.S. average. Higher gas rates are, in part, responsible for Massachusetts ranking 9th highest in natural gas expenditures per residential customer. DOE compared the citygate prices, which track the price of the natural gas at the point which a distributing gas utility receives gas from a natural gas pipeline company or transmission system, to the residential prices published by EIA. For this comparison, DOE used a time series of data from EIA spanning January 2010 to June 2010. While DOE found there was only a 3 percent increase in the citygate price of natural gas supplied to Massachusetts as compared to the national average, the residential prices over the same period were 30 percent higher than the national average. In addition, Massachusetts ranked 10th highest in 2008 in percentage markup in residential natural gas rates in the U.S. at 67 percent, compared to the U.S. average of 51 percent. While DOE is unable to point to a specific cause for these pricing differences, these data suggest that factors (such as taxes and related surcharges) rather than natural gas prices alone, likely play a role in affecting the prices consumers pay for natural gas in Massachusetts. (Natural gas pricing data from EIA are available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm.*)

C. Massachusetts Residential Heating Loads Compete With Power Plant Loads

While residential heating loads in Massachusetts compete with current power plant loads, this fact is mitigated by the fact that 44 percent of Massachusetts homes are heated using natural gas (compared to over 51 percent for the Nation as a whole). Approximately 40 percent of the electricity used in Massachusetts is generated from natural gas (compared to only 17 percent for the Nation); however, the volume of natural gas used in Massachusetts to generate this electricity ranks the State as the 12th highest in volume. Furthermore, three of the Nation's ten liquefied natural gas (LNG) terminals are located in Massachusetts, which bolsters the Commonwealth's ability to supply natural gas relative to other areas of the country. (*See* the EIA State Energy Profiles at *http://www.eia.gov/state/state_energy_profiles.cfm?sid=MA* and natural gas consumption data *http://www.eia.gov/dnav/ng/ng_cons_sum_dcu_nus_m.htm.*)

D. The High Percentage of Rental Housing Creates Market Barriers

While Massachusetts has a significant percentage of rental housing, rental houses are smaller (apartments) and require less fuel on a per unit basis. EIA data from 2005 (RECS 2005) suggest that multifamily housing units in New England that rely on natural gas furnaces for heating purposes consumed 22 percent less natural gas than the average for all natural gas furnace-equipped houses in New England. Furthermore, renters in multifamily housing in the U.S. used 22 percent less natural gas for space heating per unit in 2005 than did owners. These facts indicate that multifamily units, which comprise the majority of the rental market, use significantly less natural gas per unit. Consequently, DOE believes the available data seem to show that renters spend less annually on natural gas and would be less impacted by a 90-percent AFUE standard than residents who own their homes. Consequently, renters are likely to see smaller benefits from the granting of the waiver than those projected by Massachusetts.

E. Massachusetts Has a Unique Set of Statutes and Policies Promoting Increased Energy Efficiency and Reductions in Greenhouse Gas Emissions

DOE recognizes that Massachusetts may have certain self-imposed legal requirements to improve energy efficiency and reduce greenhouse gas emissions. The imposition of these requirements, however, does not create circumstances that would otherwise enable Massachusetts to demonstrate that it faces unusual and compelling interests that would justify a waiver from Federal preemption. As DOE indicated previously, the types of interests of most relevance under the statute are those that are of a substantially different nature or magnitude and that make regulation preferable to other measures when considering the costs, benefits, burdens and reliability of the projected energy savings. (42 U.S.C. 6297(d)(1)(C)) State legal requirements to improve energy efficiency and reduce greenhouse gas emissions, which any State could impose on itself, do not satisfy these criteria.

DOE does not make this decision lightly. Were DOE to make its decision based on these circumstances, any State could conceivably pass legislation that would impose stringent energy efficiency requirements and argue that it faced unusual and compelling circumstances. Such an outcome would undermine the general purpose behind a broad Federal regulatory framework for energy efficiency standards. *See Geier* v. *American Honda Motor Company,* 529 U.S. 861, 870 (2000) (declining to apply savings clauses where doing so would upset careful regulatory schemes established by Federal law). Accordingly, in order to give meaning to the authority granted by Congress to permit a waiver from preemption to individual States, the circumstances faced by a given State must be sufficiently unusual and compelling as to warrant an exception from the regulatory scheme developed under Federal law.

F. Potential Impacts on Manufacturers

DOE examined the potential impacts on manufacturers if the Massachusetts petition were granted. Massachusetts argued that there will be no impact to the furnace manufacturing industry doing business in Massachusetts. AHRI points out that 80 percent of the average annual residential gas furnace shipments going to the state of Massachusetts were already at or above 90-percent AFUE. (AHRI, No. 19 at p. 5) Using the voluntary measures already in place, these numbers point to the ability of manufacturers to readily produce, market, and sell residential gas furnaces in Massachusetts that satisfy the 90-percent AFUE level that the Commonwealth seeks to make mandatory. This situation suggests that

rather than having an adverse impact on the industry, applying a higher level may have little or no impact on the industry's ability to manufacture and sell its furnaces in Massachusetts. These numbers are consistent with national data, which show increasing national shipments of high efficiency furnaces. (See DOE's shipments model from the 2007 rulemaking Chapter 9 of the final rule technical support document) at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/fb_fr_tsd/chapter_9.pdf.*) These data are also supported by Federal ENERGY STAR program data confirming that high efficiency furnaces are readily available in the market. (*See* the ENERGY STAR product list for residential furnaces at *http://downloads.energystar.gov/bi/qplist/gas_furnaces_prod_list.pdf.*) Thus, collectively, these data demonstrate that manufacturers of non-weatherized natural gas furnaces are already capable of producing at a level to meet the demands of the Massachusetts housing market.

After evaluating the arguments raised by AHRI and the information provided, DOE does not believe that AHRI has sufficiently demonstrated under the statute that there is likely to be an adverse impact on the industry. Based on the slim evidence provided by the commenters opposing the petition, neither commenter provided sufficiently useful evidence in support of such a finding. Accordingly, although DOE is declining to grant a waiver in this instance, the information provided by these groups, in DOE's view, indicates that it is unlikely that an adverse impact on the industry would result if such a waiver were granted.

G. Potential Impacts on Consumers From Installation Issues

AGA explained that moving to a mandatory 90-percent AFUE level would require substantial changes to existing homes in order to properly install high-efficiency furnaces into homes. It noted that in order to accommodate the positive pressure characteristics found in typical high-efficiency furnaces, many structures would need to be modified—for example, the chimney may need relining to accommodate the gas water heater that would need to be installed to work in conjunction with the furnace. Additionally, a given structure may need a dedicated vent to discharge by-products of combustion away from the furnace. These changes would be likely to raise the installation costs of these products and may, in AGA's view, significantly impact manufacturers' sales. (AGA, No. 12 at pp. 2)

DOE agrees with AGA that additional consideration should be given to any potential impacts of existing residences as a result of installing condensing furnaces, especially in cases where safety issues could arise. DOE plans to further evaluate these issues in the existing furnace energy conservation standards rulemaking and believes that venue is the more appropriate one in which to address the variety of installations that may need to be modified to accommodate a condensing furnace in homes across the U.S.

H. Current Energy Conservation Standards Rulemaking and the Consensus Agreement

On January 26, 2010, AHRI, American Council for an Energy Efficient Economy (ACEEE), Alliance to Save Energy (ASE), ASAP, Natural Resources Defense Council (NRDC), and NEEP submitted a joint comment (hereafter referred to as the Joint Comment) to DOE recommending minimum energy conservation standards for residential central air conditioners, heat pumps, and furnaces. (Docket Number EE–2009–BT–STD–0022, AHRI, ACEEE, ASE, ASAP, NRDC, and NEEP, the Joint Comment, No. 1 at pp. 1–33) In describing the negotiating process that led to these recommended standards, the Joint Comment explains that the original consensus agreement was completed on October 13, 2009 and had 15 signatories, including AHRI, ACEEE, ASE, NRDC, ASAP, NEEP, Northwest Power and Conservation Council (NPCC), California Energy Commission (CEC), Bard Manufacturing Company Inc., Carrier Residential and Light Commercial Systems, Goodman Global Inc., Lennox Residential, Mitsubishi Electric & Electronics USA, National Comfort Products, and Trane Residential.

The Joint Comment recommends standards that divide the nation into two regions for residential furnaces based on the population-weighted number of heating degree days (HDD) of each state. States with 5000 HDDs or more are considered as part of the northern region, while states with less than 5000 HDDs are considered part of the southern region. The Joint Comment further recommends a 90-percent AFUE standard for the northern region, which includes the Commonwealth of Massachusetts, with a compliance date of May 1, 2013 for non-weatherized natural gas furnaces.

DOE notes that it is currently conducting a rulemaking to consider amending the energy conservation standards for residential furnaces. While DOE is examining a variety of options for consideration, including the levels recommended by the Joint Comments, the agency has not yet decided which set of options it plans to propose. Among the options that the agency is considering is the possible exercise of DOE's recently granted statutory authority to develop and implement geographically-based regional standards. See EISA 2007, sec. 306(a). The agency notes, however, that, when comparing the potential benefits to Massachusetts that would be likely to flow from the adoption of the levels recommended by the Joint Comments against the potential benefits from granting the petition, DOE believes that any additional benefits from granting the petition are likely to be small. Specifically, if DOE were to grant the waiver, the earliest compliance date under the waiver would be October 2013, compared to the May 2013 compliance date prescribed under the consensus agreement. The full consensus agreement can be found at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_framework_joint stakeholdercomments.pdf.* A potential Federal standard for the northern regions of 90-percent AFUE through adoption of the consensus agreement will provide slightly more energy savings (*i.e.,* an estimated 0.000002 quads) as compared to granting the waiver. The small energy savings difference can be attributed to the small heating energy use over the period spanning May to October, which accounts for only 7% of the annual heating energy use in Massachusetts. Consequently, given the on-going rulemaking, DOE believes that addressing this issue in one collective rulemaking action, rather than on a piece-meal basis, would be more likely to offer a comprehensive solution should DOE decide to adopt a regionally-based approach.

V. Conclusion

Taking into account all of the factors discussed above, DOE is declining to grant the Commonwealth's request. DOE also emphasizes that it will give consideration to those levels proposed in the consensus agreement presented by industry and environmental advocacy groups. These levels are currently being evaluated within the context of the agency's rulemaking to address standards for furnaces. See *http://www1.eere.energy.gov/buildings/appliance_standards/residential/furnaces_nopm_rulemaking_analysis.html.*

VI. Denial

In light of the reasons noted above, and consistent with the requirements under EPCA, DOE is denying the Commonwealth's petition for a waiver from Federal preemption.

VII. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of this notice of denial.

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–25324 Filed 10–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Draft Basis for Determination Under Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) for Closure of the F–Tank Farm at the Savannah River Site

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the "Draft Basis for Section 3116 Determination for Closure of the F–Tank Farm at the Savannah River Site" (Draft FTF 3116 Basis Document) for public review and comment. DOE prepared the Draft FTF 3116 Basis Document pursuant to Section 3116(a) of the NDAA, which provides that the Secretary of Energy may, in consultation with the U.S. Nuclear Regulatory Commission (NRC), determine that certain waste from reprocessing of spent nuclear fuel is not high-level waste if the provisions set forth in Section 3116(a) are satisfied. To make this determination, the Secretary of Energy must determine that the waste in the FTF: (1) Does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste; (2) has had highly radioactive radionuclides removed to the maximum extent practical; and (3)(A) does not exceed concentration limits for Class C low-level waste and will be disposed of in compliance with the performance objectives in 10 CFR Part 61, Subpart C and pursuant to a State approved closure plan or State-issued permit; or (3)(B) exceeds concentration limits for Class C low-level waste but will be disposed of in compliance with the performance objectives of 10 CFR Part 61, Subpart C; pursuant to a State-approved closure plan or State-issued permit; and pursuant to plans developed by DOE in consultation with the NRC. Although not required by the NDAA, DOE is making the Draft FTF 3116 Basis Document available for public review and comment.

DATES: The comment period will end on January 7, 2011. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The Draft Basis for Determination is available on the Internet at *http://sro.srs.gov/f_htankfarmsdocuments.htm,* and is publicly available for review at the following locations:

District of Columbia

U.S. Department of Energy, Freedom of Information Act Public Reading Room, 1000 Independence Avenue, SW., Room 1G–033, Washington, DC 20585, (202) 586–5955.

South Carolina

University of South Carolina–Aiken, Gregg-Graniteville Library, 471 University Parkway, Aiken, SC 29801, (803) 641–3320.

Written comments on the Draft FTF Section 3116 Basis Document may be submitted by U.S. mail to the following address: Ms. Sherri Ross, DOE–SR, Building 704–S, Room 43, U.S. Department of Energy, Savannah River Operations Office, Aiken, SC 29802 (ATTN: F–Tank Farm Draft Basis).

Alternatively, comments may also be filed electronically by e-mail to *sherri.ross@srs.gov*, or by Fax at (803) 208–7414.

SUPPLEMENTARY INFORMATION: The FTF is a 22-acre site, located at the Savannah River Site near Aiken, South Carolina. The FTF consists of 22 underground radioactive waste storage tanks and supporting ancillary structures. Two of those waste tanks, Tanks 17 and 20 were cleaned and operationally closed in 1997, prior to enactment of NDAA Section 3116. Accordingly, Tanks 17 and 20 are not within the scope of this Draft FTF Section 3116 Basis Document. The major FTF ancillary structures are two evaporator systems, transfer lines, six diversion boxes, one catch tank, a concentrate transfer system, three pump pits, three pump tanks and eight valve boxes. There are three waste tank types in FTF with operating capacities ranging from 750,000 gallons (Type I tanks) to 1,300,000 gallons (Type III/IIIA and Type IV tanks). The waste tanks have varying degrees of secondary containment and in-tank structural features such as cooling coils and columns. All FTF waste tanks are constructed of carbon steel. The FTF was constructed to receive waste generated by various SRS production, processing and laboratory facilities.

DOE has initiated waste removal and cleaning of tanks and ancillary structures in the FTF using a process that includes removing bulk waste from tanks and ancillary structures and then deploying tested technologies to removing the majority of the remaining waste. After completing cleaning operations, a small amount of residual radioactive waste will remain in the tanks, ancillary equipment and piping. DOE plans to stabilize the residuals in the tanks and certain ancillary structures with grout. Tank waste storage and removal operations in the FTF are governed by a South Carolina Department of Health and Environmental Control (SCDHEC) industrial wastewater operating permit. Removal of tanks from service and stabilization of the FTF waste tanks and ancillary structures will be carried out pursuant to a State-approved closure plan, the *Industrial Wastewater General Closure Plan for F–Area Waste Tank Systems* (GCP). Specific Closure Modules for each tank or ancillary structure or groupings of tanks and ancillary structures will be developed and submitted to SCDHEC for approval. Subsequent to SCDHEC's approval of the specific and final closure configuration documentation and grouting, the tank/system will be removed from the State's industrial wastewater permit. This Draft FTF Section 3116 Basis Document applies to stabilized residuals in the waste tanks and ancillary structures, the waste tanks, and the ancillary structures in the FTF at the time of closure.

The Draft FTF Section 3116 Basis Document is being issued in draft form to facilitate public review and comment. DOE anticipates it will take approximately 9 months to complete consultation with the NRC, before the Secretary makes a potential determination under Section 3116 (a) of the NDAA.

Issued in Washington, DC, on September 30, 2010.

Frank Marcinowski,

Deputy Assistant Secretary for Technical and Regulatory Support.

[FR Doc. 2010–25341 Filed 10–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: Office of Nonproliferation and International Security, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the Government of the United States and the European Atomic Energy Community (EURATOM) and the Agreement for Cooperation Between the United States and Japan Concerning Peaceful Uses of Nuclear Energy.

This subsequent arrangement concerns the retransfer of 573 g of U.S.-origin uranium (2 g U–235) and 10 g of plutonium, contained in 50 irradiated fuel rod segments, from Studsvik Nuclear AB, Nyköping, Sweden, to the Japan Atomic Energy Agency (JAEA), Tokai-Mura, Japan. The material, which is currently located at Studsvik, will be transferred to the JAEA Research Reactor for ramp test and post-irradiation examination. These rod segments have been irradiated in various European power plants under project ALPSII, and collected and prepared by the Hot Cell Laboratory at Studsvik. Upon completion of the analysis, the material will remain in Japan.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than October 22, 2010.

Dated: October 1, 2010.

For the Department of Energy.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. 2010–25307 Filed 10–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13812–000]

Osprey IV, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 30, 2010.

On July 12, 2010, Osprey IV, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the #1 Pond Dam Project to be located at the #1 Pond Dam, on the Mousam River, in York County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 14-foot-high, 245-foot-long #1 Pond Dam; (2) an existing 100-acre impoundment with a normal water surface elevation of 279 feet National Geodetic Vertical Datum; (3) a new 6-foot-diameter siphon intake; (4) a new 6-foot-diameter, 706-foot-long buried concrete penstock; (5) a new approximately 300-square-foot powerhouse containing two new turbines and generators with a total installed capacity of 850 kilowatts; (6) a new tailrace; (7) a new approximately 100-foot-long, 7.2 or 12.47-kilovolt transmission line; and (8) appurtenant facilities. The project would have an estimated annual generation of 5,500 megawatt-hours.

Applicant Contact: Hoon Won, 275 River Road, P.O. Box 202, Woolwich, ME 04579; (207) 443–9747.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13812) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25253 Filed 10–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13811–000]

Osprey V, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 30, 2010.

On July 12, 2010, Osprey V, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Emery Mills Dam Project to be located at the Emery Mills Dam, on the Mousam River, in York County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 29.3-foot-high, 210-foot-long Emery Mills Dam; (2) an existing 1,005-acre impoundment with a normal water surface elevation of 482 feet National Geodetic Vertical Datum; (3) an existing 8-foot-diameter, 28-foot-long drainage conduit; (4) a new in-line bulb turbine and generator with an installed capacity of 450 kilowatts; (5) a new approximately 700-foot-long, 7.2 or

12.47-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 3,000 megawatt-hours.

Applicant Contact: Hoon Won, 275 River Road, P.O. Box 202, Woolwich, ME 04579; (207) 443–9747.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13811) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25254 Filed 10–6–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–028]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Application for Interim Waiver From the Department of Energy Residential Central Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Daikin AC (Americas), Inc. (Daikin). The petition for waiver (hereafter "Daikin Petition") requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to residential central air conditioners and heat pumps. The waiver request is specific to the Daikin Altherma air-to-water heat pump with integrated domestic water heating. Through this document, DOE: Solicits comments, data, and information with respect to the Daikin Petition; and grants an interim waiver to Daikin from the applicable DOE test procedure for the subject residential central air conditioning heat pump.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than November 8, 2010.

ADDRESSES: You may submit comments, identified by case number "CAC–028," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include "CAC–028" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received should include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 430.27(d). The contact information for the petitioner is: Mr. Lee Smith, Assistant Vice President—Residential Solutions, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, Texas 75006.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building,

1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act, as amended ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309). Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for residential central air conditioners is contained in 10 CFR part 430, subpart B, appendix M.

The regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2)). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additionally 180 days, if necessary. (10 CFR 430.27(h)).

II. Petition for Waiver

On August 27, 2009, Daikin filed an application for interim waiver and a petition for waiver for its Altherma products from the test procedures at 10 CFR part 430, subpart B, appendix M, which apply to residential central air conditioners and heat pumps. DOE granted Daikin an interim waiver and published its petition for waiver on December 15, 2009. (74 FR 66319) DOE published a **Federal Register** notice granting Daikin's waiver on June 18, 2010. (75 FR 34731) On July 29, 2010, Daikin filed the instant petition for waiver. The basic models covered by this petition differ from the models covered by the previous Altherma waiver only in that these models have different capacities in the same capacity range.

The Daikin Altherma system consists of an air-to-water heat pump providing hydronic heating and cooling with the added ability to provide domestic hot water functions. It operates either as a split system with the compressor unit outside and the hydronic components in an inside unit, or as a single package configuration where all system components are combined in a single outdoor unit. In both the single package and the split system configurations, the system can include a domestic hot water supply tank that is located inside the unit.

The test method for central air conditioners and heat pumps contained in 10 CFR subpart B, appendix M does not include any provisions to account for the operational characteristics of an air-to-water heat pump with an integrated domestic hot water component. The domestic hot water portion of the Daikin Altherma system is an integral component of the system, and it cannot operate independently. The applicable DOE test method does not account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water portion of the system, nor does it have any provisions for air-to-water heat pumps. Daikin proposes using the European standards that are used for testing and rating the Altherma products in Europe. The test procedures are EN 14511 "Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling" and EN 15316 "Heating systems in buildings—Methods for calculation of system energy requirements and system efficiencies". Daikin did not petition for including the performance of the combined cooling and hot water functions in the waiver.

III. Application for Interim Waiver

In addition to its petition for waiver submitted on July 29, 2010, Daikin submitted to DOE an application for interim waiver. DOE determined that Daikin's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Daikin might experience absent a favorable determination on its application for interim waiver. However, DOE understands that absent an interim waiver, Daikin's products would not otherwise be tested and rated for energy consumption on a comparable basis with equivalent products where DOE previously granted waivers. Furthermore, DOE has determined that it appears likely that Daikin's Petition for Waiver will be granted and that is desirable for public policy reasons to grant Daikin immediate relief pending a determination on the petition for waiver. In those instances where the likely success of the petition for waiver has been demonstrated, based upon DOE having granted a waiver for similar product designs, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. DOE has previously granted waivers to Carrier (55 FR 13607, April 11, 1990) and Nordyne (61 FR 11395, March 20, 1996) for comparable heat pumps with integrated domestic water heating. DOE granted Daikin an interim waiver and published Daikin's petition for waiver for nearly identical Altherma products on December 15, 2009. (74 FR 66319). DOE granted Daikin's waiver on June 18, 2010. (75 FR 34731).

Thus, DOE has determined that it is likely that Daikin's petition for waiver will be granted for its new Altherma models. Therefore, *it is ordered that:*

The Application for interim waiver filed by Daikin is hereby granted for Daikin's Altherma heat pumps, subject to the specifications and conditions below.

1. Daikin shall not be required to test or rate its Altherma heat pump products on the basis of the test procedure under 10 CFR part 430 subpart B, appendix M.

2. Daikin shall be required to test and rate its Altherma heat pump products according to the alternate test procedure

as set forth in section IV, "Alternate test procedure."

The interim waiver applies to the following basic model groups:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 1.5-Ton or 6kW)	ERLQ018BAVJU	ERLQ006BAV3
	OD Unit (Split, 2.0-Ton or 7kW)	ERLQ024BAVJU	ERLQ007BAV3
	OD Unit (Split, 2.5-Ton or 8kW)	ERLQ030BAVJU	ERLQ008BAV3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH030BA3VJU	EKHBH008BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH030BA6VJU	EKHBH008BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX030BA3VJU	EKHBX008BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX030BA6VJU	EKHBX008BA6V3
DHW	Hot Water Tank (50 Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80 Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP
Type	Description	U.S. Model Name	E.U. Equivalent Model Name
Split Altherma	OD Unit (Split, 1.5-Ton or 6kW)	ERLQ018BAVJU	ERLQ006BAV3
Hydrobox	OD Unit (Split, 2.0-Ton or 7kW)	ERLQ024BAVJU	ERLQ007BAV3
	OD Unit (Split, 2.5-Ton or 8kW)	ERLQ030BAVJU	ERLQ008BAV3
	HB (Heating Only, BUH 3kW)	EKHBH030BA3VJU	EKHBH008BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH030BA6VJU	EKHBH008BA6V3

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

DOE is not aware of an alternate test procedure that is applicable within the United States to test and rate the performance of air-to-water heat pump systems that provide heating and that can also perform domestic hot water and cooling functions such as Daikin's Altherma. However, Daikin Europe N.V. (DENV) is currently marketing Daikin Altherma systems in Europe, using European Standards. Daikin shall be required to test and rate its Altherma heat pumps as DOE ordered in its June 18, 2010, Daikin Altherma decision and order using these European Standards as follows:

(1) Full Load Performance and Efficiency—The Daikin Altherma shall be tested and rated according to European Standard EN 14511, "Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling," except that the test operating and test condition tolerances in Tables 7, 13, and 15 of the DOE test procedure in 10 CFR part 430, subpart B, Appendix M shall apply. Daikin shall rate the Altherma full load heating and cooling performance (not including the DHW contribution) using coefficient of performance (COP) and energy efficiency ratio (EER).

(2) The European Standard EN 14511 applies only to testing for COP and EER and does not supersede any DOE requirements in 10 CFR 430.24.

Daikin may make representations about the energy use of its Altherma heat pump products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above, and such representations fairly disclose the results of such testing. Daikin may not make representations of annual operating cost, or any parameters other than COP and EER for the Altherma's space heating and space cooling functions, respectively.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Daikin petition for waiver from the test procedures applicable to Daikin's Altherma heat pump products, and for the reasons articulated above, DOE grants Daikin an interim waiver from those procedures. As part of this notice, DOE is publishing Daikin's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its interim waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE prescribes the European test procedure described above to measure the full load COP and EER to characterize the Altherma's heating and cooling performance.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 430.27(d), any person submitting written comments must also send a copy of such comments to the petitioner, whose contact information is included in the section entitled **ADDRESSES** section above.

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

July 29, 2010

Ms. Catherine Zoi
Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585–0121

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Zoi: Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 C.F.R. § 430.27(a)(1) (2009) for a waiver of the test procedures applicable to central air conditioners and heat pumps, as established in 10 C.F.R. Part 430, Subpart B, Appendix M (2009),[1] for the Daikin Altherma system, an air to water heat pump system that performs a hydronic heating function but can also be configured to serve domestic hot water requirements and also cooling as necessary. The particular systems and the specific models for which DACA requests this waiver in the Daikin Altherma product class are listed below in this Petition. DACA seeks a waiver from the existing central air conditioner and central air conditioning heat

[1] Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 3 of this petition.

pump test procedure for the Daikin Altherma line of air to water heat pumps because the integrated water-heating feature causes the prescribed test procedures to evaluate the Daikin Altherma in a manner that is unrepresentative of the system's true energy consumption characteristics. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 C.F.R. § 430.27(a)(2) (2009).

General Characteristics of Daikin Altherma

The Daikin Altherma system has the following characteristics and applications:

• Daikin Altherma is an air to water heat pump that performs a space heating function and can be configured to provide Domestic Hot Water and additionally include the provision for space cooling.

• Daikin Altherma can be installed as a two-unit split system consisting of an outdoor compressor unit and an indoor unit or "Hydrobox" containing the hydronic parts. Alternatively, the system can be installed as a monobloc system with a single outdoor unit combining the compressor and hydronic parts.

• The split system includes R–410A refrigerant piping between the outdoor unit and the Hydrobox, and water piping between the indoor unit and the indoor heating appliances. The monobloc system includes water piping between the outdoor unit and the heat emitters/DHW tank.

• Both the Daikin Altherma monobloc system and split system can be combined with under floor heating, fan coil units, and low temperature radiators.

• Depending on the model and the conditions, a Daikin Altherma air/water heat pump delivers between 3 and 5 kWh of usable heat for every kWh of electricity used.

• The Daikin Altherma system heat pump compressor incorporates inverter technology, with an integrated frequency-converter that adjusts the rotational speed of the compressor to meet the heating or cooling demand. Therefore, the system seldom operates at full capacity.

• The domestic hot water tank includes a supplemental electrical heating element to boost the Domestic Hot Water temperature if necessary.

• The Altherma system also can be tied into a solar thermal collector system that supports the production of domestic hot water.

• The Hydrobox for the split system and contained in the outdoor unit in the monobloc system both include a built-in electric back-up heater to provide additional heating during extremely cold weather.

Particular Basic Models for Which DACA Requests a Waiver

DACA requests a waiver from the test procedures for the following basic model groups:

Type	Description	U.S. model name	E.U. equivalent model name
Split Altherma	OD Unit (Split, 1.5-Ton or 6kW)	ERLQ018BAVJU	ERLQ006BAV3
	OD Unit (Split, 2.0-Ton or 7kW)	ERLQ024BAVJU	ERLQ007BAV3
	OD Unit (Split, 2.5-Ton or 8kW)	ERLQ030BAVJU	ERLQ008BAV3
Hydrobox	HB (Heating Only, BUH 3kW)	EKHBH030BA3VJU	EKHBH008BA3V3
	HB (Heating Only, BUH 6kW)	EKHBH030BA6VJU	EKHBH008BA6V3
	HB (Heat Pump, BUH 3kW)	EKHBX030BA3VJU	EKHBX008BA3V3
	HB (Heat Pump, BUH 6kW)	EKHBX030BA6VJU	EKHBX008BA6V3
DHW	Hot Water Tank (50 Gallon or 200L)	EKHWS050BA3VJU	EKHWS200B3V3
	Hot Water Tank (80 Gallon or 300L)	EKHWS080BA3VJU	EKHWS300B3V3
Options	Digital I/O PCB	EKRP1HBAAU	EKRP1HBAA
	Solar Pump Kit	EKSOLHWBAVJU	EKSOLHAV1
	Wired Room Thermostat	EKRTWA	EKRTWA
	Condensate Kit	EKHBDP	EKHBDP

Daikin Altherma System Characteristics Constituting the Grounds for DACA's Petition

The Daikin Altherma system consists of an air to water heat pump providing hydronic heating with the added availability to provide domestic hot water and cooling functions that operates either as a split system with the compressor unit outside and the hydronic components in an inside unit, or as a monobloc configuration where all system components are combined in a single outdoor unit. In both the monobloc and the split system configurations, the system can include a domestic hot water supply tank that is located inside.

The test method for central air conditioners and heat pumps contained in 10 C.F.R. Part 430, Subpart B, Appendix M does not include any provision to account for the operation characteristics of an Air to Water heat pump of the function and energy consumption characteristics of a domestic hot water component that is integrated into an air to water heat pump system. The domestic hot water tank portion of the Daikin Altherma system is a regular element of the complete system, and it cannot operate independent of the rest of the system. Therefore, the currently applicable test method does not accurately account for the Daikin Altherma system's energy performance because the test method does not accurately evaluate the integrated domestic hot water portion of the system.

Daikin Altherma products share the design characteristics and basic features of three other products for which DOE has previously granted waivers. One product was Carrier's Hydrotech system,[2] and the other product was Nordyne's Powermiser system.[3] The Carrier and Nordyne systems that previously received waivers from DOE were both air source heat pump systems providing both heating and cooling functions. Both of these systems also included a domestic hot water supply tank as an integral part of the system. More recently, DOE granted an interim waiver for another series of Altherma models, which share the same design features as the equipment covered by this waiver petition, but which have different capacities.[4] The same energy consumption calculation constraints apply equally to all of these products.

DOE stated the following in its March 20, 1996 approval notice issuing the Nordyne: "DOE agrees [with Nordyne] that, using the current central air conditioning test procedure, the company cannot account for the energy savings associated with integrated water heating." 61 Fed. Reg. at 11,396.

Based on this conclusion, the DOE granted the Nordyne Powermiser system waiver petition (Id.), and based on a similar analysis DOE granted the Carrier Hydrotech system waiver petition. (55 Fed. Reg. at 13,607).

Based on the same rationale, the DOE granted Daikin's previous Altherma interim waiver request (74 Fed. Reg. at 66,320).

The rationale for DACA's Petition for a waiver from testing standards for the Daikin Altherma system is identical to Daikin's previous Altherma Petition, and is virtually identical to the basis for the other manufacturers' previous requests for waivers noted above. DACA requests that DOE apply the same rationale to DACA's Petition for waiver for the Daikin Altherma system that DOE used to grant the previous Daikin Altherma interim waiver petition, and the Carrier and Nordyne waiver petitions for their similar systems.

Specific Testing Requirements Sought To Be Waived

The test procedures from which DACA is requesting a waiver are contained in 10 C.F.R. Part 430, Subpart B, Appendix M, which is incorporated by reference into 10 C.F.R. § 430.23(m), and which is applicable to central air conditioner and heat pump equipment with a capacity of <65,000 Btu/hr.

Detailed Discussion of Need for Requested Waiver

Although the capacity of the Daikin Altherma product class is within the scope of 10 C.F.R. Part 430, Subpart B, Appendix M, the design characteristics of the Daikin

[2] 55 Fed. Reg. 13,607 (April 11, 1990).

[3] 61 Fed. Reg. 11,395 (March 20, 1996).

[4] 74 Fed. Reg. 66,319 (December 19, 2009).

Altherma product class prevent testing of the system according to the prescribed test procedures in a manner that represents the system's true energy consumption characteristics. Specifically, application of the existing prescribed test method does not define Air to Water Heat Pump operating characteristics and also cannot account for energy savings associated with the system's integrated water heating.

The absence of a waiver from the required testing procedure will restrict the availability to consumers in the United States of the Daikin Altherma system's energy savings benefits that result from integrating domestic hot water production into the system.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of no other manufacturers that currently produce products incorporating similar design characteristics to the Daikin Altherma system in the United States market.[5]

Alternative Test Procedures

To our knowledge, there is no alternative test procedure that is applicable within the United States to test accurately and to rate the performance of air to water heat pump systems that provide both heating and that can also serve domestic hot water and cooling functions such as Daikin Altherma. However, DACA's sister division, Daikin Europe N.V. (DENV) is currently marketing Daikin Altherma systems in Europe. To address the local EU requirements regarding testing and rating of the Daikin Altherma system, DENV has approached the matter in two ways as follows:

Full Load Performance and Efficiency:
Daikin Altherma is tested and rated to EN14511

Annual Performance and Efficiency:
Daikin Altherma is rated to EN15316

Standard EN14511, Air conditioners, liquid chilling packages and heat pumps with electrically driven compressors for space heating and cooling, is an internationally recognized standard that is used throughout Europe.

Standard EN14511 is published in 4 sections and clearly defines Terms and Conditions (–1), Test Conditions (–2), Test Methods (–3) and Requirements (–4). The overall scope of the standard is stated in EN14511–1:2004(E), Section 1, Scope, which states that the standard:

Specifies the terms and definitions for the rating and performance of air and water cooled air conditioners, liquid chilling packages, air-to-air, water-to-air, air-to-water and water-to-water heat pumps with electrically driven compressors when used for space heating and/or cooling. This European Standard does not specifically apply to heat pumps for sanitary hot water, although certain definitions can be applied to these.

Standard EN14511, which is attached, provides the full criteria to establish full load performance ratings for Air to Water Heat Pump Systems.

Standard EN15316, Heating systems in buildings—Method for calculation of system energy requirements and system efficiencies, is an internationally recognized standard that is also used throughout Europe.

The portion of the standard that is relevant to Daikin Altherma is Standard EN15316–4–2, which is attached. A brief conceptual summary of Standard EN15316–4–2 follows:

The Scope of Standard EN15316–1 (Section 1) states that this standard "specifies the structure for calculation of energy use for space heating systems and domestic hot water systems in buildings." The standard's calculation method enables the energy analysis of the various sub-systems of the heating system, "including control (emission, distribution, storage, generation), through determination of the system energy losses and the system performance factors. This performance analysis permits the comparison between sub-systems and makes it possible to monitor the impact of each sub-system on the energy performance of the building." Id.

Under Section 4.2 of the Standard EN15316–1, the calculation period is established to evaluate the annual energy use of the space heating and domestic hot water system.

Pursuant to Section 4.3 of the Standard, the calculation methods in the standard determine operating conditions, such as heat demand and water temperatures, and energy performance for given operating conditions, including system thermal losses and recoverable losses.

The full attached Standard EN15316–4–2 provides the full energy calculation method used under the standard for seasonal performance of space heating and an integrated domestic hot water system. No methodology exists for determining the seasonal performance of space cooling and an integrated domestic hot water system, as the air to water heat pump systems are primarily focused as being a "heating" solution. Cooling is deemed as an added optional benefit.

DACA aims to utilize the performance and efficiency characteristics of the Daikin Altherma system as tested and determined by the EN testing and rating standards, as an alternate rating method for Daikin Altherma in lieu of an applicable U.S. testing and rating standard being available at this time. This utilization specifically means that DACA would promote the following characteristics:

Full Load Heating Capacity and COP
(Per EN Std 14511—Test Conditions and Methods defined in section 2 and section 3 of std 14511 respectively).

Full Load Cooling Capacity and EER
(Per EN Std 14511—Test Conditions and Methods defined in section 2 and section 3 of std 14511 respectively).

Seasonal Performance Factor (SPF)
(Per EN15316–4–2—Full energy calculation method is defined).

No representation will be made to any Seasonal Performance Factor for the cooling operation.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 C.F.R. § 430.27(a)(2) for an interim waiver of the applicable test procedure requirements for the Daikin Altherma product class models listed above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that the test method contained in 10 C.F.R. Part 430, Subpart B, Appendix M can be accurately applied to the Daikin Altherma product class. As explained above in the DACA's Petition for Waiver, the design characteristics of the Daikin Altherma product class clearly prevent testing the Daikin Altherma system with the prescribed test procedures and obtaining a representative result of the system's true energy consumption characteristics.

The likelihood of DOE approving DACA's Petition for Waiver is supported by the DOE's history of approving previous waiver requests from other manufacturers for products that are similar to the Daikin Altherma product class, based on the same rationale offered by DACA in this Petition for Waiver.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its Daikin Altherma product class in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its production and marketing costs associated with introducing the Daikin Altherma product class into the United States market.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its January 7, 2008 approval of DACA's interim waiver for the VRV–WII product classes:

[I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for similar products design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

73 Fed. Reg. at 1215. The Daikin Altherma product class will provide superior comfort to the end user, and will incorporate state of the art technology such as variable speed compressors and a solar kit to enhance the energy efficiency performance of the integrated domestic hot water production system component. The Daikin Altherma product class will introduce technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we can bring the new highly energy efficient technology represented by the Daikin Altherma product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product.

[5] DACA believes that Carrier is no longer marketing its Hydrotech system for which DOE previously granted a waiver, and DACA believes that Nordyne is no longer marketing its Powermiser system for which DOE also previously granted a waiver.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

Conclusion

Daikin AC (Americas), Inc. respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for specified models of the Altherma system, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted a waiver to other products that were offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact me at 972–245–1510 or by email at: *Lee.smith@daikinac.com.*

Sincerely,

Lee Smith
Assistant Vice President—Residential Solutions
Daikin AC (Americas), Inc.
1645 Wallace Drive, Suite 110
Carrollton, Texas 75006
(Submitted in triplicate)

Encls: Copy of Daikin Altherma Brochure, Engineering Data, EN Testing & Rating Standards

[FR Doc. 2010–25302 Filed 10–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–004]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to Whirlpool Corporation From the Department of Energy Residential Dishwasher Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. DW–004) that grants to Whirlpool Corporation (Whirlpool) a waiver from the DOE dishwasher test procedure for certain basic models containing integrated or built-in water softeners. Under today's decision and order, Whirlpool shall be required to test and rate its dishwashers with integrated water softeners using an alternate test procedure that takes this technology into account when measuring energy and water consumption.

DATES: This Decision and Order is effective October 7, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 287–6111. E-mail: *Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants Whirlpool a waiver from the applicable residential dishwasher test procedure in 10 CFR part 430, subpart B, appendix C for certain basic models of dishwashers with built-in or integrated water softeners, provided that Whirlpool tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits Whirlpool from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Whirlpool Corporation (Case No. DW–004).

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." 42 U.S.C. 6291–6309. Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3). The test procedure for residential dishwashers, the subject of today's notice, is contained in 10 CFR part 430, subpart B, appendix C.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) the petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Whirlpool's Petition for Waiver: Assertions and Determinations

On March 16, 2010, Whirlpool filed a petition for waiver from the test procedure applicable to residential dishwashers set forth in 10 CFR Part 430, subpart B, appendix C. The products covered by the petition employ

integrated or built-in water softeners. Whirlpool asserted that the DOE test procedure does not account for the energy and water use incurred by water softener regeneration. Whirlpool's petition was published in the **Federal Register** on July 15, 2010. 75 FR 41167. DOE received one comment, from General Electric Appliances (GE), on the Whirlpool petition, discussed below.

Whirlpool claims that water softeners can prevent consumer behaviors that consume additional energy and water. Whirlpool asserts that a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and that consumers will have less reason to run their dishwasher through a clean-up cycle periodically. Further, Whirlpool claims that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener.

The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. According to Whirpool, including water use attributable to the regeneration operation in the measurement of water consumption during an individual energy test cycle could overstate water use by as much as 12 percent, and energy use by as much as 6 percent. In view of the small amount of water consumed during softener regeneration and the relative infrequency of the regeneration operation, Whirlpool requests approval to measure water consumption of its dishwashers equipped with water softeners without including the water consumed by the dishwasher during softener regeneration. This is the approach used in European Standard EN 50242, "Electric Dishwashers for Household Use—Methods for Measuring the Performance" (EN 50242), which Whirlpool recommends.

The current DOE test procedure only registers water consumption from softener regeneration in a small fraction of test runs, producing variable results. As a result, and using the information provided by Whirlpool, DOE has determined that test results may provide materially inaccurate comparative data. DOE has considered EN 50242 as an alternate test procedure. This standard excludes water use due to softener regeneration from its water use efficiency measure. Use of EN 50242 would provide repeatable results, but would slightly underestimate the energy and water use of these models. DOE notes that if water consumption of a regeneration operation is to be apportioned across all cycles of operation, then manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations that are not currently provided for or allowed by the test procedure. In its petition, Whirlpool estimated that, on average, 23 gallons/year of water and 4 kWh/year would be consumed in softener regeneration. These values are based on internal testing conducted by Whirlpool.

GE, in its comment on Whirlpool's petition, stated that if water consumption occurring during regeneration operations were excluded entirely, it could lead to ambiguity in the test procedure. GE recommended requiring an additive factor to overall annual energy and water consumption that captures representative energy and water use for softener regeneration. In the alternate test procedure DOE granted in July 2010 in response to Whirlpool's application for interim waiver, DOE added the constant values of 23 gallons/year of water and 4 kWh/year to the energy consumption measured by appendix C. These values were based on Whirlpool's internal testing. DOE is retaining these additive constants in its alternate test procedure. GE also stated that the test procedure could ensure that regeneration does not occur during the three runs required in the test cycle by specifying that the start of the DOE test should begin on a cycle immediately following a regeneration cycle. DOE agrees that this provision would help ensure repeatability of the test procedure, and is incorporating it into its alternate test procedure.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Whirlpool petition for waiver. The FTC staff did not have any objections to granting a waiver to Whirlpool.

IV. Conclusion

After careful consideration of all the material that was submitted by Whirlpool, the comment submitted by GE, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the Whirlpool Corporation (Case No. DW–004) is hereby granted as set forth in the paragraphs below.

(2) Whirlpool shall not be required to test or rate the following models on the basis of the current test procedures contained in 10 CFR part 430, subpart B, appendix C. Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3) below:

KitchenAid brand:

KUDE60SXSS
KUDS30SXSS

Kenmore brand:

14052K01
14053K01
14059K01
14062K01
14063K01
14069K01

(3) Whirlpool shall be required to test the products listed in paragraph (2) above according to the test procedures for dishwashers prescribed by DOE at 10 CFR part 430, appendix C, except that, for the Whirlpool products listed in paragraph (2) only:

In Section 4.1, *Test cycle,* add at the end, "The start of the DOE test should begin on a cycle immediately following a regeneration cycle."

In Section 4.3, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth below:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix. Where the regeneration of the water softener depends on demand and water hardness, and does not take place every cycle, Whirlpool shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption, but constant values of 23 gallons/year of water and 4 kWh/year of energy shall be added to the values measured by appendix C.

(4) Representations. Whirlpool may make representations about the energy use of its dishwashers containing integrated or built-in water softeners for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined above and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from

the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on September 30, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–25272 Filed 10–6–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0163; FRL–8848–1]

Aldicarb; Notice of Receipt of Request to Voluntarily Cancel a Pesticide Registration

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 a request by the registrant to voluntarily cancel all of the registrations for aldicarb products held by Bayer CropScience. The request asks for the deletion at various times of aldicarb use in or on citrus, cotton, dry beans, peanuts, potatoes, soybeans, sugar potatoes, sugar beets, and sweet potatoes. Because these uses constitute all the remaining uses of aldicarb, Bayer's request would result in the termination of the last aldicarb product registered for use in the United States. EPA intends to grant this request 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 request. If this request is granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been canceled 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 November 8, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0163, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0163. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: K. Avivah Jakob, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number: (703) 308–6467; e-mail address: *jakob.kathryn@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. What should I consider as I prepare my comments for EPA?

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

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

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. Background on the Receipt of Requests To Cancel and/or Amend Registrations To Delete Uses

This notice announces receipt by EPA of a request from the registrant Bayer CropScience LLP (Bayer) to voluntary cancel their remaining registration for aldicarb and to terminate all uses of aldicarb. Aldicarb is registered for use as a systemic insecticide and nematicide on the following agricultural crops: citrus, cotton, dry beans, peanuts, potatoes, soybeans, sugar beets, and sweet potatoes. Aldicarb products are not intended for sale to homeowners or for use in residential settings. To address dietary risks of concern identified in EPA's Revised Aggregate Dietary Risk Assessment of Aldicarb (August 4, 2010), Bayer has voluntary requested to cancel their existing FIFRA registration for Temik® 15G aldicarb end-use product, EPA Registration No. 264–330. EPA's revised risk assessment can be found by going to the aldicarb reregistration status Web page at: *http://www.epa.gov/pesticides/reregistration/aldicarb/*. Bayer requests pursuant to section 6(f) of FIFRA, that EPA cancel the pesticide uses for citrus and potatoes effective immediately. Bayer also requests cancellation of the remaining pesticide uses (cotton, dry beans, peanuts, soybeans, sugar beets, and sweet potatoes) effective as of December 31, 2014. The action on the registrant's request will terminate the last aldicarb pesticide products registered in the United States. For further information please refer to the Memorandum of Agreement Between the Environmental Protection Agency and Bayer CropScience, Regarding the Registration of Pesticide Product Containing Aldicarb, signed August 16, 2010, and Bayer's Request to Voluntarily Cancel Use on Citrus and Potatoes (August 11, 2010) which are located in the docket and on the aldicarb reregistration status Web page at: *https://www.regulations.gov* and *http://www.epa.gov/pesticides/reregistration/aldicarb/*. In addition, Bayer has requested that EPA waive the 180-day comment period section 6(f) of FIFRA otherwise provides for requests to cancel minor uses.

III. What action is the agency taking?

This notice announces receipt by EPA of a request from Bayer CropScience to cancel all remaining aldicarb product registrations. The affected product and the address of the registrant making the request are identified in Tables 1 and 2 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling the affected registration.

TABLE 1—ALDICARB PRODUCT REGISTRATION WITH PENDING REQUEST FOR CANCELLATION

Registration No.	Product name	Company
264–330	TEMIK® brand 15G	Bayer CropScience LLC.

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2—REGISTRANT REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company name and address
264	Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709.

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**.

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, FIFRA section 6(f)(1)(C) 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 registrant request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The aldicarb registrant has requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed requests.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the request for voluntary cancellation of the remaining aldicarb product registration and all aldicarb uses is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to this request for cancellation of a product registration EPA currently intends to include the following provisions for the treatment of any existing stocks of the

product listed in Table 1 of Unit III. Existing stocks of aldicarb may be sold by retailers, and used on citrus and potatoes until December 31, 2011.

Sale and distribution of aldicarb end-use product for use on cotton, dry beans, peanuts, soybeans, sugar beets, and sweet potatoes will be permitted until December 31, 2016. Existing stocks of any end-use product on these remaining uses may be used until August 31, 2018.

List of Subjects

Environmental protection, Pesticides and pests, Aldicarb.

Dated: September 29, 2010.

Richard P. Keigwin, Jr,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–25128 Filed 10–6–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the Federal Register) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 27, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10293	Haven Trust Bank Florida	Ponte Vedra Beach	FL	9/24/2010
10294	North County Bank	Arlington	WA	9/24/2010

[FR Doc. 2010–25226 Filed 10–6–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2010–19]

Filing Dates for the New York Special Election in the 29th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: New York has scheduled a Special General Election on November 2, 2010, to fill the U.S. House seat in the 29th Congressional District vacated by Representative Eric J.J. Massa.

Committees required to file reports in connection with the Special General Election on November 2, 2010, shall file a 12-day Pre-General Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the New York Special General Election shall file a 12-day Pre-General Report on October 21, 2010, and a 30-day Post-General Report on December 2, 2010. (*See* chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in October 2010 and January 2011. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2010 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the New York Special General Election by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the New York Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the New York Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2010.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,000 during the special election reporting periods (*see* charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

CALENDAR OF REPORTING DATES FOR NEW YORK SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL (11/02/10) MUST FILE

Report	Close of books [1]	Reg./Cert & overnight mailing deadline	Filing deadline
Pre-General	10/13/10	10/18/10	10/21/10

CALENDAR OF REPORTING DATES FOR NEW YORK SPECIAL ELECTION COMMITTEES INVOLVED IN THE SPECIAL GENERAL (11/02/10) MUST FILE—Continued

Report	Close of books [1]	Reg./Cert & overnight mailing deadline	Filing deadline
Post-General	11/22/10	12/02/10	12/02/10
Year-End	12/31/10	01/31/11	01/31/11

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: October 1, 2010.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–25238 Filed 10–6–10; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10 a.m., Thursday, October 7, 2010.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Jayson Turner* v. *National Cement Company of California,* Docket No. WEST 2006–568–DM. (Issues include whether the administrative law judge's denial of a miner's discrimination complaint was legally correct and supported by substantial evidence.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 2010–25379 Filed 10–5–10; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 22, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Cecil R. Simmons, San Benito, Texas, individually; Cecil R. Simmons, San Benito, Texas, Leonard P. Simmons, San Benito, Texas, Anita Simmons Boswell, Harlingen, Texas, Michael Scott, Raymondville, Texas, Wilson B. Fry, San Benito, Texas, Francisco Loya, Harlingen, Texas, and Frank E. Russell (the "Director Group"); Cecil R. Simmons and Juana L. Simmons, San Benito, Texas, Anita Simmons Boswell, Harlingen, Texas, Sarah Simmons Hays, Evergreen, Colorado, and Dolores Simmons, San Benito, Texas; and Leonard P. Simmons and Mary Beth Simmons, San Benito, Texas, Delores M. Simmons, San Benito, Texas, Ricardo D. Leal, Harlingen, Texas, Audrey Simmons Hooks, Austin, Texas, Samuel E. Simmons, Harlingen, Texas, and Ernest G. Nash, III, Harlingen, Texas; to acquire voting shares of, and thereby control First San Benito Bancshares Corporation, San Benito, Texas, and indirectly acquire voting shares and control of First Community Bank, National Association, San Benito, Texas.

Board of Governors of the Federal Reserve System, October 4, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–25271 Filed 10–6–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; GuLF Worker Study: Gulf Long-Term Follow-Up Study for Oil Spill Clean-Up Workers and Volunteers

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Gulf Worker Study: Gulf Long-Term Follow-Up Study for Oil Spill Clean-Up Workers and Volunteers. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of the GuLF Study is to investigate potential short- and long-term health effects associated with oil spill clean-up activities and exposures surrounding the Deepwater Horizon disaster; and to create a resource for additional collaborative research on focused hypotheses or subgroups. Over 55,000 persons participating in oil-spill clean-up activities have been exposed to a range of known and suspected toxins in crude oil, burning oil, and dispersants, to excessive heat, and possibly to stress due to widespread economic and lifestyle disruption. Exposures range from negligible to potentially significant, however, potential long-term human health consequences are largely unknown due to insufficient research in this area. Participants will be recruited from across job/exposure groups of primarily English, Spanish, or Vietnamese speaking adults (accommodations for other languages developed as appropriate) who performed oil-spill clean-up-related work ("exposed") and similar persons who did not

("unexposed" controls), and followed in either an *Active Follow-up Cohort* (N~27,000) or a *Passive Follow-up Cohort* (N~28,000). Exposures will be estimated using detailed job-exposure matrices developed from data from monitoring performed by different agencies and organizations during the crisis, information obtained by interview, and the available scientific literature. We will investigate acute health effects among all cohort members via self-report from the enrollment interview, and via clinical measures and biological samples from Active Follow-up Cohort members only. All cohort members will be followed for development of a range of health outcomes through record linkage (*e.g.,* cancer, mortality) and possibly through linkage with routinely collected health surveillance data (collected by health departments and the CDC) or with electronic medical records. Recruitment of subjects should begin in late 2010, with telephone interviews and the baseline home visits conducted within 18 months.

Activity (3-yrs)	Estimated number of respondents	Estimated responses per respondent	Burden hours per response	Total Burden hours per respondent	Estimated total burden hours
Ineligible respondents	25,000	1	0.25	0.25	6,250
Enrollment interview (All)	55,000	1	0.50	0.50	27,500
Home Visit (Active)	27,000	1	2.75	2.75	74,250
Annual Contact Info Update (Passive)	28,000	3	0.25	0.75	21,000
Annual Contact Info Update (Active)	27,000	2	0.25	0.50	13,500
Biennial interview (Active)	27,000	1	0.50	0.50	13,500
Passive Cohort Total responses & hrs		4		1.25	
Active Cohort Total responses & hrs		5		4.25	
Total responses & avg hrs per response		9		0.58	156,000
Average per year					52,000

Frequency of Response: Participation will include one enrollment telephone interview (0.5 hr); collection of biological and environmental samples, basic clinical measurements, and GPS coordinates (2.75 hr) from the Active Follow-up Cohort only; annual contact information update (0.25; Active and Passive) or biennial follow-up telephone or Web interviews (0.5 hr; Active only) for 10 years or more. We also anticipate screening 25,000 ineligible respondents. *Affected Public:* Individuals or households. *Type of Respondents:* Workers involved in Deepwater Horizon disaster clean-up, and similar individuals not involved in clean-up effort. The annual reporting burden is as follows: *Estimated Number of Respondents:* Active Follow-up Cohort (N~27,000) and Passive Follow-up Cohort (N~28,000).

Estimated Number of Responses per Respondent: See table.

Average Burden Hours Per Response: 0.58 hour; and *Estimated Total Burden Hours Requested:* 156,000 (over 3 years). The average annual burden hours requested is 52,000. The annualized cost to respondents is estimated at $11.60 (assuming $20 hourly wage × 0.58 hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the project or to obtain a copy of the data collection plans and instruments, contact: Dr. Dale P. Sandler, Chief, Epidemiology Branch, NIEHS, Rall Building A3–05, PO Box 12233, Research Triangle Park, NC 27709; non-toll-free number 919–541–4668 or e-mail *sandler@niehs.nih.gov*. Include your address.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 29, 2010.

W. Christopher Long,

NIEHS, Acting Associate Director for Management, National Institutes of Health.

[FR Doc. 2010–25293 Filed 10–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Availability of Final Environmental Assessment (FINAL EA) and a Finding of No Significant Impact (FONSI) for Land Purchase, Access Road Construction and Access Tunnel Construction, NIOSH Lake Lynn Laboratory, Lake Lynn, PA

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Availability of Final Environmental Assessment (FINAL EA) and a Finding of No Significant Impact (FONSI) for Land Purchase, Access Road Construction and Access Tunnel Construction, NIOSH Lake Lynn Laboratory, Lake Lynn, PA.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) is issuing this notice to advise the public that the CDC has prepared, and signed on September 7, 2010, a Finding of No Significant Impact (FONSI) based on the Final Environmental Assessment (FINAL EA) for Land Purchase, Access Road Construction and Access Tunnel Construction, NIOSH Lake Lynn Laboratory, Lake Lynn, Pennsylvania. The CDC prepared the final EA, dated July 2010, in accordance with the National Environmental Policy Act.

DATES: The FONSI and/or Final EA are available October 7, 2010.

ADDRESSES: Interested parties may request copies of the FONSI and/or Final EA, from: Mr. Sam Tarr, Centers for Disease Control and Prevention, Buildings and Facilities Office, 1600 Clifton Road, Mailstop K96, Atlanta, GA 30333. Telephone Number (770) 488–8170.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the acquisition of approximately 507 acres of real estate containing the CDC/NIOSH's Lake Lynn Experimental Mine located in Springhill Township, Pennsylvania. The EA also evaluated the construction for a new access road and new entry access mine tunnels servicing the Experimental Mine. The purpose and need of the proposed acquisition and construction improvements secures the currently leased Experimental Mine for the long-term continuation of mine health and safety research currently conducted at the site.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969. Based on the results of the EA, CDC has issued a Finding of No Significant Impact (FONSI) indicating that the proposed action will not have a significant impact on the environment. Minimization and mitigating measures will include: compliance with applicable regulatory laws, procedures, and permits for stream crossings; conduct presence absence surveys for identified wildlife; implementation of avoidance plan for a previously recorded archeological site near area of proposed access road construction; and the application of best management practices (BMP) to minimize short term air quality and noise impact during roadway and access mine tunnel construction.

Dated: September 30, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–25269 Filed 10–6–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; T32 Teleconference.

Date: October 25, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, Neuroscience Center, 6001 Executive Blvd., Room 3203, MSC 9529, Bethesda, MD 20892–9529, 301–496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25297 Filed 10–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: October 18–20, 2010.

Time: October 18, 2010, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Time: October 19, 2010, 8:30 a.m. to 12:40 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Molecular Imaging Branch including the Section on PET Neuroimaging Sciences, the Section on PET Radiopharmaceutical Sciences, the Section on Magnetic Resonance Spectroscopy, and meet with PIs, Training Fellows, and Staff Scientists.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Time: October 19, 2010, 1 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Time: October 19, 2010, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Time: October 20, 2010, 8:30 a.m. to 12:40 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Unit on Affective Cognitive Neuroscience, the Unit on Genetics of Cognition and Behavior, the Laboratory of Neurotoxicology and the Section on Analytical Chemistry, and meet with PIs, Training Fellows, and Staff Scientists.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Time: October 20, 2010, 1 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Legacy Hotel & Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dawn M. Johnson, PhD, Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, 10 Center Drive, Building 10, Room 4N222,Bethesda, MD 20892, 301–402–5234, *dawnjohnson@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 30, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–25296 Filed 10–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2010, will be increased.

DATES: *Effective Date:* October 1, 2010, and applies to major disasters declared on or after October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Response and Recovery Directorate Policy No. 9122.1 provides that FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $3.27 for all disasters declared on or after October 1, 2010.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.1 percent for the 12-month period ended in August 2010. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 17, 2010.

Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–25332 Filed 10–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2010.

DATES: *Effective Date:* October 1, 2010, and applies to major disasters declared on or after October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5121–5207, prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Small Project Grants, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase of the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $63,900 for all disasters declared on or after October 1, 2010.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.1 percent for the 12-month period ended in August 2010. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 17, 2010.

Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–25329 Filed 10–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2010, will be increased.

DATES: *Effective Date:* October 1, 2010, and applies to major disasters declared on or after October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.30 for all disasters declared on or after October 1, 2010.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.1 percent for the 12-month period ended in August 2010. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 17, 2010.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–25334 Filed 10–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1938–DR; Docket ID FEMA–2010–0002]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1938–DR), dated September 23, 2010, and related determinations.

DATES: *Effective Date:* September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding during the period of July 21–30, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark A. Neveau, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Beadle, Brule, Clay, Fall River, Hand, Jerauld, Lincoln, Miner, Minnehaha, Sanborn, Turner, and Union Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–25326 Filed 10–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Maximum Amount of Assistance Under the Individuals and Households Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2010.

DATES: *Effective Date:* October 1, 2010, and applies to emergencies and major disasters declared on or after October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Misczak, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 212–1000.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174, prescribes that FEMA must annually adjust the maximum amounts for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is $30,200. The increase in award amount as stated above is for any single emergency or major disaster declared on or after October 1, 2010. In addition, in accordance with 44 CFR 61.17(c), this adjustment includes the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued for those disasters.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 1.1 percent for the 12-month period ended in August 2010. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 17, 2010.

Catalog of Federal Domestic Assistance No. 97.048, Individuals and Households—Housing; 97.049 Individuals and Households—Disaster Housing Operations; 97.050, Individuals and Households—Other Needs.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–25328 Filed 10–6–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L51010000.FX0000 LVRWB10B4040 LLCAC05000]

Notice Extending Scoping Period for the Notice of Intent To Prepare an Environmental Impact Statement for the Walker Ridge Wind Project, Lake and Colusa Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the extension of the scoping period for the Environmental Impact Statement (EIS) for the proposed Walker Ridge Wind Project, Lake and Colusa Counties, California. The BLM published a Notice of Intent to prepare the EIS in the **Federal Register** on August 13, 2010 [75 FR 49517], and in that notice provided for a scoping period to end on September 13, 2010. The BLM now extends the scoping period through October 13, 2010.

FOR FURTHER INFORMATION CONTACT: Bethney Lefebvre, telephone (707) 468–4000; address Ukiah Field Office, 2550 North State Street, Ukiah, California 95482; e-mail *ukiahwindeis@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The Notice of Intent provided for scoping comments on the Proposed Walker Ridge Wind Project to be received through September 13, 2010. The BLM is extending the scoping period to

accommodate comment submission after the planned September 9th and September 10th public scoping meetings, and to address the broad public interest in the Project. Scoping comments on the proposed Walker Ridge Wind Project will now be accepted through October 13, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2010–25360 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000–10–L12200000.EB0000]

Notice of Intent To Collect Fees on Public Land in Fremont County, Idaho, Upper Snake Field Office Under the Federal Lands Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the Federal Lands Recreation Enhancement Act (REA), the Upper Snake Field Office will begin collecting fees for the day use area and a fee for use of the Recreational Vehicle dump station at Egin Lakes Access Recreation Site (Egin). The day use fee will be $5 per day for the use of the area, and $10 per use of the recreational vehicle dump station. A $60 season pass will be available. The site is located in Fremont County, Idaho.

DATES: *Effective Date:* There will be a public comment period that will expire on November 8, 2010. The BLM welcomes public comments on this proposal, and the public is encouraged to participate by submitting their comments on fee collection at this site. Six months after the publication of this notice, the Upper Snake Field Office will initiate fee collection in the day use area at Egin, unless the BLM publishes a notice to the contrary in the **Federal Register**. A recreation fee business plan for Egin was completed and reviewed by the Idaho Falls District Resource Advisory Council (RAC). The RAC provided a recommendation to the Upper Snake Field Office affirming the proposal to collect fees at the Egin Day Use Area.

ADDRESSES: Mail comments to: Field Manager, Upper Snake Field Office, Bureau of Land Management, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Upper Snake Field Office, Bureau of Land Management, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, telephone: (208) 524–7500.

SUPPLEMENTARY INFORMATION: The Egin Day Use Area, which provides developed parking and other amenities to visitors wishing to recreate on the St. Anthony Sand Dunes, is located in Township 7 N., Range 39 E., Section 3, N ½, NW ¼ SW ¼, Boise Meridian. Pursuant to REA, 16 U.S.C. 6801 *et seq.,* and implementing regulations in 43 CFR part 2933, fees may be charged for day use that occurs in a highly developed, highly visited recreation area. The Egin Day Use Area qualifies as a "standard amenity recreation fee area" under 16 U.S.C. 6802(f); therefore, a recreation fee may be charged for use of the area. Fee collection at the Egin Day Use Area is consistent with the Medicine Lodge Resource Management Plan (1985), and the Egin Lakes Area was identified and analyzed for day and overnight use fees in the environmental assessment prepared pursuant to the requirements of the National Environmental Policy Act for the Egin Lakes Project Site Plan (2001). Fees for use of the campground have been collected for years and will continue. Specific visitor fees will be identified and posted at the sites. This notice announces that visitors must purchase a recreation use permit as described in 43 CFR 2933 for day use and pay a separate fee to use the recreational vehicle dump station. Fees must be paid at the self-service pay station located at the Egin Day Use Area. Holders of an America the Beautiful-The National Parks and Federal Recreation Lands Interagency Annual Pass, Interagency Senior or Access Pass, Interagency Access Pass, or an InteragencyVolunteer Pass will have all day use fees waived.

The BLM is committed to providing and receiving fair value for the use of developed recreation facilities and services in a manner that meets public use demands, provides quality experiences, and protects important resources. Day use fees collected at the Egin Lakes Day Use Area will help ensure funding for the maintenance of existing facilities, and providing recreational opportunities and resource protection.

The BLM will report to the RAC each year on how the revenue from these fees has been used. A copy of this report will be available to the public at the Upper Snake River Field Office at the address listed in the **ADDRESSES** section above.

Future adjustments in the fee amount will be made in accordance with the Egin Lakes Access Recreation Site Business Plan, consultation with the RAC, and through public notice and comment.

Authority: 16 U.S.C. 6803(b).

Wendy Reynolds,

Field Manager, Upper Snake Field Office, Bureau of Land Management.

[FR Doc. 2010–25359 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC02200–L13200000–PP0000–LXSICOMP0000; MTM–99236]

Notice of Public Meeting; Proposed Alluvial Valley Floor Coal Exchange Public Interest Factors; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) hereby notifies the public that it will hold a public meeting to consider a proposal to exchange Federal coal deposits for Alluvial Valley Floor (AVF) fee coal pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, and the Surface Mining Control and Reclamation Act (SMCRA) of 1977. This exchange (serial number MTM–99236) has been proposed by Jay Nance, Brett A. Boedecker, as personal representative for Susanne N. Boedecker, Joseph P. Hayes, Patricia Hayes Rodolph, and the Brown Cattle Company Shareholders Coal Trust, collectively referred to as Nance-Brown.

DATES: A public meeting will be held from 5:30 p.m. to 7 p.m. on October 19, 2010.

ADDRESSES: The public meeting will be held at The Bicentennial Library of Colstrip at 417 Willow Avenue, Colstrip, Montana. The Alluvial Valley Floor Environmental Assessment can be viewed on the BLM's Miles City Field Office Web page located at *http://www.blm.gov/mt/st/en/fo/miles_city_field_office.html.*

FOR FURTHER INFORMATION CONTACT: Dan Fox, AVF Project Manager, BLM Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone 406–233–3664.

SUPPLEMENTARY INFORMATION:

As required under the BLM's regulations at 43 CFR 2203.3, a public meeting must be held after completion of an environmental analysis and prior to the issuance of a notice of decision. The purpose of this public meeting will be to receive oral and written testimony and comments on the public interest factors (see determination of public interest at 43 CFR 2200.0–6 (b)) associated with the Nance-Brown exchange.

The exchange proponents, Nance-Brown, seek an exchange as required by section 510(b)(5) of SMCRA, which provides that owners of coal determined to be unminable due to prohibitions against mining coal within an alluvial valley floor, west of the 100th meridian, west longitude, are entitled to an exchange of coal with the Federal Government (30 U.S.C. 1260(b)(5)). Pursuant to section 510 of SMCRA and the revised stipulation entered on January 29, 2010, in *Nance* v. *Salazar,* No. CV–06–125–BLG–RFC (D. Montana), the BLM is considering an exchange of Federal coal in Montana, within the Ashenhurst Tract, to equal the value, as determined by appraisal, of approximately 3,379.55 acres of non-Federal coal in the alluvial valley floor of the Tongue River, in Montana, owned by Nance-Brown.

The Federal coal in the following-described land in Rosebud County, Montana, is being considered for exchange by the United States:

Ashenhurst Tract

Principal Meridian, Montana

T. 1 N., R. 40 E.,
Sec. 22, all;
Sec. 26, all;
Sec. 28, all; and
Sec. 34, lots 1–4, N½, N½S½.
T. 1 S., R. 41 E.,
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼.
Containing 3,173.88 acres, more or less.

In exchange, the United States would acquire the coal within the following-described non-Federal land in Rosebud County, Montana, from Nance Brown:

Principal Meridian, Montana

T. 5 S., R. 42 E.,
Sec. 25, lot 5, E½E½; and
Sec. 35, E½, E½SW¼.
T. 6 S., R. 42 E.,
Sec. 1, SE¼NE¼, E½SE¼, SW¼SE¼;
Sec. 12, E½E½, SW¼NE¼, SE¼SW¼, W½SE¼; and
Sec. 13, NE¼NE¼.
T. 4 S., R. 43 E.,
Sec. 23, lot 2, SE¼SE¼;
Sec. 24, lots 2–4, S½SW¼, NE¼SE¼, SW¼SE¼;
Sec. 25, W½NW¼;
Sec. 26, NE¼, E½W½, SW¼NW¼, N½SE¼, SW¼SE¼;
Sec. 27, lot 1;
Sec. 33, lot 1;
Sec. 34, S½NE¼, SW¼, W½SE¼; and
Sec. 35, W½NW¼.
T. 5 S., R. 43 E.,
Sec. 3, lots 3 and 4; and
Sec. 9, NW¼NE¼, NE¼SW¼.
T. 6 S., R. 43 E.,
Sec. 6, lots 2–7. SE¼NW¼, E½SW¼;
Sec. 7, lots 1–4, E½W½; and
Sec. 18, lots 1 and 2, NW¼NE¼, NE¼NW¼.
Containing 3,379.55 acres, more or less.

Further information regarding this exchange can be found in the Environmental Analysis (EA). A hardcopy of the EA can be viewed at the BLM Miles City Field Office, 111 Garryowen Rd., Miles City, Montana, on Monday through Friday from 8 a.m. to 5 p.m. The EA may also be viewed, as noted above under **ADDRESSES**, on the BLM's Miles City Field Office Web page. The EA will be available for public viewing until November 22, 2010.

The BLM will use the following procedures to facilitate the public meeting: All persons who wish to present an oral statement must register at the door to present comments between 5:30 p.m. to 7 p.m. on the day of the meeting. Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks which will be made part of the record. The meeting will be recorded and a transcript prepared. The transcript and all written submissions will be made a part of the public record of the proposed exchange. Persons not able to attend the meeting are invited to provide written comments. All written comments must be received by the BLM's Miles City Field Office at the address indicated below by November 22, 2010. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information–may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments may be submitted after the publication of the **Federal Register** Notice. You can submit your written comments to: Bureau of Land Management, Attention: Dan Fox, AVF Project Manager, 111 Garryowen Rd., Miles City, MT 59301.

The meeting transcript and all written submissions will be forwarded to the U.S. Attorney General, who will have 90 days to advise, in writing, on the anti-trust consequences of the proposed exchange. The BLM will make any advice received from the Attorney General a part of the public record on the proposed exchange. The advice from the Attorney General will be considered in making the final decision on the proposed exchange and whether it is in the public interest. The BLM will discuss, in the decision record, the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

Michael D. Nedd,

Acting State Director.

[FR Doc. 2010–25060 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000.L16400000.PH0000.006F 241A; 11–08807; TAS: 14X1109]

Notice of Public Meeting: Resource Advisory Councils, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Nevada will hold a joint meeting of its three Resource Advisory Councils (RACs), the Sierra Front-Northwestern Great Basin RAC, the Northeastern Great Basin RAC, and the Mojave-Southern Great Basin RAC in Sparks, Nevada. The meeting is open to the public and a public comment period will be available.

DATES AND TIMES: Thursday, November 4, 2010, from 8 a.m. to 5 p.m. and Friday, November 5, 2010, from 8 a.m. to 12 p.m. A public comment period will be held early in the afternoon on Thursday, November 4. Actual time will be posted on the Web and the agenda will be available two weeks days prior to the meeting at *http://www.blm.gov/nv.*

FOR FURTHER INFORMATION CONTACT: Rochelle Francisco, telephone: (775) 861–6588, e-mail: *rochelle_francisco@blm.gov.*

SUPPLEMENTARY INFORMATION: The three 15-member Nevada councils advise the Secretary of the Interior, through the BLM Nevada State Director, on a variety of planning and management issues associated with public land management in Nevada. The meeting will be held at the John Ascuaga Nugget Hotel Casino, 1100 Nugget Avenue, Sparks, Nevada. Agenda topics include a presentation and discussion of accomplishments during 2010 and the outlook for 2011 for the BLM in Nevada; opening remarks and closeout reports of the three RACs; discussion on the BLM and U.S. Forest Service joint recreation subcommittee; breakout meetings of each group category; breakout meetings of the three RACs; and setting of schedules for meetings of the individual RACs for the upcoming year. The public may provide written comments to the three RAC groups or the individual RACs. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations may contact Rochelle Francisco.

Dated: September 30, 2010.

Ron Wenker,

State Director, Nevada.

[FR Doc. 2010–25275 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N218; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before November 8, 2010. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by November 8, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Busch Gardens, Tampa, FL; PRT–22130A.

The applicant requests a permit to import six live captive-bred female cheetahs (*Acinonyx jubatus*) from South Africa for the purpose of enhancement of the survival of the species and conservation education.

Applicant: Steve Martin's Working Wildlife, Frazier Park, CA; PRT–069439.

The applicant request the re-issuance of a permit for the re-export and re-import of a female captive-born Bengal tiger (*Panthera tigris tigris*) to and from worldwide locations for the purpose of enhancement of the species through conservation education. The permit number and animal: [069439, Sasha]. This notification covers activities to be conducted by the applicant over a three year period and the import of any potential progeny born while overseas.

Applicant: Chelonian Research Institute, Oviedo, FL; PRT–24269A.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities conducted by the applicant for a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kevin Slaughter, Birmingham, AL; PRT–23152A;

Applicant: Jernigan Theodore, Olympia, WA; PRT–22592A;

Applicant: Anthony Clemenza, Brooklyn, NY; PRT–22557A;

Applicant: Richard Young, West Islip, NY; PRT–22107A;

Applicant: David Crawford, Baker MI; PRT–22509A;

Applicant: Hector Bonilla, Wimberley, TX; PRT–23150A.

B. Endangered Marine Mammals and Marine Mammals

Applicant: Florida Fish and Wildlife Conservation Commission, St. Petersburg, FL; PRT–773494

The applicant requests an amendment for the permit to allow additional sampling and harassment of Florida manatees (*Trichechus manatus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: October 1, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–25295 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW159733]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW159733, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Sun Cal Energy Inc. for competitive oil and gas lease WYW159733 for land in Sublette County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW159733 effective February 1, 2008, under the original terms and conditions of the lease along with the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Fluid Minerals Adjudication.

[FR Doc. 2010–25356 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Mobile Devices, Associated Software, and Components Thereof,* DN 2757; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Microsoft Corporation on October 1, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile devices, associated software, and components thereof. The complaint names as respondent Motorola, Inc. of Schaumburg, IL.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five

business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2757") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25244 Filed 10–6–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–678]

In the Matter of Certain Energy Drink Products; Notice of Issuance of a Corrected General Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to revise the general exclusion order issued in the subject investigation on September 8, 2010.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–708–3747. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: This trademark and copyright-based investigation was instituted by the Commission on June 17, 2009, based on a complaint filed by Red Bull GmbH of Fuschl am See, Austria, and Red Bull North America, Inc. of Santa Monica, California (collectively, "Red Bull"). 74 FR 28725 (Jun. 17, 2009). The respondents named in the notice of investigation were: Chicago Import Inc. of Chicago, Illinois; Lamont Distr., Inc., a/k/a Lamont Distributors Inc., of Brooklyn, New York; India Imports, Inc., a/k/a International Wholesale Club, of Metairie, Louisiana; Washington Food and Supply of DC, Inc., a/k/a Washington Cash & Carry, of Washington, DC; Vending Plus, Inc. d/b/a Baltimore Beverage Co., of Glen Burnie, Maryland; Posh Nosh Imports (USA), Inc. of South Kearny, New Jersey ("Posh Nosh"); Greenwich, Inc. of Florham Park, New Jersey; Advantage Food Distributors Ltd. of Suffolk, UK; Wheeler Trading, Inc. of Miramar, Florida; Avalon International General Trading, LLC of Dubai, United Arab Emirates; and Central Supply, Inc. of Brooklyn, New York. The asserted trademarks are U.S. Trademark Reg. Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607. The asserted copyright is U.S. Copyright Registration No. VA0001410959.

On September 8, 2010, the Commission issued a general exclusion order directed to U.S. Trademark Registration Nos. 3,092,197; 2,946,045; 2,994,429; and 3,479,607 and U.S. Copyright Registration No. VA0001410959. The Commission has determined to issue a corrected general exclusion order to more closely conform to the Commission's determination.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.49–50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.49–50.

By order of the Commission.

Issued: October 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25242 Filed 10–6–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Third Review)]

Glycine From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on glycine from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is November 1, 2010. Comments on the adequacy of responses may be filed with the Commission by December 14, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–225, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On March 29, 1995, the Department of Commerce (Commerce) issued an antidumping duty order on imports of glycine from China (60 FR 16116). Following first five-year reviews by Commerce and the Commission, effective July 25, 2000, Commerce issued a continuation of the antidumping duty order on imports of glycine from China (65 FR 45752). Following second five-year reviews by Commerce and the Commission, effective November 15, 2005, Commerce issued a second continuation of the antidumping duty order on imports of glycine from China (70 FR 69316). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all glycine, regardless of grade. In its first and second expedited five-year review determinations, the Commission continued to define the *Domestic Like Product* as all glycine, coextensively with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its first and second expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of glycine.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 1, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize

filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal

operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 4, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25287 Filed 10–6–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–298 and 299 (Third Review); (Investigation Nos. 701–TA–267 and 731–TA–304 (Third Review))]

Porcelain-on-Steel Cooking Ware From China and Taiwan; Top-of-the-Stove Stainless Steel Cooking Ware From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan and the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan and the countervailing and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 1, 2010. Comments on the adequacy of responses may be filed with the Commission by December 14, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective Date: October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 1986, the Department of Commerce (Commerce) issued antidumping duty orders on imports of porcelain-on-steel cooking ware from China and Taiwan (51 FR 43414). On January 20, 1987, Commerce issued antidumping and countervailing duty orders on imports of top-of-the-stove stainless steel cooking ware from Korea (52 FR 2138). Following five-year reviews by Commerce and the Commission, effective April 14, 2000, Commerce issued a continuation of the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan (65 FR 20136 and 21504) and, effective April 18, 2000, Commerce issued a continuation of the countervailing and antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea (65 FR 20801). Following second five-year reviews by Commerce and the Commission, effective November 17, 2005, Commerce issued a continuation of the antidumping duty order on imports of top-of-the-stove stainless steel cooking ware from Korea (70 FR 69739). Effective November 22, 2005, Commerce issued a continuation of the countervailing duty order on top-of-the-stove stainless steel cooking ware from Korea (70 FR 70585) and the antidumping duty orders on porcelain-on-steel cooking ware from China and Taiwan (70 FR 70581). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–227 expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, Korea, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations concerning porcelain-on-steel cooking ware from China and Taiwan, the Commission defined the *Domestic Like Product* as all porcelain-on-steel cooking ware, including teakettles. One Commissioner defined the *Domestic Like Product* differently in the original determinations concerning porcelain-on-steel cooking ware from China and Taiwan. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations concerning top-of-the-stove stainless steel cooking ware from Korea, the Commission defined the *Domestic Like Product* as all top-of-the-stove stainless steel cooking ware as defined in Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations concerning porcelain-on-steel cooking ware from China and Taiwan, the Commission defined the *Domestic Industry* as all domestic producers of porcelain-on-steel cooking ware, including teakettles. One Commissioner defined the *Domestic Industry* differently in the original determinations concerning porcelain-on-steel cooking ware from China and Taiwan. In the original determinations, its full first five-year review determinations, and its expedited second five-year review determinations concerning top-of-the-stove stainless steel cooking ware from Korea, the Commission defined the *Domestic Industry* as all domestic producers of top-of-the-stove stainless steel cooking ware.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 1, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide

equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its original determinations and its prior five-year review determinations, and for each of the products identified by Commerce as *Subject Merchandise*. If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one Subject Country; or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and/or antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country(ies)* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country(ies);* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country(ies).*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and

cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 4, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25286 Filed 10–6–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0031]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

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

ACTION: Announcement of meeting and member appointments.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet October 21, 2010, in Washington, DC. FACOSH is comprised of 16 members; eight representing federal agency management and eight from labor organizations representing federal employees. On July 1, 2010, the Secretary appointed eight persons to FACOSH. This Federal Register notice also announces these appointments.

DATES: *FACOSH meeting:* FACOSH will meet from 1 p.m. to 4:30 p.m., Thursday, October 21, 2010.

Submission of comments, requests to speak, and requests for special accommodations: Comments, requests to speak at the FACOSH meeting, and request for special accommodations to attend the FACOSH meeting must be submitted (postmarked, sent, transmitted) by October 14, 2010.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in the Great Hall, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak at the FACOSH meeting, identified by Docket No. OSHA–2010–0031, may be submitted by any of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: You must provide one copy of your submission to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Requests for special accommodations for FACOSH meeting: Submit requests for special accommodations by telephone, e-mail or hard copy to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2010–0031). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, *see* the **SUPPLEMENTARY INFORMATION** section below.

Comments and requests to speak, including any personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as social security numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA–2010–0031 at *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Ms. MaryAnn Garrahan, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Mr. Francis Yebesi, OSHA, Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; e-mail *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet Thursday, October 21, 2010, in Washington, DC. All FACOSH meetings are open to the public.

FACOSH is authorized by 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), and Executive Order 12196 to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs. The tentative agenda for the FACOSH meeting includes:

- Federal Advisory Committee Act requirements;
- New FACOSH Bylaws and Operating Procedures;
- Emerging Issues Subcommittee update;
- Strategic Planning to determine priorities for FACOSH, including consideration of: Permissible Exposure Limits (PELs) in federal agencies; OSHA overseas coverage of Federal civilian employees; motor vehicle safety for the Federal workforce; outreach and training; and any other issues identified by FACOSH.

FACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts, minutes and other materials presented at the meeting are included in the FACOSH meeting record, which is posted at *http://www.regulations.gov.*

Public Participation

FACOSH meetings are open to the public. Interested persons may submit a request to make an oral presentation to FACOSH by one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest represented (*e.g.,* organization name), if any, and a brief outline of the presentation. Requests to address FACOSH may be granted as time permits and at the discretion of the FACOSH chair.

Interested persons also may submit comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. OSHA will provide all submissions to FACOSH members prior to the meeting and put them in the public docket for that meeting.

Individuals who need special accommodations and wish to attend the FACOSH meeting must contact Ms. Chatmon by any of the methods listed in the **ADDRESSES** section.

Submissions and Access to Meeting Record

You may submit comments, requests to speak and requests for special accommodations (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the OSHA docket number for this notice (Docket No. OSHA–2010–0031). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit one copy to the OSHA Docket Office using the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Meeting transcripts and minutes as well as written comments and requests to speak are included in the public record of the FACOSH meeting (Docket No. OSHA–2010–0031). Written comments and requests to speak are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting certain personal information such as Social Security numbers and birthdates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* to make submissions and to access the docket and exhibits is available at that Web page. Contact the OSHA Docket Office for information about materials not available through the Web page and for assistance in using the Internet to locate submissions and other documents in the docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available at OSHA's Web page at *http://www.osha.gov.*

Announcement of FACOSH Appointments

FACOSH is comprised of 16 members; eight representing federal agency management and eight from labor organizations representing federal employees. On July 1, 2010, the Secretary appointed eight persons to FACOSH. The Secretary appointed the following persons from labor organizations representing Federal employees:

- William Dougan, National Federation of Federal Employees;
- Deborah Kleinberg, Seafarers International Union;
- Colleen Kelly, National Treasury Employees Union;
- William Kojola, AFL–CIO; and
- William "Chico" McGill, International Brotherhood of Electrical Workers.

The Secretary appointed the following persons as representatives of Federal agency management:

- Curtis Bowling, U.S. Department of Defense;
- John Sepulveda, U.S. Department of Veterans Affairs; and
- Thomas Yun, U.S. Department of State.

In addition, the Secretary has appointed Robin Heard, U.S. Department of Agriculture (USDA), to complete the unexpired term of a FACOSH management member from the USDA who is no longer able to serve on the Council.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App. 2) and regulations issued under FACA (41 CFR part 102–3), section 1–5 of Executive Order 12196, and Secretary of Labor's Order No. 4–2010 (75 FR 55335 (9/10/2010)).

Signed at Washington, DC, this fourth day of October, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–25268 Filed 10–6–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–120)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the member states of the European Patent Organisation to practice the invention described and claimed in International Application No. PCT/US2009/043694 entitled "Zero-Valent Metallic Treatment System and its Application for Removal and Remediation of Polychlorinated Biphenyls," identified as NASA Case No. KSC–12878–2–PCT to JORD MILJØ A/S, having its principal place of business in Lyngby, Denmark. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: October 4, 2010.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2010–25285 Filed 10–6–10; 8:45 am]

BILLING CODE 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 November 8, 2010. 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:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@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: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. 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.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e)).

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:

1. Department of Agriculture, Grain Inspection, Packers, and Stockyards Administration (N1–545–08–20, 2 items, 2 temporary items). Records relating to the policy and guidelines of the agency's Equal Employment Opportunity program, including records related to developing special emphasis programs.

2. Department of the Army, Agency-wide (N1–AU–10–68, 1 item, 1 temporary item). Master files of an electronic information system used in association with the Army Substance Abuse Program. Included are drug and alcohol abuse testing and treatment data, patient background information, progress reports, and counselor observations.

3. Department of the Army, Agency-wide (N1–AU–10–104, 1 item, 1 temporary item). Master files of an electronic information system used to automate the maintenance and logistics activities of the aircraft used in Army aviation units. Included are parts and work orders information, maintenance and logistics reports, inspection information, and aircraft and crew history reports.

4. Department of Commerce, Bureau of Economic Analysis (N1–375–10–2, 6 items, 3 temporary items). Records of the Communications Division including art work and background files for the *Survey of Current Business,* as well as media advisory files. Proposed for permanent retention are record copies of news releases and agency publications, including *Survey of Current Business.*

5. Department of Health and Human Services, Administration for Children and Families (N1–292–10–1, 1 item, 1 temporary item). Master files of an electronic information system used to track information regarding victims of human trafficking in order to issue certification and eligibility letters.

6. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–09–8, 1 item, 1 temporary item). Master files of an electronic information system used to track agency publications through the editorial process and capture bibliographic information for printed publications.

7. Department of Health and Human Services, Agency for Healthcare Research and Quality (N1–510–09–10, 1 item, 1 temporary item). Master files of an electronic information system used to disseminate information about resources relating to the adoption of health information technology.

8. Department of Homeland Security, Federal Emergency Management Agency (N1–311–10–2, 1 item, 1 temporary item). Informal legal opinions that do not contain significant opinions, analysis, conclusions, advice, or interpretations and do not pertain to significant policy-making or major activities.

9. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–10–3, 3 items, 3 temporary items). Electronic database and paper forms used for tracking aliens' changes of address.

10. Department of Homeland Security, U.S. Coast Guard (N1–26–08–5, 7 items, 4 temporary items). Merchant Mariner personnel files from 1968 to the present, licensing files from 1968 to the present, and master files of an electronic information system containing licensing records and personnel information. Proposed for permanent retention are paper and microfilm copies of personnel jackets from 1919 to 1967, paper and microform copies of licensing files from 1897 to 1967, and officer licensing files index cards from 1947 to 1981.

11. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–09–07, 1 item, 1 temporary item). Master files of an electronic information system containing immigration case documentation and attorneys' notes.

12. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–15, 2 items, 2 temporary items). Master files of an electronic information system containing imaged copies of electronic data seized during an investigation, associated case information, and reports created by computer forensics agents.

13. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–16, 4 items, 4 temporary items). Master files of an electronic information system containing imaged copies of electronic storage devices seized during an investigation. Also included are printouts of search results and individual documents.

14. Department of Homeland Security, U.S. Secret Service (N1–87–10–4, 2 items, 2 temporary items). Master files of an electronic information system used to report and research counter surveillance incident source data.

15. Department of Homeland Security, U.S. Secret Service (N1–87–10–5, 3 items, 2 temporary items). Electronic data relating to persons of interest for possible criminal activity that is of a routine nature. Proposed for permanent retention is electronic data relating to persons of interest when the data relates to unique and significant intelligence-related matters.

16. Department of Homeland Security, U.S. Secret Service (N1–87–10–6, 1 item, 1 temporary item). Non-investigative case files that track the seizure and forfeiture of property.

17. Department of the Interior, Office of the Secretary (N1–48–08–14, 1 item, 1 temporary item). Master files of an electronic information system used to track work orders, expenses, and other information relating to equipment and buildings.

18. Department of Justice, Bureau of Prisons (N1–129–09–3, 3 items, 2 temporary items). Master files of an electronic information system used to notify staff in emergency situations and provide reference copies of emergency procedures. Proposed for permanent retention are emergency operations directives and planning reports.

19. Department of Justice, Executive Office for United States Attorneys (N1–118–10–4, 1 item, 1 temporary item). Master files of an electronic information system used to submit and evaluate incident reports.

20. Department of Justice, Federal Bureau of Investigation (N1–65–10–9, 5 items, 4 temporary items). Training records of the Laboratory Division Evidence Response Team. Proposed for permanent retention are crime scene files. Mission, goals, objectives, and program review files were previously approved as permanent.

21. Department of Justice, Federal Bureau of Investigation (N1–65–10–31, 4 items, 4 temporary items). Master files, outputs, audit logs, and administrative records of an electronic information system used to access intelligence and investigative data.

22. Department of Transportation, Federal Highway Administration (N1–406–09–25, 11 items, 11 temporary

items). Highway safety program records of the Federal-Aid Divisions (field offices) including pedestrian safety files; correspondence; highway safety improvement and safety commission files; records documenting state compliance with 23 U.S.C. 154, 159, 163, and 164; safe school route, railroad crossing, and rural road program files; and strategic highway safety program files.

23. Department of the Treasury, Internal Revenue Service (N1–58–10–7, 3 items, 3 temporary items). Master files, outputs, and system documentation of an electronic information system used to research tax return, enforcement, and compliance data.

24. Court Services and Offender Supervision Agency, Re-Entry and Sanction Center (N1–562–10–1, 1 item, 1 temporary item). Resident files for offenders sentenced to life parole terms, including assessments, education records, financial transactions, and medical, criminal, and employment history.

Dated: October 1, 2010.

Sharon Thibodeau,

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–25408 Filed 10–6–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, October 5;
Wednesday, October 6;
Thursday, October 7;
Tuesday, October 12;
Wednesday, October 13;
Thursday, October 14;
Tuesday, October 19;
Wednesday, October 20;
Thursday, October 21;
Tuesday, October 26;
Wednesday, October 27;
Thursday, October 28.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider "the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto." *See also* 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Dated: October 4, 2010.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2010–25389 Filed 10–5–10; 4:15 pm]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–134; NRC–2010–0053]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for the Leslie C. Wilbur Nuclear Reactor Facility at the Worcester Polytechnic Institute in Worcester, MA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Ted Carter, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission (NRC), Two White Flint North, Mail Stop T8 F5, 11545 Rockville Pike, Rockville, Maryland 20852–2738 Telephone: (301) 414–5543; fax number: (301) 415–5369; e-mail: *ted.carter@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The NRC is considering the issuance of a license amendment to Material License No. R–61 issued to the Worcester Polytechnic Institute (WPI) to authorize decommissioning of its Leslie C. Wilbur Nuclear Reactor Facility (LCWNRF) located on the campus of WPI in the city of Worcester, Massachusetts for unrestricted use and termination of this license. NRC has prepared an Environmental Assessment (EA) (ML102020428) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

Environmental Assessment

Identification of the Proposed Action

By letter dated March 31, 2009, (ADAMS ML090960651), as supplemented on September 30, 2009 (ADAMS ML092880231), the licensee submitted a Decommissioning Plan (DP) in accordance with 10 CFR 50.82(b)(1), in order to dismantle the 10-kw (thermal) General Electric (GE) Reactor, to dispose of its component parts and radioactive material, and to decontaminate the facilities in accordance with the proposed DP to meet the NRC's unrestricted release criteria. After the NRC verifies that the release criteria have been met, Facility Operating License No. R–61 will be terminated. The licensee submitted an environmental report as part of the Final DP, dated September 2009, that addressed the estimated environmental impacts resulting from decommissioning the GE Reactor. The reactor is permanently shutdown, with the fuel removed from the core and stored in racks in the reactor pool. The objective of the decommissioning is the release of the reactor facility for unrestricted use.

A notice of license amendment request and opportunity to request a hearing was published in the **Federal Register** on March 8, 2010 (75 FR 10519–10524). No requests for a hearing were received.

Need for the Proposed Action

The proposed action is necessary because of WPI's decision to permanently cease operations at the LCWNRF. As specified in 10 CFR 50.82, any licensee may permanently cease operation and apply to the NRC for license termination and authorization to decommission the affected facility. Further, 10 CFR 51.53(d) provides that each applicant for a license amendment to authorize decommissioning of a production or utilization facility shall submit an environmental report with its application that reflects any new information or significant environmental changes associated with the proposed decommissioning activities. WPI is planning unrestricted use for the area that would be released.

Environmental Impact of the Proposed Action

Many of the potential environmental impacts that would normally be associated with a decommissioning project are not applicable to the WPI decommissioning program. The factors distinguishing the WPI decommissioning program include: The small size of the facility, the limited

scope of the planned decontamination and decommissioning work, the short duration of the proposed work, and the small radiological inventory within this facility. Based upon the work scope and approach described in the WPI DP, the potential for negative impact to the environment during the decommissioning of the WPI research reactor is small or not applicable.

The DP states that all decontamination will be performed by trained personnel in accordance with the requirements of the radiation protection program, and will be overseen by a radiation safety officer with multiple years of experience in decommissioning health physics practices. All reactor and pool components will be removed from the facility as low level radioactive waste and managed in accordance with NRC requirements. The licensee estimates the total radiation exposure for the decommissioning process to be about 0.5 person-rem. In addition, by keeping the public at a safe distance, using access control, and by using the approved DP and WPI's radiation protection program to control effluent releases, the licensee expects the radiation exposure to the general public to be negligible. The licensee's conclusion is consistent with the estimate given for the "reference research reactor" in NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of the Nuclear Facilities, August 1988."

Occupational and public exposure may result from offsite disposal of the low-level radioactive waste from the LCWNRF, which includes the GE reactor. In the DP the licensee stated that the handling, storage, and shipment of this radioactive waste will meet the requirements of subpart D, "Technical Requirements for Land Disposal Facilities," of 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," 10 CFR part 71, "Packaging and Transportation of Radioactive Material" and 10 CFR 20.2006, "Transfer for Disposal and Manifests." Low-level radioactive waste will be processed and package for disposal at a licensed low-level waste site such as the Energy*Solutions,* LLC facility in Clive, Utah.

The NRC regulations at 10 CFR 20.1402 provide radiological criteria for release of a site for unrestricted use. Release criteria for unrestricted use is a Total Effective Dose Equivalent (TEDE) of less than 25 mrem per year from residual radioactivity above background and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). The final status survey will be used to demonstrate that the predicted doses to a member of the public from any residual activity do not exceed the 25 mrem per year dose limit. The NRC will perform inspections and a confirmatory survey to verify the decommissioning activities and the final status survey.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. Proper precautions will be taken to reduce the exposure to dust from lead paint and asbestos. WPI has committed to compliance with applicable occupational health and safety requirements, primarily the federal Occupational Safety and Health Act (OSHA) of 1973.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives for disposition of the LCWNRF, which includes the GE Reactor, are: DECON, SAFSTOR, and no action. WPI has proposed the DECON option. DECON is the alternative in which the equipment, structures, and portions of the facilities containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use. SAFSTOR is the alternative in which the nuclear facilities are placed and maintained in a condition that allows the nuclear facilities to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. The no-action alternative would leave the facilities in their present configuration, without any decommissioning activities required or implemented. The SAFSTOR and no-action alternatives would entail continued surveillance and physical security measures to be in place and continued monitoring by licensee personnel. The SAFSTOR and no-action alternatives would also require continued maintenance of the facilities. The radiological impacts of SAFSTOR and no-action would be less than the DECON option because of radioactive decay prior to the start of future decommissioning activities under the SAFSTOR and no action options. The SAFSTOR and no-action alternatives also would have no significant environmental impact. However, these options involve the continued use of resources during the SAFSTOR or no-action period. WPI has determined that the proposed action (DECON) is the most efficient use of the LCWNRF, including the GE Reactor, since it proposes to use the space that will become available for unrestricted use. In addition, the regulations in 10 CFR 50.82(b)(4)(i) allow an alternative which provides for delayed completion of decommissioning only when the delay is necessary to protect the public health and safety. The NRC staff finds that delay is not justified since the environmental impacts of the proposed action and the alternatives are similar and insignificant.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Environmental Report submitted as part of the DP on September 30, 2009, for the LCWNRF Reactor.

Agencies and Persons Contacted

On June 29, 2010, NRC sent a copy of the draft EA to the Solid Waste Program, Bureau of Waste Prevention, Central Regional Office, Massachusetts Department of Environmental Protection (MDEP) regarding the environmental impact of the proposed action. After review, the MDEP had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of human health or the environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, *see* the licensee's letter dated September 30, 2009 (ADAMS ML092880231), which is available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. This document may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov.* Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September, 2010.

For the U.S. Nuclear Regulatory Commission.

Paul Michalak,

Chief, Materials Decommissioning Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. 2010–25276 Filed 10–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9073; NRC–2009–0364]

Notice of the Nuclear Regulatory Commission Issuance of Materials License SUA–1596 for Uranium One Americas, Inc. Moore Ranch *In Situ* Recovery Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of materials license SUA–1596.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has issued a license to Uranium One Americas, Inc. (Uranium One) for its Moore Ranch uranium *in situ* recovery (ISR) facility in Campbell County, Wyoming. Materials License SUA–1596 authorizes Uranium One to operate its facility as proposed in its license application, as amended, and to possess uranium source and 11.e(2) byproduct material at the Moore Ranch facility. Furthermore, Uranium One will be required to operate under the conditions listed in Materials License SUA–1596.

This notice also serves as the record of decision for the NRC decision granting the Uranium One application for the Moore Ranch facility and issuing Materials License SUA–1596. This record of decision satisfies the regulatory requirement in Section 51.102(a) of Title 10 of the Code of Federal Regulations, which requires a Commission decision on any action for which a final environmental impact statement has been prepared to be accompanied by or include a concise public record of decision.

The NRC has always considered that the entire publically available record for a license application as the agency's record of decision. Documents related to the application carry docket number 40–9073. These documents for the Moore Ranch ISR facility include the license application (including the applicant's environmental report) [ML072851218], the Commission's Safety Evaluation Report (SER) published in September 2010 [ML101310291] and the Commission's Final Supplemental Environmental Impaction Statement (FSEIS) (NUREG–1910, Supplement 1) published in August 2010 [ML102290470]. As discussed in the Moore Ranch FSEIS, the Commission considered a range of alternatives. The reasonable alternatives discussed in detail were the applicant's proposal as described in its license application to conduct *in situ* uranium recovery on the site and the no-action alternative. Other alternatives considered but eliminated from detailed analysis include conventional uranium mining and milling, conventional mining and heap leach processing, alternative site location, alternate lixiviants and alternate wastewater treatment methods. The factors considered when evaluating the alternatives, discussion of preferences among the alternatives, and license conditions and monitoring programs related to mitigation measures are also discussed in the Moore Ranch FSEIS.

The NRC has found that the application for the source material license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR 40.32(b–c), the staff has found that Uranium One is qualified by reason of training and experience to use source material for the purpose it requested; and that Uranium One's proposed equipment and procedures for use at its Moore Ranch facility are adequate to protect public health and minimize danger to life or property. The NRC staff's review supporting these findings is documented in the SER. The NRC staff has also concluded, in accordance with 10 CFR 40.32(d), that issuance of Materials License SUA–1596 to Uranium One will not be inimical to the common defense and security or to the health and safety of the public.

Uranium One's request for a materials license was previously noticed in the **Federal Register** on January 25, 2008 (73 FR 4642), with a notice of an opportunity to request a hearing. The NRC did not receive any requests for a hearing on the license application.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," the details with respect to this action, including the SER and accompanying documentation and license, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1	Applicant's application, October 2, 2007	ML072851218
2	First Response to Request for Additional Information, July 11, 2008	ML082060521
3	Second Response to Request for Additional Information, October 28, 2008	ML090370721
4	First Open Issue Response, December 4, 2009	ML093440347
5	Second Open Issue Response, December 10, 2009	ML093570333
6	Third Open Issue Response, January 18, 2010	ML100250919
7	Generic Environmental Impact Statement for *In Situ* Leach Uranium Milling Facilities, May 2009	ML091530075
8	Supplemental Environmental Impact Statement for the Moore Ranch *In Situ* Recovery Project, August 2010.	ML102290470
9	NRC Safety Evaluation Report, September 2010	ML101310291
10	Source Materials License for the Moore Ranch, September 28, 2010	ML102345678

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *PDR.Resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Douglas T. Mandeville, Project Manager, Uranium Recovery Licensing Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of

Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–0724; fax number: (301) 415–5369; e-mail: *douglas.mandeville@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2010.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–25274 Filed 10–6–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0319; Docket No. 50–400]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Renewed Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of the Carolina Power & Light Company (the licensee) to withdraw its application dated September 29, 2008, as supplemented by letters dated January 16, 2009, August 12, 2009, January 18, 2010, and August 16, 2010, for a proposed amendment to Renewed Facility Operating License No. NPF–63 for the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake County, North Carolina.

The proposed amendment would have modified Technical Specification (TS) Sections 5.6.1.3.a and 5.6.1.3.b to incorporate the results of a new criticality analysis. Specifically the TSs would be revised to add new requirements for the Boiling-Water Reactor (BWR) spent fuel storage racks containing Boraflex in Spent Fuel Pools A and B. The requirements for the BWR spent fuel racks currently contained in TS 5.6.1.3 would be revised to specify applicability to the spent fuel storage racks containing Boral in Spent Fuel Pool B.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 24, 2009 (74 FR 8283). However, by letter dated September 28, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 29, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML082800410), as supplemented by letters dated January 16, 2009, (ADAMS Accession No. ML090230373), August 12, 2009 (ADAMS Accession No. ML092310549), January 18, 2010 (ADAMS Accession No. ML100250850), and August 16, 2010 (ADAMS Accession No. ML102370768), and the licensee's letter dated September 28, 2010, which withdrew the application for license amendment.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of September 2010.

For the Nuclear Regulatory Commission.

Douglas A. Broaddus,

Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–25281 Filed 10–6–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29455; 812–13624]

Van Eck Associates Corporation, et al.; Notice of Application

October 1, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act granting an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

Summary of Application: Applicants request an order to amend a prior order that permits: (a) Series of an open-end management investment company (each a "Fund," collectively, the "Funds") to issue shares that can be redeemed only in large aggregations ("Creation Units"); (b) secondary market transactions in shares to occur at negotiated prices; (c) dealers to sell such shares to secondary market purchasers unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) under specified limited circumstances, certain Funds to pay redemption proceeds more than seven days after the tender of shares; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds to acquire shares; and (f) certain affiliated persons of the Funds to deposit securities into, and receive securities from, the Funds in connection with the purchase and redemption of Creation Units of such Funds ("Prior Order").[1] Applicants seek to amend the Prior Order to: (a) Permit certain Funds based on equity and/or fixed income securities indexes for which Van Eck Associates Corporation ("Adviser") or an "affiliated person" of the Adviser as defined in section 2(a)(3) of the Act, is an index provider (each a "Self Indexing Fund"); (b) delete the relief granted from section 24(d) of the Act and revise various disclosure requirements in the applications for the Prior Order ("Prior Applications"); (c) modify the 80% investment requirement in the Prior Applications; (d) revise the discussion of depositary receipts in the Prior Applications; and (e) revise the discussion in the Prior Applications of the composition of securities deposited with the Fund to purchase Creation Units ("Deposit Securities") and securities received in connection with redemption of Creation Units ("Fund Securities").

Applicants: Adviser, Market Vectors ETF Trust ("Trust"), and Van Eck Securities Corporation ("Distributor").

Filing Dates: The application was filed on January 23, 2009, and amended

[1] Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 27283 (Apr. 7, 2006) (notice) and 27311 (May 2, 2006) (order), as subsequently amended by Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 27694 (Jan. 31, 2007) (notice) and 27742 (Feb. 27, 2007) (order), Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 28007 (Sept. 28, 2007) (notice) and 28021 (Oct. 24, 2007) (order), Van Eck Associates Corporation, et al., Investment Company Act Release Nos. 28349 (July 31, 2008) (notice) and 28365 (August 25, 2008) (order).

on June 3, 2009, March 12, 2010, June 23, 2010, August 13, 2010, and August 25, 2010.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 25, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 335 Madison Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is organized as a series fund with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), will serve as investment adviser to the Trust. The Adviser may retain sub-advisers ("Sub-Advisers") to manage the assets of one or more Funds. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter and distributor of the Trust's shares.

2. The applicants are currently permitted to offer Funds that track the performance of equity and fixed income indexes developed by either (i) third parties that are not "affiliated persons" (as such term is defined in section 2(a)(3) of the Act), or affiliated persons of affiliated persons, of the Trust, the Adviser, any Sub-Adviser, the Distributor or a promoter of a Fund or (ii) by the Adviser to the extent the Adviser may be deemed a sponsor of an underlying index due to licensing arrangements between the Adviser and S-Network Global Indexes, LLC or other similar arrangements. Applicants seek to amend the Prior Order to permit Self Indexing Funds. Applicants request that the order apply to any Self Indexing Funds offered in the future that are advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser and operate pursuant to the terms and conditions of the Prior Order, as amended. Applicants also seek to amend the Prior Order to (a) Delete the relief granted from section 24(d) of the Act and revise the Prior Applications accordingly; (b) modify the Fund's 80% investment requirement; (c) revise the discussion of depositary receipts; and (d) revise the discussion of the composition of Deposit Securities and Fund Securities.

Self-Indexing Funds

3. Each underlying index ("Underlying Index") for a Self Indexing Fund is or will be a rules based index comprised of equity and/or fixed income securities (including depositary receipts). A wholly owned subsidiary of the Adviser currently domiciled in Germany (the "Index Provider") will create and/or own a proprietary, rules based methodology ("Rules-Based Process") to create indexes for use by the Self Indexing Funds and other equity or fixed income investors.[2] The Index Provider intends to license the use of the Underlying Indexes, their names and other related intellectual property to the Adviser for use in connection with the Trust and the Self Indexing Funds. The licenses for the Self Indexing Funds will specifically state that the Adviser must provide the use of the Underlying Indexes and related intellectual property at no cost to the Trust and the Self Indexing Funds.

4. Applicants contend that any potential conflicts of interest arising from the fact that the Index Provider will be an "affiliated person" of the Adviser will not have any impact on the operation of the Self Indexing Funds because the Underlying Indexes will maintain transparency, the Self Indexing Funds' portfolios will be transparent, and the Index Provider, the Adviser, any Sub-Adviser and the Self Indexing Funds each will adopt policies and procedures to address any potential conflicts of interest ("Policies and Procedures"). The Index Provider will publish in the public domain, including on its Web site and/or the Self Indexing Funds' Web site ("Web site"), the rules that govern the construction and maintenance of each of its Underlying Indexes. Applicants believe that this will prevent the Adviser from possessing any advantage over other market participants by virtue of its affiliation with the Index Provider. Applicants note that the identity and weightings of the component securities of an Underlying Index ("Component Securities") for a Self Indexing Fund will be readily ascertainable by anyone, since the Rules-Based Process will be publicly available.

5. While the Index Provider does not presently contemplate specific changes to the Rules-Based Process, it could be modified, for example, to reflect changes in the underlying market tracked by an Underlying Index, the way in which the Rules-Based Process takes into account market events or to change the way a corporate action, such as a stock split, is handled. Such changes would not take effect until the employees of the Index Provider ("Index Group") have given (a) the Calculation Agent (defined below) reasonable prior written notice of such rule changes, and (b) the investing public at least sixty (60) days published notice that such changes will be implemented. Each Underlying Index for a Self Indexing Fund will be reconstituted or rebalanced on at least an annual basis, but no more frequently than monthly.

6. As owner of the Underlying Indexes, the Index Provider will enter into an agreement ("Calculation Agent Agreement") with a third party to act as "Calculation Agent." The Calculation Agent will be solely responsible for the calculation and maintenance of each Underlying Index, as well as the dissemination of the values of each

[2] The Underlying Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts (collectively referred to herein as "Accounts"), like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Index(es) or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

Underlying Index. The Calculation Agent is not, and will not be, an affiliated person, as such term is defined in the Act, or an affiliated person of an affiliated person, of the Self Indexing Funds, the Adviser, any Sub-Adviser, any promoter or the Distributor.

7. The Adviser and the Index Provider will adopt and implement Policies and Procedures to minimize or eliminate any potential conflicts of interest. Among other things, the Policies and Procedures will be designed to limit or prohibit communication with respect to issues/information related to the maintenance, calculation and reconstitution of the Underlying Indexes between the "Index Administrator," the Index Group and the employees of the Adviser. As employees of the Index Provider, the Index Administrator and members of the Index Group (i) Will not have any responsibility for the management of the Self Indexing Funds or the Affiliated Accounts, (ii) will be expressly prohibited from sharing this information with any employees of the Adviser or those of any Sub-Adviser, including those persons that have responsibility for the management of the Self Indexing Funds or the Affiliated Accounts until such information is publicly announced, and (iii) will be expressly prohibited from sharing or using this non-public information in any way except in connection with the performance of their respective duties. In addition, the Adviser and any Sub-Adviser have adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules under the Advisers Act. Also, the Adviser has adopted a Code of Ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act.

Additional Changes to Prior Order

8. Applicants also seek to amend the Prior Order to delete the relief granted from the requirements of section 24(d) of the Act. Applicants believe that the deletion of the exemption from section 24(d) that was granted in the Prior Order is warranted because the adoption of the summary prospectus under Investment Company Act Release No. 28584 (Jan. 13, 2009) (the "Summary Prospectus Rule") should make unnecessary any need by a Fund to use a product description ("Product Description"). Applicants also note that, to date, no Fund has utilized a Product Description. The deletion of the relief granted with respect to section 24(d) of the Act from the Prior Order will also result in the deletion of related discussions in the Prior Application, revision of the Prior Application to delete references to the Product Descriptions including in the conditions, and the deletion of condition 7 to the Prior Order.[3]

9. The application for the Prior Order states that a Fund will hold, in the aggregate, at least 80% of its total assets in Component Securities of its Underlying Index and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index. Applicants seek to amend the Prior Order to require a Fund to hold at least 80% of its total assets in Component Securities of its Underlying Index or in Depositary Receipts (defined below) or to-be-announced transactions ("TBAs") representing Component Securities.

10. The application for the Prior Order states, among other things, that the Fund will invest only in Depositary Receipts listed on a national securities exchange, as defined in section 2(a)(26) of the Act ("Exchange"), and that all Depositary Receipts in which the Funds invest will be sponsored by the issuers of the underlying security, except for certain specified exceptions. Applicants seek to amend the application for the Prior Order by revising the discussion of Depositary Receipts to note that "Depositary Receipts" include American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"). With respect to ADRs, the depositary is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. The ADR is registered under the Securities Act on Form F–6. ADR trades occur either on an Exchange or off-exchange. FINRA Rule 6620 requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depositary may be foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants will serve as the depositary for any Depositary Receipts held by a Fund. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.

11. The Prior Order provides that Deposit Securities and Fund Securities generally will correspond pro rata, to the extent practicable, to the portfolio securities of a Fund ("Portfolio Securities"). Applicants seek to amend this discussion of the composition of Deposit Securities and Fund Securities to state that Deposit Securities and Fund Securities either (a) will correspond pro rata to the Portfolio Securities of a Fund, or (b) will not correspond pro rata to the Portfolio Securities, provided that the Deposit Securities and Fund Securities (1) consist of the same representative sample of Portfolio Securities designed to generate performance that is highly correlated to the performance of the Portfolio Securities, (2) consist only of securities that are already included among the existing Portfolio Securities, and (3) are the same for all Authorized Participants on a given Business Day. In either case, the Deposit Securities and Fund Securities may differ from each other (and from the Portfolio Securities) (a) to reflect minor differences when it is not possible to break up bonds beyond certain minimum sizes needed for transfer and settlement, or (b) for temporary periods to effect changes in the Portfolio Securities as a result of the rebalancing of an Underlying Index.

12. The Self Indexing Funds, except as otherwise noted herein, will operate in a manner identical to the operation of the other Funds. Applicants agree that any order of the Commission granting the requested relief will be subject to all of the conditions in the Prior Order, except that condition 7 will be deleted.[4] Applicants believe that the requested relief continues to meet the necessary exemptive standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25294 Filed 10–6–10; 8:45 am]

BILLING CODE 8010–01–P

[3] Condition 7 states "Before an Index Fund may rely on this order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares."

[4] All representations and conditions contained in the Application that require a Fund to disclose particular information in its Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29454; 812–13582]

Dolby Laboratories, Inc.; Notice of Application

October 1, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

Summary of Application: Dolby Laboratories, Inc. ("Dolby") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Dolby, directly and through its wholly-owned subsidiaries, develops and delivers products and technologies that are used throughout the entertainment industry to produce a more immersive and enjoyable experience.

Filing Date: The application was filed on September 26, 2008, and amended on April 7, 2009, April 22, 2010, and September 30, 2010.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 26, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, 100 Potrero Avenue, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or calling (202) 551–8090.

Applicant's Representations:

1. Dolby, a Delaware corporation, directly and through its wholly-owned subsidiaries, develops and delivers innovative products and technologies that are used throughout the entertainment industry to produce a more immersive and enjoyable experience. Dolby generates revenue by licensing its technologies to manufacturers of consumer electronics products and software vendors and selling professional products and related services to entertainment content creators, producers and distributors. Dolby works across the global entertainment industry by offering products and services for content creators, such as studios and broadcasters, to encode content in Dolby's formats, by licensing Dolby technology to consumer electronics manufacturers and software vendors so that consumers can enjoy the content that has been encoded in Dolby's proprietary formats, and by working directly with standards bodies in an effort to have Dolby's formats adopted in their specifications to ensure a common standard across devices and to improve the overall consumer experience.

2. Dolby states that its business is highly capital intensive, highly cyclical and requires research and development of new technologies. As a result, Dolby represents that it maintains a substantial amount of cash, and various short-term investment securities, to run its operations, including research and development activities,[1] and to be available for strategic acquisitions. Dolby also states that it seeks to preserve capital and maintain liquidity by investing in short-term fixed income and money market investments that are investment grade, liquid, and that earn competitive market returns and provide a low level of credit risk in order to conserve capital and liquidity until the funds are used in Dolby's primary business or businesses ("Capital Preservation Investments"). Dolby states that it does not invest in securities for short-term speculative purposes.

3. Dolby also states that a significant portion of its assets consist of intangible assets, such as internally-generated intellectual property and other intangibles that may not appear on its balance sheet. Dolby states that because it holds its internally-developed intangible assets through wholly-owned subsidiaries, the value of its investment securities is (and likely will remain) well below 40% of its total assets (excluding Government securities and cash items) on an unconsolidated basis. Dolby states, however, that valuation of internally-developed intangible assets is difficult and inherently subjective, and Dolby believes that it cannot rely on the fact that it does not meet the definition of investment company found in section 3(a)(1)(C) of the Act because third parties such as underwriters will not accept investment company status representations based on unconsolidated calculations that rely on Dolby's valuations of those assets. Because Dolby cannot rely on the fact that it does not meet the definition of investment company found in section 3(a)(1)(C) in circumstances requiring an unqualified opinion that Dolby is not an investment company under the Act, it seeks an order of the Commission pursuant to section 3(b)(2) of the Act.

Applicant's Legal Analysis:

1. Dolby seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. Dolby states that as of June 25, 2010, the value of its total assets on an unconsolidated basis (exclusive of Government securities and cash items) was approximately $7.5 billion, the value of Dolby's investment securities (as defined in section 3(a)(2) of the Act) on an unconsolidated basis was approximately $0 and constituted approximately 0.0% of Dolby's total

[1] In fiscal years 2007, 2008 and 2009, Dolby's research and development expenses were $44.1 million, $62.1 million and $66.7 million, respectively, and accounted for roughly 14.9%, 17.6% and 18.7% of Dolby's total expenses (including the cost of revenues), respectively.

assets (exclusive of Government securities and cash items).

3. Rule 3a–1 under the Act provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities, securities of majority-owned subsidiaries and primarily controlled companies. These percentages are determined on a consolidated basis with the company's wholly-owned subsidiaries. Dolby states that it currently relies on rule 3a–1 and limits its investment in Capital Preservation Investments, investing its liquid capital more heavily in Government securities and cash items to ensure that its investment securities remain within the limits of the asset component of rule 3a–1's 45% test. Dolby believes that limiting its Capital Preservation Investments to meet the constraints of rule 3a–1 greatly underutilizes Dolby's cash management potential to the detriment of Dolby and its shareholders.[2]

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses. Dolby requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

5. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

a. Historical Development. Dolby states that since its founding in 1965, it has been engaged in delivering products and technologies that are employed throughout the entertainment creation, distribution and playback process to enhance the entertainment experience. In recent years, Dolby has expanded its focus on developing and delivering new audio and video technologies that enhance the entertainment experience. Dolby's revenue comes almost exclusively from its licensing, sales and services of its technologies to manufacturers of consumer electronics products and software vendors.

b. Public Representations of Policy. Dolby states that it has never represented that it is involved in any business other than developing and delivering products and technologies for the entertainment creation, distribution and playback process. Dolby asserts that it has consistently stated in its annual reports, stockholder letters, prospectuses, filings with the Commission, press releases, marketing materials, and website that it is engaged in the business of developing and delivering products and technology that improve the entertainment experience. Dolby states that it generally does not make public representations regarding its investment securities except as required by its obligation to file periodic reports to comply with federal securities laws. Dolby further states that it has emphasized operating results and has never emphasized either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. Activities of Officers and Directors. Dolby states that its directors spend substantially all of their time as directors for Dolby overseeing Dolby's business of developing and delivering products and technologies for the entertainment creation, distribution and playback process. Dolby states that its executive officers spend substantially all of their time managing Dolby's business of developing and delivering innovative products and technologies that are used throughout the entertainment industry. Dolby's Chief Financial Officer spends less than 5% of his time monitoring Dolby's cash balances and managing short-term investment securities in accordance with Dolby's investment policies. None of Dolby's executive officers, other than the Chief Financial Officer, spend time monitoring cash balances and managing short-term investment securities.

As of September 25, 2009, Dolby had approximately 1,135 employees in locations throughout the world, consisting of 388 employees in sales and marketing, 421 employees in products and technology (including 345 employees in research and development) and 326 employees in general and administrative functions. In addition to the Chief Financial Officer, only three employees spend a small portion of time on matters relating to the management of Dolby's investment securities: The Vice President, Tax and Treasury spends less than 10% of his time on investment matters. The Director of Treasury spends about one-third of her time on investment matters and the Treasury Manager spends approximately 20% of his time on investment matters.

d. Nature of Assets. Dolby states that as of June 25, 2010, the value of its investment securities (as defined in section 3(a)(2) of the Act) was approximately $411 million, which constituted approximately 39.2% of its total assets on a consolidated basis (exclusive of Government securities and cash items) in accordance with rule 3a–1.[4] Dolby states that its investments in "investment securities" that are not Capital Preservation Instruments will be no more than 10 percent of its total assets (other than Government securities and cash items) on a consolidated basis. Dolby further states that it owns, through its wholly-owned subsidiaries, a significant amount of intangible assets, including internally-developed intellectual property. Dolby states that notwithstanding the value of its internally-developed intellectual property to its business, that value is not recorded on Dolby's consolidated balance sheet as it is not treated as an asset under Generally Accepted Accounting Principles. Dolby also states that the asset tests used in connection with sections 3(a)(1)(C), 3(b)(1) and 3(b)(2) of the Act and rule 3a–1 under the Act thus significantly understate the relative value of Dolby's internally-developed intellectual property assets and significantly overstate the relative value of investment securities.

e. Sources of Income and Revenue. Dolby states that for the four fiscal quarters ended June 25, 2010, most of Dolby's net income before taxes was generated by its operating activities. At the end of the third quarter of fiscal 2010, Dolby had net income of $405 million for the last four fiscal quarters combined, of which net investment income was $8 million or 2% of income before taxes. Dolby states that the overwhelming majority of its income is

[2] Rule 3a–8 under the Act provides an exemption for certain companies whose research and development expenses are a substantial percentage of their total expenses. Dolby does not rely on rule 3a–8 because its research and development expenses have in recent years accounted for less than 20 percent of its total expenses (including the cost of revenues).

[3] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

[4] For purposes of determining its primary business, Dolby believes that consolidating its financial results with those of its wholly-owned subsidiaries presents a more accurate view of Dolby's business and financial position and a more reliable basis for evaluating its assets and income.

operating income generated by its licensing and products and services sales activities.

6. Dolby thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

Applicant's Conditions:

Dolby agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Dolby will continue to allocate and utilize its accumulated cash and investment securities for bona fide business purposes.

2. Dolby will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25292 Filed 10–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63021; File No. SR–C2–2010–004]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Certain Rule Language Contained in CBOE Rules

September 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2010, C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt certain rules in place at the Chicago Board Options Exchange, Incorporated ("CBOE"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, C2 included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2009, C2 was registered as a national securities exchange under Section 6 of the Exchange Act.[5] C2 has yet to commence trading options, however a launch is anticipated in October 2010. The purpose of this filing is to modify certain C2 rules to match changes that have been made to corresponding CBOE rules, and to also adopt certain provisions from CBOE Rules 3.1 and 8.3 regarding trading permits and market maker appointments, respectively.

The Exchange proposes to amend Rule 1.1 to adopt the definitions of the terms "Professional" and "Voluntary Professional" in a substantially similar manner as they have recently been adopted for use on CBOE. Thus, C2 will allow users that fall into the customer range to elect to have orders treated, for purposes of certain C2 rules, as broker dealers. Further, when a person or entity that is not a broker-dealer places more than 390 orders per day on average during a calendar month for its own beneficial account(s), such person will be deemed a "Professional" under the Rules and will be treated in the same manner as a broker-dealer for purposes of certain designated C2 rules.

The Exchange proposes to amend Rule 3.1 to allow C2 to establish different types and terms of trading permits, and to establish guidelines and standards governing the Exchange's authority regarding these trading permits. The proposed changes merely adopt certain language contained in CBOE Rule 3.1.

The Exchange also proposes to amend Interpretation .03 to Rule 3.5 to expand the ability of the Exchange to waive the requirement to conduct a hearing under Rule 3.5 if the Exchange intends to grant a Permit Holder's application to continue holding a Trading Permit or an associated person's application for continued association with a Permit Holder.

The Exchange also proposes to modify Rule 6.10 regarding order types to (i) make clear that the Exchange has the flexibility to make order types available on a class-by-class basis (this language is identical to language contained in CBOE Rule 6.53); (ii) add the Intermarket Sweep Order (identical to the CBOE version); add the AIM Sweep Order (identical to the CBOE version); add the Sweep and AIM Order (identical to the CBOE version); and add the C2-Only Order (identical to the CBOE version except it is called C2-Only instead of CBOE-Only).

The Exchange also proposes to amend Rule 6.32 regarding trading pauses to conform Rule 6.32 to comparable rules on CBOE and other exchanges.

The Exchange also proposes to amend Rule 8.2 to adopt language from CBOE Rule 8.3 (Appointment of Market-Makers) to provide a structure for C2 Market-Makers to register in option classes. As proposed, approved C2 Market-Makers will receive an option class registration credit of 1.0. Like on CBOE, a Market-Maker can use that credit to register in option classes (each class will have a designated registration cost). For now, C2 is designating every option traded on C2, except SPX, VIX, OEX, DJX, and XSP, to have a registration cost of .001 (with that cost structure, C2 Market-Makers should be able to register in every option class anticipated to be listed on C2, except for the specific classes listed above, with the registration credit of 1.0). If C2 determines to commence trading of SPX, VIX, OEX, DJX, and XSP options, it will file a proposed rule change to adopt registration costs for those products.

Lastly, the Exchange proposes to amend C2 Chapter 24 to clarify that CBOE Rule 24.20 (SPX Combination Orders) shall not apply to C2. CBOE Rule 24.20 relates to open-outcry trading of SPX combos on CBOE and is therefore not applicable to C2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") [6] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Updating the C2 rules to keep them in line with those of CBOE provides for consistency in rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[11] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] The Commission notes the proposal is substantively identical to SRO rules that were approved by the Commission, and does not raise any new regulatory issues. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–C2–2010–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2010–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2010–004 and should be submitted on or before October 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25247 Filed 10–6–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(1). [sic]

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. C2 has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63027; File No. SR–Phlx–2010–108]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval to a Proposed Rule Change Relating to a Proposed Price Improvement System, Price Improvement XL

October 1, 2010.

I. Introduction

On July 30, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish Price Improvement XL ("PIXL"). The proposed rule change was published for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comment in the **Federal Register** on August 16, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In its filing, Phlx proposes to establish a price-improvement mechanism in which a member (an "Initiating Member") may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (this initial order is referred to as the "PIXL Order") against principal interest or against any other order it represents as agent (this matching order is referred to as the "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction") pursuant to the proposed Rule.[4] In addition, Phlx proposes to provide for the automatic execution, under certain conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change to establish rules for the implementation of the PIXL auction is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act.[6] Specifically, as discussed further below, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, in part, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) of the Act also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Commission believes that approving the Exchange's proposal to establish PIXL should increase competition among those options exchanges that offer similar functionality. For the reasons discussed below, the Commission finds that the Exchange's proposal is consistent with the Act.

A. Auction Eligibility

Proposed Rule 1080(n)(i) describes the circumstances under which an Initiating Member may initiate a PIXL Auction. Notably, the proposal draws a distinction between orders for less than 50 contracts and those for 50 contracts or more, and affords slightly different treatment based on that distinction. The specific treatment of public customer and non-public customer orders for above and below 50 contracts is described directly below.[8]

For public customer orders, if the PIXL Order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer ("NBBO") on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. If the PIXL Order is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order.

For non-public customer orders (*i.e.,* where the order is for the account of a broker-dealer or any other person or entity that is not a public customer), if the order is for 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO. If the PIXL Order is for less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price improved by at least one minimum price improvement increment on the same side of the market as the PIXL Order, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one minimum improvement increment better than the PBBO on the opposite side of the market from the PIXL Order.

The Commission finds that the Exchange's proposed rule with respect to auction eligibility requirements for PIXL is consistent with the Act. The Commission notes that the PIXL Order will be guaranteed an execution price of at least the NBBO in all cases and will be given an opportunity for execution at a price better than the NBBO.[9] Further, for public customer orders of less than 50 contracts, the Commission notes that minimum stop price must be one minimum increment better than the NBBO. In addition, the proposal seeks to protect the priority of resting limit orders on the Exchange book. The Commission notes that proposed Rule 1080(n)(i)(A)(2) and (n)(i)(B)(2), concerning orders that are submitted with a size of less than 50 contracts, will be effective on a pilot basis expiring August 31, 2011. The Exchange has agreed to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in

[3] *See* Securities Exchange Act Release No. 62678 (August 10, 2010), 75 FR 50021 ("Notice").

[4] For a more detailed discussion of the purpose of the proposal and examples, *see* Notice.

[5] In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] In addition, the Notice contains an example that illustrates the application of these specific provisions. *See* Notice, *supra* note 3, at 75 FR 50022.

[9] The Boston Options Exchange ("BOX"), a trading facility of NASDAQ OMX BX, Inc., operates an auction known as the PIP, *see* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (Order approving SR–BSE–2002–15 to establish trading rules for the BOX facility ("PIP Order")), the International Securities Exchange, LLC. ("ISE") operates an auction known as the PIM, *see* Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Order approving SR–ISE–2003–06 to adopt rules for the PIM ("PIM Order")), and the Chicago Board Stock Exchange, Incorporated ("CBOE") operates an auction known as the AIM, *see* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (Order approving SR–CBOE 2005–60 to adopt rules for the AIM ("AIM Order")). The PIP and PIM also require a member to enter an order into the auction at a price that is at least equal to the NBBO. *See* BOX Rules, Chapter V, Section 18(e) and ISE Rule 723(b)(1). The CBOE requires an agency order that is for 50 contracts or more to be entered into the AIM at a price that is the better of the NBBO or the agency order's limit price, and an agency order that is less than 50 contracts at a price that is the better of the NBBO price improved by one minimum price improvement increment or the agency order's limit price. *See* CBOE Rule 6.74A(a).

ascertaining the level of price improvement attained for smaller-sized orders during the pilot period.

B. Initiating the Auction

An Initiating Member may initiate a PIXL Auction by submitting a PIXL Order in one of three ways: (1) Single stop price, (2) auto-match price, or (3) not-worse-than price.

Under the first option, the Initiating Member could submit a PIXL Order specifying a single "stop" price at which it seeks to execute the PIXL Order. Under the second option, an Initiating Member could submit a PIXL Order specifying that it is willing to automatically match ("auto-match") as principal or as agent on behalf of an Initiating Order the price and size of all trading interest [10] and responses to the PIXL Auction Notification ("PAN," as described below), in which case the PIXL Order would be stopped at the NBBO on the Initiating Order side of the market (if 50 contracts or greater) or, if less than 50 contracts, the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order's limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO and at least one increment better than the limit of an order on the book on the same side as the PIXL Order.

Under the third and final option, an Initiating Member could submit a PIXL Order specifying that it is willing to either: (i) Stop the entire order at a single stop price and auto-match PAN responses, as described below, together with trading interest, at a price or prices that improve the stop price to a specified price above or below which the Initiating Member will not trade (a "Not Worse Than" or "NWT" price); (ii) stop the entire order at a single stop price and auto-match all PAN responses and trading interest at or better than the stop price; or (iii) stop the entire order at the NBBO on the Initiating Order side (if 50 contracts or greater) or the better of: (A) The PBBO price on the opposite side of the market from the PIXL Order improved by one minimum price improvement increment, or (B) the PIXL Order's limit price (if the order is a limit order) on the Initiating Order side (if for less than 50 contracts), and auto-match PAN responses and trading interest at a price or prices that improve the stop price up to the NWT price. In all cases, if the PBBO on the same side of the market as the PIXL Order represents a limit order on the book, the stop price must be at least one minimum price improvement increment better than the booked limit order's limit price.

Once the Initiating Member has submitted a PIXL Order for processing, the PIXL Order may not be cancelled. The Initiating Member may improve the stop price or NWT price of its Initiating Order, however such price may be improved only to the benefit of the PIXL Order during the Auction, and the order may not be cancelled.

The Commission notes that the proposed PIXL procedures regarding the submission of a PIXL Order using the auto-match and NWT prices are similar to the rules of the CBOE, BOX, and ISE.[11] One notable difference is that the BOX and ISE Rules prohibit a member from cancelling or modifying the auto-match price during the price improvement auction [12] whereas the Phlx proposal would allow a member to modify the stop or NWT price, but such price may only be improved to the benefit of the PIXL Order during the Auction and the order may not be cancelled after it is entered. The Commission notes that when the Initiating Member selects the auto-match or NTW price prior to the start of the auction, competitive final pricing would be out of the Initiating Member's control. The Commission believes that permitting the Initiating Member to improve the NWT price during the PIXL Auction could allow members to quickly react to an improving market and thereby provide additional opportunity for the member to offer price improvement to the PIXL Order.

In addition, the Exchange has undertaken to provide the Commission with the following data on a monthly basis, which the Commission and the Exchange can use to evaluate the proposed auto-match functionality: the percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature versus the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

C. PIXL Auction Notification ("PAN")

When the Exchange receives a PIXL Order for Auction processing, a PAN detailing the side, size, and the stop price of the PIXL Order will be sent over the Exchange's TOPO Plus Orders data feed.[13] An updated PAN message will be sent over the Exchange's TOPO Plus Orders data feed when the Initiating Member improves the stop price of the PIXL Order. The updated PAN will include the side, size, and improved stop price of the PIXL Order. Messages concerning updates to the stop price by the Initiating Member would be used by PAN respondents to improve a previously-submitted price when they are alerted that a stop price has been improved. Any person or entity may submit PAN responses, provided such response is properly marked specifying price, size, and side of the market. The Commission believes that access to the PIXL auction for those who may wish to compete for a PIXL Order should be sufficient to provide opportunities for a meaningful, competitive auction.[14]

D. PIXL Auction

A PIXL Auction would last for one second,[15] unless it is concluded early as the result of any of the circumstances described below. PAN responses will not be visible to Auction participants, and will not be disseminated to the Options Price Reporting Authority ("OPRA").[16] A PAN response must be equal to or better than the NBBO at the time of receipt of the PAN response. A PAN response with a price that is outside the NBBO would be rejected. PAN responses may be modified or cancelled during the Auction.[17] PAN responses on the same side of the market as the PIXL Order are considered

[10] "Trading interest" refers to unrelated orders received during the Auction, booked orders, and quotes that are considered for execution and allocation against the PIXL Order following the Auction.

[11] *See* BOX Rules, Ch. V, Section 18(e), CBOE Rule 6.74A(b)(1)(A), and ISE Rule 716(d)(iii).

[12] *See* BOX Rules, Ch. V, Section 18(e) and ISE Rule 716(d)(iii).

[13] For a description of TOPO Plus Orders, *see* Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR–Phlx–2009–92). *See also* Securities Exchange Act Release No. 62194 (May 28, 2010), 75 FR 31830 (June 4, 2010) (SR–Phlx–2010–48) (Order approving market data fees for TOPO Plus Orders) ("TOPO Plus Approval Order"). Members who are "Professional Subscribers" to the TOPO Plus Orders data feed are subject to lower fees than the "External Distributors" from whom they receive TOPO Plus Orders.

[14] *See* TOPO Plus Approval Order, *supra* note 13 (approving market data fees for TOPO Plus Orders as consistent with Sections 6(b)(4) and 6(b)(5) of the Act).

[15] The PIP, AIM, and PIM also are one-second auctions. *See* BOX Rules, Chapter V, Section 18(e)(i), CBOE Rule 6.74A(b)(1)(C), and ISE Rule 723(c)(1).

[16] CBOE's AIM also provides that responses to the auction will not be visible to other participants and will not be disseminated to OPRA. *See* CBOE Rule 6.74A(b)(1)(F).

[17] *See also* CBOE Rule 6.74A(b)(1)(I).

invalid and will be rejected.[18] Multiple PAN responses from the same member may be submitted during the Auction. Multiple orders at a particular price level submitted by a member in response to a PAN may not exceed, in the aggregate, the size of the PIXL Order.[19]

E. Conclusion of the PIXL Auction

An Auction could conclude early any time: (i) The PBBO crosses the PIXL Order stop price on the same side of the market as the PIXL Order (since further price improvement will be unlikely and any responses offering improvement are likely to be cancelled), or (ii) there is a trading halt on the Exchange in the affected series. The proposed rules concerning the early conclusion of an Auction will be effective for a pilot period scheduled to expire August 31, 2011. The Exchange has undertaken to provide the Commission with detailed information each month during the pilot period to assist the Commission, as well as the Exchange, in ascertaining the effect of early Auction conclusions during the pilot period.

If the Auction concludes before the expiration of one second as the result of the PBBO crossing the stop price, the entire PIXL Order will be executed at the best response price(s) or, if the stop price is the best price in the Auction, at the stop price, unless the best response price is equal to the price of a limit order resting on the Phlx book on the same side of the market as the PIXL Order, in which case the PIXL Order will be executed against that response, but at a price that is at least one minimum price improvement increment better than the price of such limit order at the time of the conclusion of the Auction. The Commission notes that Phlx Rule 1080(n)(v) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price, causing a PIXL Auction to conclude before the end of the PIXL Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707.

If the Auction concludes early as the result of a trading halt on the Exchange in the affected series, the entire PIXL Order would execute against the Initiating Order at the stop price, since the Initiating Member had guaranteed that an execution would occur at the stop price (or better) prior to the initiation of the trading halt.

An unrelated market or marketable limit order on the opposite side of the market from the PIXL Order received during the Auction will not cause the Auction to end early. Such order would execute against interest outside of the Auction. If contracts remain from such unrelated order at the time the Auction ends, however, they would participate in the PIXL order allocation process. This provision would be effective for a pilot period scheduled to expire on August 31, 2011. The Commission believes that allowing the PIXL auction to continue for the full auction period despite receipt of unrelated orders outside the Auction would allow the auction to run its full course and, in so doing, will provide a full opportunity for price improvement to the PIXL Order. Further, the unrelated order would be available to participate in the PIXL order allocation.

The Commission believes that approval of these provisions on a pilot basis is appropriate and will afford both the Exchange and the Commission an opportunity to analyze the impact of early terminations and unrelated orders on the PIXL process, as well as the Exchange's surveillance procedures with respect to PIXL.[20] In particular, the Exchange has agreed to provide the Commission with data on a monthly basis to assist the Commission, and the Exchange, in evaluating the operation of the PIXL Auction and the provisions for early termination of an Auction. In addition, the Exchange has agreed to provide information on (1) the number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period and (2) the price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order. The Commission expects to be able to use this information to consider the impact of the proposed rule on the PIXL Order as well as the unrelated order.

F. Order Allocation

At the conclusion of the Auction, the PIXL Order would be allocated at the best price(s), which may include non-Auction quotes and orders that may be present at each price level. Public customer orders would have priority at each price level, after which contracts would be allocated among all Exchange quotes, orders, and PAN responses.[21] Any unexecuted PAN responses would be cancelled.

1. Single Price Submission Option

Under the single stop price option, allocations would be made first at prices that improve the stop price, and then at the stop price with up to 40% of the remaining contracts after public customer interest is satisfied being allocated to the Initiating Member at the stop price.[22] Remaining contracts would be allocated among remaining quotes, orders, and PAN responses at the stop price, and then to the Initiating Member.[23]

2. Auto-Match Option

Under the auto-match option, the Initiating Member would be allocated an equal number of contracts as the aggregate size of all other quotes, orders, and PAN responses at each price point until a price point is reached where the balance of the order can be fully executed, except that the Initiating Member would receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

3. Stop and NWT Option

Under the NWT option, after public customer interest is satisfied, contracts would be allocated first to quotes, orders, and PAN responses at prices

[18] The Exchange stated in its proposal that any PAN response on the same side of the market as the PIXL Order would be the result of an error, and therefore Phlx would reject such response.

[19] A pattern or practice of submitting multiple orders in response to a PAN at a particular price point that exceed, in the aggregate, the size of the PIXL Order, will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Phlx Rule 707. *See* Phlx Rule 1080(n)(iv).

[20] The Exchange's surveillance plan and procedures are subject to inspection by the Commission, to ensure that the Exchange adequately monitors its market and its members, and enforces its rules and the federal securities laws, including the anti-fraud provisions.

[21] Proposed Rules 1080(n)(ii)(F) through (H) address the handling of the PIXL Order and other orders, quotes and PAN responses when certain conditions are present. Specifically, if there are PAN responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Auction, such PAN responses will be executed, if possible, at their limit price(s). If the final PIXL Auction price is the same as an order on the limit order book on the same side of the market as the PIXL Order, the PIXL Order may only be executed at a price that is at least one minimum price improvement increment better than the resting order's limit price or, if such resting order's limit price crosses the stop price, then the entire PIXL Order will trade at the stop price with all better priced interest being considered for execution at the stop price.

[22] However, if only one specialist, SQT or RSQT matches the stop price, then the Initiating Member may be allocated up to 50% of the contracts executed at such price. This allocation is consistent with CBOE Rule 6.74A(b)(3)(F).

[23] Under the proposed Rule, the specialist would not be entitled to receive orders for 5 contracts or fewer.

better than the NWT price (if any), beginning with the best price. Next, contracts would be allocated among quotes, orders, and PAN responses at prices equal to the Initiating Member's NWT price and better than the Initiating Member's stop price, beginning with the NWT price. The Initiating Member would receive an equal number of contracts as the aggregate size of all other quotes, orders, and PAN responses at each price point, except that the Initiating Member would be entitled to receive up to 40% of the contracts remaining at the final price point (including situations where the final price point is the stop price).

The Commission believes that the proposed PIXL rules should promote price competition within a PIXL auction by providing Phlx members with a reasonable opportunity to compete for a significant percentage of the PIXL order and, therefore, should protect investors and the public interest. The Commission continues to believe that a 40% allocation is consistent with the statutory standards for competition and free and open markets.[24]

G. Professionals

Phlx Rule 1000(b)(14) defines the term "professional" and provides that professional orders will be treated in the same manner as orders for an off-floor broker-dealer for the purposes of certain rules.[25] The definition provides an exception for professional all-or-none orders, which are treated like customer orders. Phlx proposes to amend this definition to provide that professional orders will be treated in the same manner as orders for an off-floor broker-dealers for the purposes of PIXL and to also provide that PIXL orders for the beneficial accounts of professionals with an all-or-none designation[26] will be treated in the same manner as off-floor broker-dealer orders (*i.e.,* not treated like customer orders). The Commission notes that this is consistent with the ISE's PIM, where ISE Priority Customer interest is executed in full before Professional Orders and market maker quotes.[27]

H. Crossing Public Customer Orders on PIXL

Proposed Rule 1080(n)(v) addresses the situation where an Initiating Member holds public customer orders on both sides of the market in the same option series. Instead of initiating a PIXL Auction, an Initiating Member would be able to enter a PIXL Order for the account of a public customer paired with an order for the account of another public customer and such paired orders would be automatically executed without the need to commence a PIXL Auction. The execution price would be required to be expressed in the minimum quoting increment applicable to the series (*e.g.,* a penny where the series trades in penny increments). An execution may not trade through the NBBO or at the same price as any resting customer order. The Commission believes that these specifications are designed to protect resting limit orders on the book, and would ensure that this mechanism could not be used to trade in increments that would not otherwise be available for trading outside the PIXL context.

Phlx Rule 1080(c)(ii)(C) prevents an Order Entry Firm from executing agency orders to increase its economic gain from trading against the order without first giving other trading interests on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for a firm to establish a relationship with a customer or other person to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. The proposed rule would provide that it would be a violation of Rule 1080(c)(ii)(C) for a firm to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for (i) a customer affiliated with the firm, or (ii) a customer with whom the firm has an arrangement that allows the firm to realize similar economic benefits from the transaction as the firm would achieve by executing agency orders as principal, to regularly execute against agency orders handled by the firm immediately upon their entry as PIXL customer-to-customer immediate crosses. These provisions are substantially similar to those of CBOE.[28]

I. No Minimum Size Requirement for PIXL

Like the BOX's PIP auction, the ISE's PIM auction, and the CBOE's AIM auction, the PIXL auction would be available for orders of fewer than 50 contracts. Under the Exchange's proposal, there would be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

The Commission believes that the Exchange's proposal should provide small customer orders with the opportunity for price improvement in a manner that is consistent with the Act. The Commission will evaluate the PIXL auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the PIXL auction. In addition, the Commission will examine the data submitted by the Exchange with respect to situations in which the PIXL auction is terminated prematurely by an unrelated order. To aid the Commission in its evaluation, the Exchange represents that it will provide the following information each month:

Regarding the early conclusion of an Auction due to the PBBO crossing the PIXL Order stop price on the same side of the market as the PIXL order, or due to a trading halt, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) The number of times that the PBBO crossed the PIXL Order stop price on the same side of the market as the PIXL Order and prematurely ended the PIXL Auction, and at what time the PIXL Auction ended;

(2) The number of times that a trading halt prematurely ended the PIXL auction and at what time the trading halt ended the PIXL Auction;

(3) Of the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

(4) In the Auctions terminated early due to the PBBO crossing the PIXL order stop price, the percentage of contracts that received price improvement over the PIXL order stop price;

(5) Of the Auctions terminated early due to a trading halt, the number that resulted in price improvement over the PIXL Order stop price, and the average amount of price improvement provided to the PIXL Order;

[24] *See* PIP Order, *supra* note 9, at 2789–2790 and PIM Order, *supra* note 9, at 75097–75098.

[25] *See* Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010)(SR–Phlx–2010–05) (adopting the term "professional" as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)).

[26] According to the Exchange, PIXL Orders are inherently all-or-none orders because the Initiating Member guarantees that the PIXL Order will be filled in its entirety.

[27] *See* ISE Rule 723(d)(1).

[28] *See* CBOE Rule 6.74A.09.

(6) In the auctions terminated early due to a trading halt, the percentage of contracts that received price improvement over the PIXL order stop price; and

(7) The average amount of price improvement provided to the PIXL Order when the PIXL Auction is not terminated early (*i.e.,* runs the full one second).

(8) The number of times an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order is received during the Auction Period; and

(9) The price(s) at which an unrelated market or marketable limit order (against the PBBO) on the opposite side of the PIXL Order that is received during the Auction Period is executed, compared to the execution price of the PIXL Order.

Regarding PIXL Orders of fewer than 50 contracts, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) The number of orders of fewer than 50 contracts entered into the PIXL Auction;

(2) The percentage of all orders of fewer than 50 contracts sent to Phlx that are entered into the PIXL Auction;

(3) The percentage of all Phlx trades represented by orders of fewer than 50 contracts;

(4) The percentage of all Phlx trades effected through the PIXL Auction represented by orders of fewer than 50 contracts;

(5) The percentage of all contracts traded on Phlx represented by orders of fewer than 50 contracts;

(6) The percentage of all contracts effected through the PIXL Auction represented by orders of fewer than 50 contracts;

(7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the PIXL Auction;

(8) The number of orders of 50 contracts or greater entered into the PIXL Auction;

(9) The percentage of all orders of 50 contracts or greater sent to Phlx that are entered into the PIXL Auction;

(10) The spread in the option, at the time an order of 50 contracts or greater is submitted to the PIXL Auction;

(11) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.;

(12) Of PIXL trades where the PIXL Order is for the account of a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and

(13) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of fewer than 50 contracts, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.

(14) Of PIXL trades where the PIXL Order is for the account of a broker dealer or any other person or entity that is not a public customer, and is for a size of 50 contracts or greater, the percentage done at the NBBO plus $.01, plus $.02, plus $.03, etc.; and

(15) The number of orders submitted by Initiating Members when the spread was $.05, $.10, $.15, etc. For each spread, specify the percentage of contracts in orders of fewer than 50 contracts submitted to the PIXL Auction that were traded by: (a) The Initiating Member that submitted the order to the PIXL; (b) Phlx Market Makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction). For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the PIXL Auction that were traded by: (a) the Initiating Member that submitted the order to the PIXL Auction; (b) Phlx market makers assigned to the class; (c) other Phlx members; (d) Public Customer Orders; and (e) unrelated orders (orders in standard increments entered during the PIXL Auction).

Regarding PIXL auto-match, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) The percentage of all Phlx trades effected through the PIXL Auction in which the Initiating Member has chosen the auto-match feature, and the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen the auto-match feature vs. the average amount of price improvement provided to the PIXL Order when the Initiating Member has chosen a stop price submission.

Regarding competition, the Exchange has undertaken to provide the following information on a monthly basis during the pilot period:

(1) For the first Wednesday of each month: (a) The total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and

(2) For the third Wednesday of each month: (a) The total number of PIXL auctions on that date; (b) the number of PIXL auctions where the order submitted to the PIXL was fewer than 50 contracts; (c) the number of PIXL auctions where the order submitted to the PIXL was 50 contracts or greater; (d) the number of PIXL auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and (e) the number of PIXL auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

J. Section 11(a) of the Act

Section 11(a)(1) of the Act [29] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2–2(T) under the Act,[30] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution

[29] 15 U.S.C. 78k(a)(1).

[30] 17 CFR 240.11a2–2(T).

of the transaction once it has been transmitted to the member performing the execution;[31] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, the Exchange requests that the Commission concur with Phlx's conclusion that members who enter orders into the Auction satisfy the requirements of Rule 11a2–2(T).[32] For the reasons set forth below, the Commission believes that Exchange members entering orders into the Auction would satisfy the conditions of the Rule.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[33] Phlx has represented that only specialists and on-floor Streaming Quote Traders ("SQTs")[34] have the ability to submit orders into the Auction from on the floor of the Exchange.[35] These members, however, would be subject to the "market maker" exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.[36] Remote Streaming Quote Traders ("RSQTs") may only submit orders into the Auction from off the floor of the Exchange.[37] Phlx has also represented that, while Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange's Options Floor Broker Management System ("FBMS"), there is no mechanism by which such Floor Brokers can directly submit orders to the Auction or send orders to off-floor broker-dealers through FBMS for indirect submission into the Auction.[38] Because no Exchange members, other than specialists and SQTs, may submit orders into the Auction from on the floor of the Exchange, the Commission believes that PIXL satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. Phlx has represented that at no time following the submission of an order is a member organization able to acquire control or influence over the result or timing of an order's execution.[39] According to the Exchange, the execution of a member's order is determined by what other orders are present in the Auction and the priority of those orders.[40] Accordingly, the Commission believes that a member does not participate in the execution of an order submitted to the Auction.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as PIXL, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[41] Phlx has represented that the design of the Auction ensures that no member organization has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Auction.[42] Based on the Exchange's representation, the Commission believes that PIXL satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[43] Phlx represents that member organizations relying on Rule 11a2–2(T) for transactions effected

[31] The member may, however, participate in clearing and settling the transaction.

[32] *See* Letter from Richard S. Rudolph, Associate General Counsel, Phlx, to Elizabeth M. Murphy, Secretary, Commission, dated October 1, 2010 ("Phlx 11(a) Letter").

[33] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

[34] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[35] *See* Phlx 11(a) Letter, *supra* note 32, at note 21 and accompanying text. Also, the Exchange represented that SQTs and RSQTs are market makers on the Exchange. *See* Phlx 11(a) Letter, *supra* note 32.

[36] *See* 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2–2(T)(a)(1). According to the Exchange, there are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Auction.

[37] *See* Phlx 11(a) Letter, *supra* note 32, at note 18 and accompanying text. An RSQT is an ROT that is a member or member organization with no physical trading floor presence and who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

The Commission notes that, while RSQTs may only submit orders into the Auction from off the Exchange floor, RSQTs also would be subject to the "market maker" exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

[38] The Exchange represented that because FBMS does not have the coding required to enter orders into the Auction, and, as a result, it is impossible for such Floor Brokers to submit orders into the Auction. *See* Phlx 11(a) Letter, *supra* note 32, at note 20 and accompanying text.

[39] *See* Phlx 11(a) Letter, *supra* note 32.

[40] *See id.* A member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

[41] In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 33.

[42] *See* Phlx 11(a) Letter, *supra* note 32.

[43] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 40 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

through PIXL must comply with this condition of the Rule.[44]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[45]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–Phlx–2010–108) is approved, except that (1) paragraphs (n)(i)(A)(2), (n)(i)(B)(2), (n)(ii)(B)(4), and (n)(ii)(D) of Phlx Rule 1080 are approved on a pilot basis until August 31, 2011; and (2) there shall be no minimum size requirement for orders entered into the PIXL for a pilot period expiring on August 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25252 Filed 10–6–10; 8:45 am]

BILLING CODE 8011–01–P

[44] *See* Phlx 11(a) Letter, *supra* note 32.

[45] 15 U.S.C. 78f(b)(5). In connection with the issuance of this approval order, neither the Commission nor its staff is granting any exemptive or no-action relief from the requirements of Rule 10b–0 under the Act. 17 CFR 240.10b–10. Accordingly, a broker-dealer executing a customer order through the PIXL auction will need to comply with all applicable requirements of that Rule.

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63026; File No. SR–CBOE–2010–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Amend Certain Rules Pertaining to Credit Options

October 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend certain rules pertaining to Credit Options. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval to list and trade Credit Default Options and Credit Default Basket Options (collectively "Credit Options") in 2007, and is planning to re-launch these products.[3] In connection with the Exchange's planned re-launching of Credit Options, the Exchange will be introducing contracts that have a payout that is less than $100,000.[4] In addition, the Exchange would like to: (1) Change the quoting convention for Credit Default Options, (2) change the minimum price variation for Credit Option, and (3) designate a single applicable Credit Event for Credit Options.

Quoting Convention and Minimum Price Variation Changes

When CBOE launched Credit Default Options, the Exchange designated the cash settlement amount to be $100,000, which was equal to an exercise settlement value of $100 multiplied by a contract multiplier of 1,000 (which was specified by the Exchange at listing).[5] Because the exercise settlement value is currently fixed by rule at $100,[6] bids and offers for contracts are expressed in amounts ranging from $0 (no bid) to $100. The range of bids and offers is not hard coded into CBOE's rules and is a function of pricing options that have a fixed payout.[7] To arrive at the total amount a bid or offer represents per contract, the bid or offer is multiplied by the contract multiplier. For example, if a Credit Default Option has a cash settlement amount of $100,000 ($100 × 1,000), bids of $0.05, $45.15 and $67.50 equate to premium amounts of $50, $45,150 and $67,500, respectively.

CBOE proposes to change the quoting conventions for Credit Default Options by permitting the exercise settlement value to be an amount determined by the Exchange on a class-by-class basis and that would be equal to $1 or $100, or a value between those values. By permitting the Exchange to vary the exercise settlement value, the range of bids and offers would vary in tandem. For example, if the Exchange sets the exercise settlement value at $10, bids and offers for that contract would range from $0 (no bid) to $10, and the total premium amount would be determined by multiplying the bid or offer by the contract multiplier.

In addition, by permitting the Exchange to set the exercise settlement value on a class-by-class basis, the Exchange would be able to list a contract having a cash settlement amount that could be arrived at in different ways. For example, for a Credit Default Option with a cash settlement amount of $1,000, the Exchange could: (1) Set the exercise settlement value at $1 with a contract multiplier of $1,000, (2) set the exercise settlement value at $10 with a contract multiplier of 100, (3) set the exercise settlement value at $100 with a contract multiplier of 10, or (4) set the exercise settlement value at $1,000 with a contract multiplier of 1. The Exchange notes that it will not list more than one Credit Default Option contract with a cash settlement amount

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 55871(June 6, 2007), 72 FR 32372 (June 12, 2007) (SR–CBOE–2006–84); 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007).

[4] *See* Securities Exchange Act Release No. 56380 (September 10, 2007), 72 FR 52948 (September 17, 2007) (SR–CBOE–2007–105) (immediately effective filing pertaining to contract multiplier for Credit Default Options).

[5] The Exchange may vary the particular contract multiplier on a class-by-class basis within a range of 1 to 1,000. *See* 29.1(a).

[6] *See* Rule 29.1(a)(i).

[7] The Exchange notes that with a fixed exercise settlement value of $100, any quote above $100 (*e.g.,* $150) would not make economic sense since it would represent a premium cost ($150 × 1,000 = $150,000) that exceeds than [sic] the exercise settlement amount of the contract ($100 × 1,000 = $100,000).

arrived at in difference [sic] ways.[8] The Exchange notes that it has the discretion to set the exercise settlement value for binary options on a class-by-class and is seeking to introduce that same flexibility to Credit Default Options.[9]

The Exchange is also proposing to change the minimum price variation ("MPV") for Credit Default Options. Currently, the MPV for bids and offers on both simple and complex orders for Credit Options is fixed at $0.05.[10] Similar to binary options, the Exchange would like to build in the flexibility to establish the MPV on a class-by-class basis at an increment not less then $0.01.[11] The ability to designate $0.01 as the MPV would permit more pricing points than is currently allowed and would allow for more granular pricing points when lower exercise settlement values are designated. The Exchange believes that the introduction of more pricing points creates tighter spreads between quotes, which in turn benefits investors. For example, if the Exchange designates the exercise settlement value as $1 bids and offers for that contract would range from $0 (no bid) to $1 and only 20 price points would be available since the MPV is $0.05 ($0.05, $0.10, etc.). If the MPV is $0.01 and the designated exercise settlement value is $1, there would be 100 price points available for quoting. The Exchange notes that it has the discretion to establish the MPV on a class-by-class basis for binary options and believes that permitting more price points for options having a lower exercise settlement value will benefit market participants.

Designation of Single Credit Event Change

Currently, CBOE Rules 29.2, *Designation of Credit Default Options,* and 29.2A, *Designation of Credit Default Basket Option Contracts,* provide that a failure-to-pay default will always be a designated Credit Event for Credit Options. In addition, the Exchange may designate other event(s) of default and/or restructuring as Credit Events. The Exchange believes that there may be a market for Credit Options that specify a single Credit Event (*e.g.,* bankruptcy as defined in accordance with the terms of the Relevant Obligation(s)) and is therefore proposing to provide the Exchange with the ability to designate a single Credit Event. To make this change, the Exchange is proposing revisions to Rules 29.2(a) and 29.2A(a)(6) respectively.

Technical Change

The Exchange is also proposing to make a technical, non-substantive change to Rule 29.3.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the ability to designate $0.01 as the MPV for Credit Options. The Exchange does not believe that this change will lead to a proliferation of quotes and notes that the change will affect one series [sic] a product and not multiple series (*i.e.,* various strikes) since Credit Options do not have strikes.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, and thereby will provide investors with additional tools to hedge risk and tailor their investment needs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

[8] *See* e-mail from Jennifer L. Klebes, Senior Attorney, CBOE, to Jennifer Dodd, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated September 27, 2010.

[9] *See* Rule 22.1(e).

[10] *See* Rule 29.14(b).

[11] *See* Rule 22.13(b).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2010–046 and should be submitted on or before October 28, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25251 Filed 10–6–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7195]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institutes for Student Leaders on U.S. History and Government

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–11–10.

Catalog of Federal Domestic Assistance Number: 19.009.

Key Dates: July–August, 2011 and January, February, 2012.

Application Deadline: December 3, 2010.

Executive Summary: The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs (ECA), invites proposal submissions for the design and implementation of six (6) Study of the U.S. Institutes for Student Leaders on U.S. History and Government, pending the availability of funds. Participants will be drawn from countries throughout Central and South America and the Caribbean. Three institutes will be conducted entirely in Spanish, and the remaining three in English. Each academic institute will be five weeks in duration, including a one-week integrated study tour.

I. Funding Opportunity Description Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: All ECA programs seek to increase mutual understanding between the people of the United States and the people of other countries. The Study of the U.S. Institutes for Student Leaders on U.S. History and Government provide a group of undergraduate students, who have little to no prior experience in the U.S., with an introduction to U.S. history, government, society, and culture. In addition to this core American Studies component, students will participate in seminars, workshops, and activities to strengthen their leadership skills. Participants will also engage in volunteer activities and learn about civic engagement as a core American value. Throughout the course of the institutes, participants will interact with American peers in the classroom, community, and through a weekend long home-stay experience.

This award will support up to 120 undergraduate participants. Three institutes for twenty participants each will take place in Summer 2011 while an additional three institutes will take place in Winter 2012. Please refer to the Project Objectives, Goals, and Implementation (POGI) document for programmatic details.

Please note: This award will be in the form of a cooperative agreement. In a cooperative agreement, ECA is substantially involved in the management and oversight of the institute. Please refer to the statement of work in the POGI to see the division of responsibilities between the recipient institution and the Program Office.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number 1 above.

Fiscal Year Funds: FY 2011.

Approximate Total Funding: $1,440,000.

Approximate Number of Awards: One.

Approximate Average Award: $1,440,000.

Anticipated Award Date: Pending availability of funds, February 2011.

Anticipated Project Completion Date: February, 2012.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: The Bureau is seeking detailed proposals from accredited post-secondary U.S. institutions (community colleges, liberal arts colleges, public and private universities), consortia of organizations, and/or from public and private non-profit organizations meeting the eligibility requirements outlined below.

The Bureau intends to issue one award and is seeking proposals from organizations with the ability to administer, support, and oversee the six academic institutes. Recipient organizations may be public or private organizations that provide sub-awards to up to six institutions of higher education to implement the institutes. Or, higher education institutions may apply to administer and implement the institutes working with branch campuses, other colleges in a consortium, or partnering with any other institution of higher education.

Institutions of higher education may host no more than one institute at a time (for up to 20 students), but may host up to two institutes per year (*e.g.* a summer and a winter institute); this policy is to advance the Bureau's goals of diversity and increased mutual understanding, and to provide more individualized attention to participants.

The recipient organization will serve as the lead organization and will be responsible for the oversight of all six institutes and must appoint a project director who will be the main point of contact and liaison with ECA.

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and

in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,440,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Study of the U.S. Branch, ECA/A/E/USS, SA–5, 4th Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, tel: (202) 632–3337, fax: (202) 632–9411, *RustanAM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/A/E/USS–11–10) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competitioin.

Please specify Program Officer Amy M. Rustan and refer to the Funding Opportunity Number (ECA/A/E/USS–11–10) located at the top of this announcement on all other inquiries and correspondence.

IV.2 To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions provided below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov website as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

ECA prefers that the award recipient issue DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, Office of Designation, ECA/EC/D/P5, SA–5, 5th Floor, Department of State, Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-

economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

The recipient organization should clearly describe its plan for overseeing the activities of up to six host institutions. Ideally the recipient organization staff will conduct site visits at each host institution once throughout the course of each Institute. Additionally, the recipient organization should provide to ECA a brief weekly written summary of the highlights of each program and a description of any challenges and how they were addressed. The Bureau expects that the recipient organization will be in regular contact with all host institutions and stay up to date on all issues.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. Proposals should include a draft survey questionnaire or other technique plus a description of a methodology to be used to link outcomes to original project objectives. The Bureau expects that the recipient organization will survey participants and be able to provide responses to key evaluation questions including participants' satisfaction with the program, learning as a result of the program, and changes in behavior as a result of the program. The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depends heavily on setting clear goals and outcomes at the outset of a program. Evaluation plans should include a description of project objectives, anticipated project outcomes, and how and when outcomes (performance indicators) will be measured. The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. Proposals should also demonstrate how project objectives link to the goals of the program described in the academic residency component above.

The monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups).

The recipient organization will be required to synthesize the evaluation findings of participating host institutions and analyze and compile findings into single reports to be provided to ECA at established deadlines. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs should be kept to a minimum and should represent no greater than 30% of total project costs.

IV.3e.2. Allowable costs for the program include the following:

(1) Institute staff salary and benefits.

(2) Participant housing and meals.

(3) Participant domestic travel and per diem.

(4) Textbooks, educational materials, and admissions fees.

(5) Honoraria for guest speakers.

(6) Follow-on programming for alumni of Study of the United States programs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. The POGI document includes a sample budget; please refer to the suggested line items and amounts, when listed.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: December 3, 2010.

Reference Number: ECA/A/E/USS–11–10.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm

delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/USS–11–10, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

To submit an online application, please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application.

IV.3f.3 Applicant organizations may submit no more than one application under this competition.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

1. *Quality of Program Plan and Ability To Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate clearly how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique and description of the methodology used to link outcomes to original project objectives are strongly recommended.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

6. *Follow-on Activities:* Proposals should discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer,

and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants;

http://fa.statebuy.state.gov.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original and an electronic copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov website—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3.) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer reference the program "Monitoring and Evaluation" section in the POGI.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Program Officer Amy M. Rustan, U.S. Department of State, Study of the U.S. Branch, ECA/A/E/USS, SA–5, 4th floor, 2200 C Street, NW., Washington, DC 20522–0503, tel: (202) 632–3337, fax: (202) 632–9411.

All correspondence with the Bureau concerning this RFGP should indicate reference number ECA/A/E/USS–11–10.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 1, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–25327 Filed 10–6–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7196]

In the Matter of the Review of the Designation of Jemaah Islamiya (JI and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2004 re-designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register.**

Dated: September 28, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–25333 Filed 10–6–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice: 7198]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

DATES: *Effective Date:* As shown on each of the 15 letters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2861.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

September 15, 2010 (Transmittal No. DDTC 10–056.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the

export of technical data and defense services to the United Arab Emirates for the establishment of a maintenance service center for the Ministry of Defense's fleet of H–60 and S–70 model helicopters.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma

Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–067.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the manufacture of Executable Object Code for the Have Quick I/II Electronic Counter Counter-Measures (ECCM) Waveform to be used by the Ministry of Defense of Japan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew R. Rooney

Principal Deputy Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–077.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) and Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of MJU–68/B Decoy Flares for end use by the Joint Strike Fighter Partner Nations (Australia, United Kingdom, Canada, Turkey, Norway, Netherlands, Denmark, and Italy) for the Joint Strike Fighter (F35).

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma

Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–078.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the Anik G1 Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew R. Rooney

Principal Deputy Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–083.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services to the United Kingdom and Greece for the manufacture of Lightweight 30mm (LW 30mm) TP projectile and LW 30mm cartridge case as well as the LAP of TP and HEDP LW 30mm ammunition for sale to Greece.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma

Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–087.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are controlled under Category I of the United States Munitions List sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the permanent export of defense articles, including technical data, and defense services related to 4200 M&P9 Pistols for end-use by the Taiwan National Police.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–088.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, to include technical data, and defense services for Commercial Communication Satellite Systems.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew R. Rooney
Principal Deputy Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–089.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the assembly, modification, rework, integration and test of antenna subsystems, payload units and bus units for use in commercial communications satellites.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Matthew R. Rooney
Principal Deputy Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–090.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the post-production support of the AN/ALQ–131(V) Electronic Countermeasures ("ECM") System for the Japan Air Self Defense Force ("JASDF") in support of the Ministry of Defense of Japan ("MOD Japan").

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 15, 2010 (Transmittal No. DDTC 10–092.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement to include the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of Patriot PAC–3 Missile Segment Canister Assemblies and Components.

The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 15, 2010 (Transmittal No. DDTC 10–094.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for installation in various vehicles and dismounted applications to support the Australian Government of Defence for Communications. The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 15, 2010 (Transmittal No. DDTC 10–095.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of major defense equipment in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the

export of defense articles, including technical data, and defense services to the United Arab Emirates for the sale of six C–17A Globemaster III transport aircraft including associated spares, support equipment, and aircrew and maintenance training for the United Arab Emirates Armed Forces. The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–096.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are controlled under Category I of the United States Munitions List sold commercially under contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the permanent export of defense articles, including technical data, and defense services related to sale of FNP–9 model, 9mm pistols with accessories and spare parts for end-use by the Royal guard of Oman. The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–097.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement to include the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture of PAC–3 Missile Segment Command and Launch System for the Japanese PATRIOT Growth Program. The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

September 14, 2010 (Transmittal No. DDTC 10–098.)

Hon. Nancy Pelosi, Speaker of the House of Representatives.

Dear Madam Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the assembly, integration and maintenance of the Rolling Airframe Missile (RAM) Guided Missile Weapon System (GMWS). The United States government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Richard R. Verma
Assistant Secretary, Legislative Affairs.

Dated: September 27, 2010.

Robert S. Kovac,

Managing Director, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2010–25330 Filed 10–6–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 7194]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for Senior Executive Service members: James H. Thessin, Chairperson, Deputy Legal Adviser, Office of the Legal Adviser, Department of State; Tracy H. Mahaffey, Executive Director, Bureau of Diplomatic Security, Department of State; Joseph A. Mussomeli, Ambassador, Department of State; Wanda L. Nesbitt, Ambassador, Department of State; and Khushali P. Shah, Chief of Staff, Office of the Director of U.S. Foreign Assistance, Department of State.

Dated: September 27, 2010.

Nancy J. Powell,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2010–25336 Filed 10–6–10; 8:45 am]

BILLING CODE 4710–15–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1, 2010, through August 31, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.* Regular

mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Johnson & Johnson, Pad ID: McNeil PPC Facility, ABR–201008002, Lititz Borough, Lancaster County, Pa.; Consumptive Use of up to 0.350 mgd; Approval Date: August 3, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Citrus Energy Corporation, Pad ID: Ruark East 1 1H, ABR–201008001, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 1, 2010.

2. East Resources Management, LLC, Pad ID: McNett 708, ABR–201008003, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

3. East Resources Management, LLC, Pad ID: Clark 392, ABR–201008004, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

4. East Resources Management, LLC, Pad ID: Miller 394, ABR–201008005, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

5. Carrizo Marcellus, LLC, Pad ID: Bonnice, ABR–201008006, Jessup Township, Susquehanna County, Pa.; Consumptive Use of up to 1.400 mgd; Approval Date: August 3, 2010.

6. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad F, ABR–201008007, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

7. Chief Oil & Gas, LLC, Pad ID: Marquardt Drilling Pad #1, ABR–201008008, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: August 3, 2010.

8. Cabot Oil & Gas Corporation, Pad ID: PlonskiJ P1, ABR–201008009, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 3, 2010.

9. Chesapeake Appalachia, LLC, Pad ID: Warren, ABR–201008010, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

10. Chesapeake Appalachia, LLC, Pad ID: Lambert Farms, ABR–201008011, Forks Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

11. Chesapeake Appalachia, LLC, Pad ID: Lee, ABR–201008012, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

12. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad D, ABR–201008013, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 2, 2010.

13. Cabot Oil & Gas Corporation, Pad ID: WoodW P1, ABR–201008014, Jessup Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 2, 2010.

14. Chesapeake Appalachia, LLC, Pad ID: Slumber Valley, ABR–201008015, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

15. Anadarko E&P Company, LP, Pad ID: Charles J McNamee Pad B, ABR–201008016, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

16. Anadarko E&P Company, LP, Pad ID: Elbow Pad C, ABR–201008017, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

17. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad H, ABR–201008018, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

18. Anadarko E&P Company, LP, Pad ID: COP Tract 344 Pad B, ABR–201008019, Grugan Township, Clinton County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

19. Anadarko E&P Company, LP, Pad ID: COP Tract 356 Pad H, ABR–201008020, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

20. Anadarko E&P Company, LP, Pad ID: Jack L Hipple Pad A, ABR–201008021, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

21. Talisman Energy USA, Inc., Pad ID: 05 009 Alderson V, ABR–201008022, Pike Township, Bradford County and Middletown Township, Susquehanna County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 3, 2010.

22. Talisman Energy USA, Inc., Pad ID: 02 100 Detweiler R, ABR–201008023, Covington Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 3, 2010.

23. Anadarko E&P Company, LP, Pad ID: Maurice D Bieber Pad A, ABR–201008024, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

24. Chesapeake Appalachia, LLC, Pad ID: Joanclark, ABR–201008025, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 4, 2010.

25. Chesapeake Appalachia, LLC, Pad ID: Felter-NEW, ABR–201008026, Wyalusing Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 5, 2010.

26. EOG Resources, Inc., Pad ID: COP Pad C, ABR–201008027, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

27. Anadarko E&P Company, LP, Pad ID: Don J Davis Pad A, ABR–201008028, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010.

28. Anadarko E&P Company, LP, Pad ID: COP Tract 290 Pad B, ABR–201008029, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

29. Anadarko E&P Company, LP, Pad ID: COP Tract 289 Pad D, ABR–201008030, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

30. East Resources Management, LLC, Pad ID: Heyler 748, ABR–201008031, Morris and Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

31. East Resources Management, LLC, Pad ID: Bauer 849, ABR–201008032, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

32. East Resources Management, LLC, Pad ID: Davis 829, ABR–201008033, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

33. East Resources Management, LLC, Pad ID: Fish 301, ABR–201008034, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

34. EOG Resources, Inc., Pad ID: SG Pad P, ABR–201008035, Jones Township, Elk County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

35. Talisman Energy USA, Inc., Pad ID: 02 202 DCNR 594, ABR–201008036, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 6, 2010

36. Talisman Energy USA, Inc., Pad ID: 02 201 DCNR 594, ABR–201008037, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 6, 2010.

37. Chesapeake Appalachia, LLC, Pad ID: Lattimer, ABR–201008038, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 6, 2010.

38. Chesapeake Appalachia, LLC, Pad ID: Danilchuk, ABR–201008039, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 11, 2010.

39. Talisman Energy USA, Inc., Pad ID: 02 205 DCNR 594, ABR–201008040, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.

40. Talisman Energy USA, Inc., Pad ID: 02 204 DCNR 594, ABR–201008041, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.

41. Talisman Energy USA, Inc., Pad ID: 02 203 DCNR 594, ABR–201008042, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.

42. Seneca Resources Corporation, Pad ID: DCNR Tract 595 Pad I, ABR–201008043, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 9, 2010.

43. Seneca Resources Corporation, Pad ID: DCNR Tract 595 Pad F, ABR–201008044, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 9, 2010, including a partial waiver of 18 CFR 806.15.

44. Seneca Resources Corporation, Pad ID: DCNR Tract 007 1H, ABR–201008045, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR § 806.15.

45. EOG Resources, Inc., Pad ID: WOOD 1H Pad, ABR–201008046, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.

46. EOG Resources, Inc., Pad ID: Otten Pad, ABR–201008047, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.

47. EOG Resources, Inc., Pad ID: REITER 1H Pad, ABR–201008048, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.

48. EOG Resources, Inc., Pad ID: SGL 90A Pad, ABR–201008049, Lawrence Township, Clearfield County, Pa.: Consumptive Use of up to 4.999 mgd; Approval Date: August 30, 2010.

49. Chesapeake Appalachia, LLC, Pad ID: Moore Farm, ABR–201008050, Canton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.

50. Pennsylvania General Energy Co., LLC, Pad ID: COP Tract 729 Pad C, ABR–201008051, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR § 806.15.

51. Pennsylvania General Energy Co., LLC, Pad ID: COP Tract 729 Pad D, ABR–201008052, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.

52. EOG Resources, Inc., Pad ID: GARVER Pad, ABR–201008053, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.

53. EOG Resources, Inc., Pad ID: JANOWSKY 1H, ABR–201008054, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd: Approval Date: August 10, 2010.

54. Anadarko E&P Company, LP, Pad ID: Elbow Pad A, ABR–201008055, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010.

55. Anadarko E&P Company, LP, Pad ID: Brian K Frymire Pad A, ABR–201008056, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010.

56. Anadarko E&P Company, LP, Pad ID: Thomas E Smith Pad A, ABR–201008057, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 11, 2010.

57. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 7), ABR–201008058, Burnside Township, Centre County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.

58. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 8), ABR–201008059, Burnside Township, Centre County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.

59. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 9), ABR–201008060, Burnside Township, Centre County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.

60. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 10), ABR–201008061, Burnside Township, Centre County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR § 806.15.

61. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 25), ABR–201008062, Burnside Township, Centre County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.

62. EOG Resources, Inc., Pad ID: Manzek Land Pad, ABR–201008063, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd: Approval Date: August 11, 2010.

63. Seneca Resources Corporation, Pad ID: Wolfinger Pad A, ABR–201008064, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

64. Seneca Resources Corporation, Pad ID: Covington Pad L, ABR–201008065, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

65. Chesapeake Appalachia, LLC, Pad ID: Atgas, ABR–201008066, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.

66. Chesapeake Appalachia, LLC, Pad ID: Roundtop, ABR–201008067, Colley Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

67. Chesapeake Appalachia, LLC, Pad ID: Aikens, ABR–201008068, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.

68. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 003, ABR–201008069, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd;

Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

69. Talisman Energy USA, Inc., Pad ID: 02 012 DCNR 587, ABR–201008070, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

70. Talisman Energy USA, Inc., Pad ID: 02 016 DCNR 587, ABR–201008071, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

71. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 019, ABR–201008072, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

72. East Resources Management, LLC, Pad ID: Fuleihan 417, ABR–201008073, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

73. East Resources Management, LLC, Pad ID: Baker 897, ABR–201008074, Deerfield Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

74. Range Resources—Appalachia, LLC, Pad ID: Gulf USA #40H Drilling Pad, ABR–201008075, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 11, 2010.

75. Talisman Energy USA, Inc., Pad ID: 05–003 Edsell C, ABR–201008076, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010.

76. Anadarko E&P Company, LP, Pad ID: George E Hagemeyer Pad A, ABR–201008077, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 11, 2010.

77. Anadarko E&P Company, LP, Pad ID: Wallis Run HC Pad A, ABR–201008078, Cascade Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 12, 2010.

78. EOG Resources, Inc. Pad ID: KINGSLEY 4H, ABR–201008079, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

79. EOG Resources, Inc. Pad ID: KINGSLEY 5H, ABR–201008080, Springfield Township, Bradford County, Pa.; Consumptive use of Up to 4.999 mgd; Approval Date: August 12, 2010.

80. EOG Resources, Inc. Pad ID: KINGSLEY 6H, ABR–201008081, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

81. EOG Resources, Inc. Pad ID: Rightmire 1H Pad, ABR–201008082, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

82. EOG Resources, Inc. Pad ID: RIGHTMIRE 2H Pad, ABR–201008083, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

83. EOG Resources, Inc. Pad ID: Beardslee 1V Pad, ABR–201008084, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

84. EOG Resources, Inc. Pad ID: BEARDSLEE 2H Pad, ABR–201008085, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

85. EOG Resources, Inc. Pad ID: Dodge Pad, ABR–201008086, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

86. EOG Resources, Inc. Pad ID: MELCHIONNE 1H Pad, ABR–201008087, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

87. Southwestern Energy Production Company, Pad ID: Chamberlin, ABR–201008088, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 12, 2010.

88. Talisman Energy USA, Inc., Pad ID: Roy 03 062, ABR–201008089, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 12, 2010.

89. EOG Resources, Inc. Pad ID: NICHOLS 1H Pad, ABR–201008090, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

90. EOG Resources, Inc. Pad ID: SEAMAN 1H Pad, ABR–201008091, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

91. EOG Resources, Inc. Pad ID: McKEE Pad, ABR–201008092, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

92. EOG Resources, Inc. Pad ID: Furman Pad, ABR–201008093, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

93. EOG Resources, Inc. Pad ID: HAVEN 2H, ABR–201008094, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

94. Chesapeake Appalachia, LLC, Pad ID: Boyles, ABR–201008095, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 12, 2010.

95. Chesapeake Appalachia, LLC, Pad ID: Donna, ABR–201008096, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

96. Carrizo Marcellus, LLC, Pad ID: Shields Well Pad, ABR–201008097, Monroe Township, Wyoming County, Pa.; Consumptive Use of up to 1.400 mgd; Approval Date: August 13, 2010.

97. EOG Resources, Inc. Pad ID: Gross 1H Pad, ABR–201008098, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

98. Chesapeake Appalachia, LLC, Pad ID: Ammerman, ABR–201008099, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

99. EOG Resources, Inc. Pad ID: JOHNSON Pad, ABR–201008100, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

100. Chesapeake Appalachia, LLC, Pad ID: George, ABR–201008101, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

101. Williams Production Appalachia LLC, Pad ID: S. Farver 1V, ABR–201008102, Benton Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 13, 2010.

102. EOG Resources, Inc. Pad ID: CASEMAN 1H, ABR–201008103, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

103. EOG Resources, Inc. Pad ID: CASEMAN 2H, ABR–201008104, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

104. EOG Resources, Inc. Pad ID: Lee 4H, ABR–201008105, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

105. EOG Resources, Inc. Pad ID: Kingsley 7V Pad, ABR–201008106, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

106. Chesapeake Appalachia, LLC, Pad ID: Dave, ABR–201008107, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 16, 2010.

107. Cabot Oil & Gas Corporation, Pad ID: Ramey P1, ABR–201008108, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 16, 2010.

108. EOG Resources, Inc. Pad ID: GEROULD Pad, ABR–201008109, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

109. Talisman Energy USA, Inc., Pad ID: 05 027 Nekoranik, ABR–201008110, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

110. Talisman Energy USA, Inc., Pad ID: 05 039 Powell Trust, ABR–201008111, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

111. Energy Corporation of America, Pad ID: Whitetail #1–5MH, ABR–201008112, Goshen Township and Girard Township, Clearfield County, Pa.; Consumptive Use of up to 1.980 mgd; Approval Date: August 16, 2010.

112. Talisman Energy USA, Inc., Pad ID: 05 045 Mountain Paradise Club LLC, ABR–201008113, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

113. Cabot Oil & Gas Corporation, Pad ID: Maiolini P2, ABR–201008114, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 16, 2010.

114. Anadarko E&P Company, LP, Pad ID: Nevin L Smith Pad A, ABR–201008115, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2010.

115. Anadarko E&P Company, LP, Pad ID: Michael R Fulkerson Pad A, ABR–201008116, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2010.

116. East Resources Management, LLC, Pad ID: Old Possessions Hunting Club 485, ABR–201008117, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 17, 2010.

117. EOG Resources, Inc. Pad ID: WENGER Pad, ABR–201008118, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

118. EOG Resources, Inc. Pad ID: MICCIO 1H Pad, ABR–201008119, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

119. EOG Resources, Inc., Pad ID: MacBride Pad, ABR–201008120, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

120. Talisman Energy USA, Inc., Pad ID: 05 016 Warner, ABR–201008121, Stevens Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

121. Talisman Energy USA, Inc., Pad ID: 05 044 O'Gorman, ABR–201008122, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

122. Cabot Oil & Gas Corporation, Pad ID: WarrinerR P4, ABR–201008123, Dimock Township, Susquehanna County, Pa; Consumptive Use of up to 3.575 mgd; Approval Date: August 17, 2010.

123. Talisman Energy USA, Inc., Pad ID: 05 046 O'Rourke, ABR–201008124, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

124. EOG Resources, Inc., Pad ID: Chapman Pad, ABR–201008125, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

125. East Resources Management, LLC, Pad ID: Appold 493, ABR–201008126, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 18, 2010.

126. EOG Resources, Inc., Pad ID: WATSON Pad, ABR–201008127, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 18, 2010.

127. Talisman Energy USA, Inc., Pad ID: 01 086 Brelsford, ABR–201008128, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 18, 2010.

128. Talisman Energy USA, Inc., Pad ID: 05 005 Ayers, ABR–201008129, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 18, 2010.

129. EQT Production Company, Pad ID: Phoenix E, ABR–201008130, Duncan Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 18, 2010.

130. Hess Corporation, Pad ID: Kraft, ABR–201008131, Starrucca Borough, Wayne County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

131. Hess Corporation, Pad ID: Steinberg 1H, ABR–201008132, Preston Township, Wayne County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

132. Hess Corporation, Pad ID: Gerhard, ABR–201008133, Scott Township, Wayne County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

133. Cabot Oil & Gas Corporation, Pad ID: StockholmK P2, ABR–201008134, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 19, 2010.

134. East Resources Management, LLC, Pad ID: Kinnan 845, ABR–201008135, Middlebury Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2010.

135. Ultra Resources, Inc., Pad ID: Ritter 828, ABR–201008136, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2010.

136. Carrizo Marcellus, LLC, Pad ID: Baker 2H, ABR–201008137 Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 1.400 mgd; Approval Date: August 20, 2010.

137. Citrus Energy, Pad ID: Mirabelli Pad 1–1H, ABR–201008138, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 20, 2010.

138. Chesapeake Appalachia, LLC, Pad ID: Bedford, ABR–201008139 Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 20, 2010.

139. Chesapeake Appalachia, LLC, Pad ID: Thall, ABR–201008140, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 20, 2010.

140. Talisman Energy USA, Inc., Pad ID: Carpenter 03 023, ABR–201008141, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 20, 2010.

141. Seneca Resources Corporation, Pad ID: DCNR Tract 001 1H, ABR–201008142, Sweden Township, Potter County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 23, 2010, including a partial waiver of 18 CFR § 806.15.

142. Anadarko E&P Company, LP, Pad ID: Scott E Ely Pad A, ABR–201008143, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 23, 2010.

143. Anadarko E&P Company, LP, Pad ID: Frank L Hartley Pad A, ABR–201008144, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 23, 2010.

144. Chesapeake Appalachia, LLC, Pad ID: Clarke, ABR–201008145, Overton Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

145. Chesapeake Appalachia, LLC, Pad ID: Benspond, ABR–201008146,

Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

146. Chesapeake Appalachia, LLC, Pad ID: Fremar, ABR–201008147, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

147. Chesapeake Appalachia, LLC, Pad ID: Hottenstein, ABR–201008148, Forks Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

148. Chesapeake Appalachia, LLC, Pad ID: Balent NEW, ABR–201008149, Wysox Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

149. Talisman Energy USA, Inc., Pad ID: 01 084 O'Reilly, ABR–201008150, Granville Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2010.

150. Talisman Energy USA, Inc., Pad ID: 05 067 Green Newland LLC, ABR–201008151, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2010.

151. Talisman Energy USA, Inc., Pad ID: 05 026 Strope, ABR–201008152, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 26, 2010.

152. EOG Resources, Inc., Pad ID: TYLER Pad, ABR–201008153, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

153. EOG Resources, Inc., Pad ID: W TYLER Pad, ABR–201008154, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

154. EOG Resources, Inc., Pad ID: STURDEVANT 1H Pad, ABR–201008155, Ridgebury Township, Bradford County, Pa.; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

155. Citrus Energy, Pad ID: P&G Warehouse 1–1H, ABR–201008156, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2010.

156. Chesapeake Appalachia, LLC, Pad ID: McCabe, ABR–201008157, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 26, 2010.

157. Chesapeake Appalachia, LLC, Pad ID: Wolf, ABR–201008158, Athens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 26, 2010.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 24, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–25267 Filed 10–6–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Annual Materials Report on New Bridge Construction and Bridge Rehabilitation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 1114 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) continued the highway bridge program to enable States to improve the condition of their highway bridges over waterways, other topographical barriers, other highways, and railroads. Section 1114(f) amended 23 United States Code (U.S.C.) 144 by adding subsection (r), requiring the Secretary of Transportation to publish in the **Federal Register** a report describing construction materials used in new Federal-aid bridge construction and bridge rehabilitation projects. As part of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244), 23 U.S.C. 144 subsection (r) became subsection (q), but the reporting requirement remained the same.

ADDRESSES: The report is posted on the FHWA Web site at: *http://www.fhwa.dot.gov/bridge/britab.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Shemaka, Office of Bridge Technology, HIBT–30, (202) 366–1575, or Mr. Thomas Everett, Office of Bridge Technology, HIBT–30, (202) 366–4675, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In conformance with 23 U.S.C. 144(q), the FHWA has produced a report that summarizes the types of construction materials used in new bridge construction and bridge rehabilitation projects. Data on Federal-aid and non-Federal-aid highway bridges are included in the report for completeness. The December 2009 National Bridge Inventory (NBI) dataset was used to identify the material types for bridges that were new or replaced within the defined time period. The FHWA's Financial Management Information System and the 2009 NBI were used to identify the material types for bridges that were rehabilitated within the defined time period. Currently preventative maintenance projects are included in the rehabilitation totals.

The report, which is available at *http://www.fhwa.dot.gov/bridge/brdgtabs.cfm,* consists of the following tables:

- Construction Materials for New and Replaced Bridges, a summary report which includes Federal-aid highways and non-Federal-aid highways built in 2008 and 2007.
- Construction Materials for Rehabilitated Bridges, a summary report which includes Federal-aid and non-Federal-aid highways rehabilitated in 2008 and 2007.
- Construction Materials for Combined New, Replaced and Rehabilitated Bridges, a summary report which combines the first two tables cited above.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges 2008, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2008.
- Federal-aid Highways: Construction Materials for New and Replaced Bridges 2007, a detailed State-by-State report with counts and areas for Federal-aid bridges built or replaced in 2007.
- Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2008, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2008.
- Non-Federal-aid Highways: Construction Materials for New and Replaced Bridges 2007, a detailed State-by-State report with counts and areas for non-Federal-aid bridges built or replaced in 2007.
- Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2008, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2008.
- Federal-Aid Highways: Construction Materials for Rehabilitated Bridges 2007, a detailed State-by-State report with counts and areas for Federal-aid bridges rehabilitated in 2007.
- Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2008, a detailed State-by-State report with counts and areas for non-Federal-aid bridges rehabilitated in 2008.
- Non-Federal-aid Highways: Construction Materials for Rehabilitated Bridges 2007, a detailed State-by-State report with counts and areas for non-

Federal-aid bridges rehabilitated in 2007.

- Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2008, which combines the 2008 reports on new, replaced and rehabilitated Federal-aid bridges.
- Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2007, which combines the 2007 reports on new, replaced and rehabilitated Federal-aid bridges.
- Non-Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2008, which combines the 2008 reports on new, replaced and rehabilitated non-Federal-aid bridges.
- Non-Federal-aid Highways: Construction Materials for New, Replaced and Rehabilitated Bridges 2007, which combines the 2007 reports on new, replaced and rehabilitated non-Federal-aid bridges.

The tables provide data for 2 years: 2007 and 2008. The 2007 data is considered complete for new, replaced and rehabilitated bridges, with a minimal likelihood of upward changes in the totals. The 2008 data is considered partially complete for new bridges and complete for rehabilitated bridges, because many new bridges built in 2008 will not appear in the NBI until they are placed into service the following year. Therefore, next year's report will include 2008's data on new bridge construction, because the data will be complete.

Each table displays simple counts of bridges and total bridge deck area. Total bridge deck area is measured in square meters, by multiplying the bridge length by the deck width out-to-out. Culverts under fill are included in the counts but not in the areas because a roadway width is not collected. The data is categorized by the following material types, which are identified in the NBI: steel, concrete, pre-stressed concrete, and other. The category "other" includes wood, timber, masonry, aluminum, wrought iron, cast iron, and other. Material type is the predominate type for the main span(s).

Authority: 23 U.S.C. 144(q); Sec. 1114(f), Pub. L. 109–59, 119 Stat. 1144.

Issued on: September 27, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–25277 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139 (I)(1). The actions relate to a proposed highway project, NC 24 Improvements, from 2.8 miles east of I–95 to I–40 in Cumberland, Sampson, and Duplin Counties, North Carolina (T.I.P Project R–2303). Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139 (I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 5, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Preconstruction and Environment Engineer, Federal Highway Administration, 310 New Bern Avenue, Ste 410, Raleigh, North Carolina, 27601–1418; *Telephone:* (919) 747–7014; *e-mail: clarence.coleman@dot.gov*. FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). You may also contact Gregory J. Thorpe, Ph.D., Project Development and Environmental Analysis Branch Manager, North Carolina Department of Transportation (NCDOT), 1 South Wilmington Street (Delivery), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548; Telephone (919) 733–3141, *gthorpe@dot.state.nc.us*. NCDOT—Project Development and Environmental Analysis Branch Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: NC 24 Improvements, Federal Aid No. STPNHF–F–8–2(17), Cumberland, Sampson, and Duplin Counties, North Carolina. The proposed action will improve approximately 40 miles of NC 24 from terminus of an existing 4-lane section, approximately 2.8 miles east of I–95 to I–40. Portions of the selected alternative (Corridor 56) widen existing roadways and portions construct a four-lane facility on new location. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on March 31, 2010,and in the FHWA Record of Decision (ROD), issued on September 10, 2010, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or NCDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed at the NCDOT—Project Development and Environmental Analysis Branch, 1 South Wilmington Street, Raleigh, North Carolina; NCDOT-Division 3 Office, 124 Division Drive, Wilmington, NC 28401, NCDOT—Division 6 Office, 558 Gillespie St., Fayetteville, NC 28301, Fayetteville MPO (FAMPO) Office, 130 Gillespie Street, Fayetteville, NC 28301, Mid-Carolina RPO (MCCOG) Office, 130 Gillespie Street, 3rd Floor Post Office Drawer 1510, Fayetteville, NC 28302, and East Carolina RPO (ECC), 233 Middle Street, 3rd Floor, O. Marks Building, New Bern, NC 28560.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 USC 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq*.].
5. *Historic and Cultural Resources:* Section 106 of the National Historic

Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)-300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (I)(1).

Issued on: September 30, 2010.

Clarence W. Coleman,

Preconstruction and Environment Engineer, Raleigh, North Carolina.

[FR Doc. 2010–25280 Filed 10–6–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Comptroller's Licensing Manual." The OCC also is giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by November 8, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0014, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0014, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Comptroller's Licensing Manual.

OMB No.: 1557–0014.

Description: This submission covers an existing manual and involves no change to the manual or to the information collection requirements. The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The Comptroller's Licensing Manual (Manual) explains the OCC's policies and procedures for the formation of a new national bank, entry into the national banking system by other institutions, and corporate expansion and structural changes by existing national banks. The Manual includes sample documents to assist the applicant in understanding the types of information that the OCC needs in order to process a filing. The documents are samples only. An applicant may use any format that provides sufficient information for the OCC to act on a particular filing, including the OCC's e-Corp filing system.

Type of Review: Regular.

Affected Public: Individuals or households; Businesses or other for-profit.

Estimated Number of Respondents: 5,864.

Estimated Total Annual Responses: 5,864.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 16,144 hours.

A 60-day **Federal Register** notice was published on June 11, 2010. 75 FR 33385. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 10, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2010–25241 Filed 10–6–10; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee October 26, 2010 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee October 26, 2010 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for October 26, 2010.

Date: October 26, 2010.

Time: 9 a.m. to 4 p.m.

Location: 2nd Floor Conference Center (Room A), United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review and discuss reverse candidate designs for the 2012 America the Beautiful Quarter-Dollar Coins, designs for the Arnold Palmer Congressional Gold Medal, and designs for the New Frontier Congressional Gold Medal.

Interested persons should call 202–354–6700 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: October 4, 2010.

Andrew D. Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2010–25308 Filed 10–6–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of United States Mint Silver Eagle Bullion Coin Premium Increase

ACTION: Notification of United States Mint Silver Eagle Bullion Coin Premium Increase.

SUMMARY: The United States Mint is increasing the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, a program authorized under 31 U.S.C. 5112(e).

The United States Mint will increase the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, from $1.50 to $2.00 per coin, for all orders accepted on or after October 1, 2010.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112(e)–(f) & 9701.

Dated: October 4, 2010.

Andrew D. Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2010–25310 Filed 10–6–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0698]

Agency Information Collection (Application for Educational Assistance to Supplement Tuition Assistance) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0698" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0698."

SUPPLEMENTARY INFORMATION:

Title: Application for Educational Assistance to Supplement Tuition Assistance; 38 CFR 21.1030(c), 21.7140(c)(5).

OMB Control Number: 2900–0698.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to receive educational assistance administered by VA to supplement tuition assistance administered by the Department of Defense must apply to VA. VA will use the data collected to determine the claimant's eligibility to receive educational assistance to supplement the tuition assistance he or she has received and the amount payable.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 2, 2010, at page 45205.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 2,400 hours.

Frequency of Response: On occasion.

Estimated Average Burden per Respondent: 12 minutes.

Estimated Annual Responses: 12,000.

Dated: October 4, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25257 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Proposed Information Collection (Claim, Authorization and Invoice for Prosthetic Items and Services) Activity: Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0188" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0188."

SUPPLEMENTARY INFORMATION:

Titles:

a. Request to Submit Estimate, Form Letter 10–90.

b. Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, VA Form 10–0103.

c. Application for Adaptive Equipment Motor Vehicle, VA Form 10–1394.

d. Prosthetic Authorization for Items or Services, VA Form 10–2421.

e. Prosthetic Service Card Invoice, VA Form 10–2520.

f. Prescription and Authorization for Eyeglasses, VA Form 10–2914.

OMB Control Number: 2900–0188.

Type of Review: Extension of a currently approved collection.

Abstract: The following forms are used to determine eligibility, prescribe, and authorize prosthetic devices.

a. VA Form Letter 10–90 is used to obtain to estimated price for prosthetic devices.

b. VA Form 10–0103 is used to determine eligibility/entitlement and reimbursement of individual claims for home improvement and structural alterations.

c. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

d. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services. The form standardizes the direct procurement authorization process, eliminating the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services.

e. VA Form 10–2520 is used by the vendors as an invoice and billing document. The form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

f. VA Form 10–2914 is used as a combination prescription, authorization and invoice. It allows veterans to purchase their eyeglasses directly. If the form is not used, the provisions of providing eyeglasses to eligible veterans may be delayed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 6, 2010, at page 47680.

Affected Public: Business or other for profit and Individuals or households.

Estimated Total Annual Burden:

a. Form Letter 10–90—708.

b. VA Form 10–0103—583.

c. VA Form 10–1394—1,000.

d. VA Form 10–2421—67.

e. VA Form 10–2520—47.

f. VA Form 10–2914—3,333.

Estimated Average Burden per Respondent:

a. Form Letter 10–90—5 minutes.

b. VA Form 10–0103—5 minutes.

c. VA Form 10–1394—15 minutes.

d. VA Form 10–2421—4 minutes.

e. VA Form 10–2520—4 minutes.

f. VA Form 10–2914—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Form Letter 10–90—8,500.

b. VA Form 10–0103—7,000.

c. VA Form 10–1394—4,000.

d. VA Form 10–2421—1,000.

e. VA Form 10–2520—700.

f. VA Form 10–2914—50,000.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25258 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0709]

Proposed Information Collection (Regulation on Reduction of Nursing Shortages in State Homes; Application for Assistance for Hiring and Retaining Nurses at State Homes) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0709" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0709."

SUPPLEMENTARY INFORMATION:

Title: Regulation on Reduction of Nursing Shortages in State Homes; Application for Assistance for Hiring and Retaining Nurses at State Homes, VA Form 10–0430.

OMB Control Number: 2900–0709.

Type of Review: Extension of a currently approved collection.

Abstract: State Veterans' Homes complete VA Form 10–0430 to request funding to assist in the hiring and retention of nurses at their facility. VA will use the data collected to determine State homes eligibility and the appropriate amount of funding.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 2, 2010, at page 45207.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 134.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: One time.

Estimated Number of Respondents: 67.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25259 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0655]

Proposed Information Collection (Residency Verification Report—Veterans and Survivors) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine Filipino veterans or beneficiaries receiving benefit at the full-dollar rate continues to meet the United States residency requirements.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0655" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), 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: Residency Verification Report—Veterans and Survivors, VA Form Letter 21–914.

OMB Control Number: 2900–0655.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form Letter 21–914 is use to verify whether Filipino veterans of the Special Philippine Scouts, Commonwealth Army of the Philippines, organized guerilla groups receiving service-connected compensation benefits and survivors receiving service connected death benefits at the full-dollar rate, actually resides in the United States as United States citizens or as aliens lawfully admitted for permanent residence.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25260 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Agency Information Collection (Request for Details of Expenses) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0696" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0138."

SUPPLEMENTARY INFORMATION:

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected on VA Form 21–8049 to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received in order to calculate

the current rate of pension. Pension is an income–based program, and the payable rate depends on the claimant's annual income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 2, 2010, at pages 45205–45206.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25261 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0706]

Proposed Information Collection (Application for Reimbursement of National Test Fee) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) 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 the information needed to refund national test fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0706" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), 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 Reimbursement of National Test Fee, VA Form 22–0810.

OMB Control Number: 2900–0706.

Type of Review: Extension of a currently approved collection.

Abstract: Servicemembers, veterans, and eligible dependents complete VA Form 22–0810 to request reimbursement of national test fees. VA will use the data collected to determine the claimant's eligibility for reimbursement.

Affected Public: Individuals or households.

Estimated Annual Burden: 32 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 129.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25262 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Proposed Information Collection (Application for Refund of Educational Contributions) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) 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 the information needed to process refunds of contributions made by program participants who disenroll from the Post Vietnam Era Veterans Education Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0261" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), 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 Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C.), VA Form 22–5281.

OMB Control Number: 2900–0261.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and service persons complete VA Form 22–5281 to request a refund of their contribution to the Post-Vietnam Veterans Education Program. Contribution made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from activity duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty contributions will be refunded within 60 days of receipt of their application.

Affected Public: Individuals or households.

Estimated Annual Burden: 833 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25263 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Proposed Information Collection (Other On-The-Job Training and Apprenticeship Training Agreement and Standards and Employer's Application To Provide Job Training) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to meet statutory requirements for job training program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 6, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0342" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), 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.

Titles:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864.

b. Employer's Application to Provide Job Training (Under Title 38 U.S. Code 3677 and 3687), VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the data on VA Form 22–8864 to ensure that all trainees receive a training agreement and to make certain that training programs and agreements meet statutory requirements for approval of an employer's job training program.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—2,997 hours.

b. Employer's Application to Provide Job Training (Under Title 38 U.S. Code 3677 and 3687), VA Form 22–8865—4,496 hours.

Frequency of Response: On occasion.

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—30 minutes.

b. Employer's Application to Provide Job Training (Under Title 38 U.S. Code 3677 and 3687), VA Form 22–8865—90 minutes.

Estimated Number of Respondents:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—5,994 respondents.

b. Employer's Application to Provide Job Training (Under Title 38 U.S. Code 3677 and 3687), VA Form 22–8865—2,997 respondents.

Dated: October 4, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–25264 Filed 10–6–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
October 7, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Navarretia fossalis* (Spreading Navarretia); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0038]
[MO 92210-0-0009]

RIN 1018–AW22

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Navarretia fossalis* (Spreading Navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate final revised critical habitat for *Navarretia fossalis* (spreading navarretia) under the Endangered Species Act of 1973, as amended. In total, approximately 6,720 acres (ac) (2,720 hectares (ha)) of habitat in Los Angeles, Riverside, and San Diego Counties, California, fall within the boundaries of the critical habitat designation. This final rule constitutes an overall increase of approximately 6,068 ac (2,456 ha) from the 2005 critical habitat designation for *N. fossalis*.

DATES: This rule becomes effective on November 8, 2010.

ADDRESSES: This final rule and the associated economic analysis are available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/carlsbad/*. Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011 (telephone 760–431–9440; facsimile 760–431–5901). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development of the revised designation of critical habitat for *Navarretia fossalis* under the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*) (Act), in this final rule. For more information on the taxonomy, biology, and ecology of *N. fossalis*, refer to the final listing rule published in the **Federal Register** (FR) on October 13, 1998 (63 FR 54975), the final designation of critical habitat for *N. fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658), the proposed revised designation of critical habitat published in the **Federal Register** on June 10, 2009 (74 FR 27588), and the document announcing the availability of the draft economic analysis (DEA) published in the **Federal Register** on April 15, 2010 (75 FR 19575). Additionally, information on this species can be found in the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998).

New Information on Subspecies' Description, Life History, Ecology, Habitat, and Range

We did not receive any new information pertaining to the description, life history, or ecology of *Navarretia fossalis* following the 2009 proposed rule to revise critical habitat (74 FR 27588; June 10, 2009). However, the following paragraphs discuss new information that we received regarding the species' habitat, geographic range and status, and the areas needed for *N. fossalis* conservation.

Habitat

Navarretia fossalis habitat was discussed in detail in the proposed revised critical habitat rule (74 FR 27588; June 10, 2009). One commenter provided information during the first public comment period on the proposed rule, noting several habitat characteristics they felt we should have discussed (see Comment 15 below); therefore, we are providing additional discussion and clarification here. *Navarretia fossalis* grows in vernal pool habitat, seasonally flooded alkali vernal plain habitat (a habitat that includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland communities), and irrigation ditches and detention basins (Bramlet 1993a, pp. 10, 14, 21–23; Ferren and Fiedler 1993, pp. 126–127; Spencer 1997, pp. 8, 13). Within alkali annual grasslands, this species is restricted to small vernal pools or other depressions (Bramlet 2009, p. 3). Researchers have also described "riverine pools" where *N. fossalis* occurs as having unique floristic elements, such as *Trichocoronis wrightii* var. *wrightii* (limestone bugheal or Wright's trichocoronis); *N. fossalis* and *T. wrightii* are only known to co-occur in the San Jacinto River (Bramlet 2009, p. 7). Suitability of hydrological conditions for the germination of this species varies on an annual basis; therefore, *N. fossalis* can be undetectable for a number of years and the number of plants varies depending on the timing, duration, and extent of ponding (Bramlet 2009, p. 3). For more habitat information, please see the **Habitat** section in the proposed revised critical habitat designation published in the **Federal Register** on June 10, 2009 (74 FR 27588).

Areas Needed for Conservation: Core and Satellite Habitat Areas

In the proposed revised critical habitat rule (74 FR 27588; June 10, 2009), we discussed the areas that represent core habitat areas and satellite habitat areas for *Navarretia fossalis*. During the first public comment period, one peer reviewer expressed concern regarding our use of the word "core" and the biological connotation of such terminology. The terms "core habitat area" and "satellite habitat area" are descriptive terms defined for the purpose of this rulemaking and are not intended to be synonymous with similar terms used in other documents, or to describe a population distribution. We defined these terms in the proposed revised critical habitat designation published in the **Federal Register** on June 10, 2009 (74 FR 27588). Core habitat is defined as areas that contain the highest concentrations of *N. fossalis* and the largest contiguous blocks of habitat for this species. Satellite areas are defined as habitat areas that support occurrences that are smaller than those supported by the "core habitat areas," but provide the means to significantly contribute to the recovery of *N. fossalis* (for further discussion of this issue see Comment 4 in the **Summary of Comments and Recommendations** section and our response). For more information on "core habitat area" and "satellite habitat area," please see the **Areas Needed for Conservation: Core and Satellite Habitat Areas** section in the proposed revised critical habitat designation published in the **Federal Register** on June 10, 2009 (74 FR 27588).

Previous Federal Actions

On October 18, 2005 (70 FR 60658), we published our final designation of critical habitat for *Navarretia fossalis*. On December 19, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our

designation of critical habitat for *N. fossalis* and *Brodiaea filifolia* (*Center for Biological Diversity* v. *United States Fish and Wildlife Service et al.,* Case No. 07–CV–02379–W–NLS). This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *N. fossalis*. On July 25, 2008, we reached a settlement agreement in which we agreed to submit a proposed revised critical habitat designation for *N. fossalis* to the **Federal Register** for publication by May 29, 2009, and a final revised critical habitat designation for publication by May 28, 2010. By order dated January 21, 2010, the district court approved a modification to the settlement agreement that extends to September 30, 2010, the deadline for submission of a final revised critical habitat designation to the **Federal Register**. The proposed revised critical habitat designation published in the **Federal Register** on June 10, 2009 (74 FR 27588).

Summary of Changes From the Proposed Revised Rule and the Previous Critical Habitat Designation

The areas designated as critical habitat in this final rule constitute a revision of the critical habitat for *Navarretia fossalis* we designated on October 18, 2005 (70 FR 60658). For this revised rulemaking process we:

(1) Refined the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of *N. fossalis*;

(2) Revised criteria to more accurately identify critical habitat;

(3) Improved mapping methodology to more accurately define critical habitat boundaries and better represent areas that contain PCEs;

(4) Evaluated areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act, including identifying whether or not areas are conserved and managed for the benefit of *N. fossalis*;

(5) Reanalyzed the economic impacts to identify baseline and incremental costs associated with critical habitat designation; and

(6) Added, subtracted, and revised areas that do or do not meet the definition of critical habitat. Table 1 provides an overview of the differences between critical habitat rules for *N. fossalis* at the unit level.

TABLE 1. CHANGES BETWEEN THE OCTOBER 18, 2005, CRITICAL HABITAT DESIGNATION; THE JUNE 10, 2009, PROPOSED CRITICAL HABITAT DESIGNATION; THE APRIL 15, 2010, CHANGES TO THE JUNE 10, 2009 PROPOSAL (AVAILABILITY OF THE DEA); AND THIS REVISED CRITICAL HABITAT DESIGNATION.

Critical habitat unit in this final rule	County	October 2005 critical habitat designation	June 2009 proposed revised critical habitat designation	April 2010 changes to proposed revised critical habitat designation	September 2010 revised critical habitat designation
Unit 1: Los Angeles Basin-Orange Management Area	Los Angeles	326 ac (132 ha)	161 ac (65 ha)	176 ac (71 ha)	176 ac (71 ha)
Unit 2: San Diego: Northern Coastal Mesa Management Area	San Diego	22 ac (9 ha)	9 ac (4 ha)	9 ac (4 ha)	9 ac (4 ha)
Unit 3: San Diego: Central Coastal Mesa Management Area	San Diego	0 ac (0 ha)	110 ac (45 ha)	108 ac (44 ha)	103 ac (42 ha)
Unit 4: San Diego: Inland Management Area	San Diego	159 ac (64 ha)	206 ac (83 ha)	206 ac (83 ha)	206 ac (83 ha)
Unit 5: San Diego: Southern Coastal Mesa Management Area	San Diego	145 ac (59 ha)	711 ac (288 ha)	753 ac (305 ha)	749 ac (303 ha)
Unit 6: Riverside Management Area	Riverside	0 ac (0 ha)	5,675 ac (2,297 ha)	6,356 ac (2,572 ha)	5,477 ac (2,217 ha)
Totals*		652 ac (264 ha)	6,872 ac (2,781 ha)	7,608 ac (3,079 ha)	6,720 ac (2,720 ha)

*Values in this table may not sum due to rounding.

In 2005, we designated approximately 652 ac (264 ha) as critical habitat for *Navarretia fossalis* in 4 units with 10 subunits (70 FR 60658; October 18, 2005). In our 2009 proposed revised critical habitat, we proposed approximately 6,872 ac (2,781 ha) as critical habitat in 6 units with 22 subunits (74 FR 27588; June 10, 2009). In response to information received as public comments on our 2009 proposed revised critical habitat, we changed the 2009 proposed revised rule to propose approximately 7,608 ac (3,079 ha) as critical habitat in 6 units with 23 subunits (75 FR 19575; April 15, 2010). In this revised critical habitat rule, we are designating approximately 6,720 ac (2,720 ha) as critical habitat in 6 units with 19 subunits, reflecting exclusion of approximately 871 ac (353 ha) in all or portions of 2 units (3 subunits) based on consideration of relevant impacts under section 4(b)(2) of the Act. Lands that contain the physical and biological features essential to the conservation of *N. fossalis* on Marine Corps Air Station

(MCAS) Miramar and Marine Corps Base (MCB) Camp Pendleton are exempt from this critical habitat designation based on section 4(a)(3)(B) of the Act. All lands designated as critical habitat in this revised rule were included in the 2009 proposed revised rule (74 FR 27588) or the document that made available the DEA (75 FR 19575). Table 2 provides detailed information about differences between the 2005 final critical habitat designation, the 2009 proposed revised critical habitat designation, and this revised critical habitat designation for *N. fossalis*. The changes between the 2005 final designation, the 2009 proposed revisions, and this final designation are described below.

TABLE 2. A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING THE PHYSICAL AND BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 CRITICAL HABITAT DESIGNATION, THE 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, AND THIS REVISED CRITICAL HABITAT DESIGNATION.

Location*	2005 Critical Habitat Designation		2009 Proposed Revised Critical Habitat		2010 Revised Critical Habitat Designation	
	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features
Unit 1: Los Angeles Basin-Orange Management Area						
Cruzan Mesa	1A	294 ac (119 ha)	1A	129 ac (52 ha)	1A	156 ac (63 ha)
Plum Canyon	1B	32 ac (13 ha)	1B	32 ac (13 ha)	1B	20 ac (8 ha)
Unit 2: San Diego: Northern Coastal Mesa Management Area						
MCB Camp Pendleton	4(a)(3) exemption	67 ac (27 ha)	4(a)(3) exemption	145 ac (59 ha)	4(a)(3) exemption	145 ac (59 ha)
Poinsettia Lane Commuter Station	2; partially excluded under section 4(b)(2)	22 ac (9 ha)	2	9 ac (4 ha)	2	9 ac (4 ha)
Unit 3: San Diego: Central Coastal Mesa Management Area						
Santa Fe Valley	Proposed as Unit 3, but determined not essential	—	Not proposed	—	Not proposed	—
Santa Fe Valley (Crosby Estates)	—	—	3A	5 ac (2 ha)	Excluded under section 4(b)(2)	5 ac (2 ha)
Carroll Canyon	—	—	3B	20 ac (8 ha)	3B	18 ac (7 ha)
Nobel Drive	—	—	3C	37 ac (15 ha)	3C	37 ac (15 ha)
MCAS Miramar	4(a)(3) exemption	61 ac (25 ha)	4(a)(3) exemption	69 ac (28 ha)	4(a)(3) exemption	69 ac (28 ha)
Montgomery Field	Excluded under section 4(b)(2)	38 ac (16 ha)	3D	48 ac (20 ha)	3D	48 ac (20 ha)
Unit 4: San Diego: Inland Management Area						
San Marcos (Upham)	4C1	34 ac (14 ha)	4C1	34 ac (14 ha)	4C1	34 ac (14 ha)
San Marcos (Universal Boot)	4C2	32 ac (13 ha)	4C2	32 ac (13 ha)	4C2	32 ac (13 ha)
San Marcos (Bent Avenue)	4D	7 ac (3 ha)	4D	5 ac (2 ha)	4D	5 ac (2 ha)
Ramona	4E	86 ac (35 ha)	4E	135 ac (55 ha)	4E	135 ac (55 ha)
Unit 5: San Diego: Southern Coastal Mesa Management Area						

TABLE 2. A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING THE PHYSICAL AND BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 CRITICAL HABITAT DESIGNATION, THE 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, AND THIS REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location*	2005 Critical Habitat Designation		2009 Proposed Revised Critical Habitat		2010 Revised Critical Habitat Designation	
	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features
Sweetwater Vernal Pools (S1-3)	5A; partially excluded under section 4(b)(2)	89 ac (36 ha) Excluded 74 ac (30 ha)	5A	95 ac (38 ha)	5A	95 ac (38 ha)
Otay River Valley (K1 and K2)	Excluded under section 4(b)(2)	57 ac (23 ha)	Not proposed, determined not essential	—	Not proposed, determined not essential	—
Otay River Valley (M2)	5B and excluded under section 4(b)(2)	42 ac (17 ha) Excluded 67 ac (27 ha)	5B	24 ac (10 ha)	5B	24 ac (10 ha)
Otay Mesa (J26)	5C and excluded under section 4(b)(2)	14 ac (6 ha)	Not proposed, determined not essential	—	5C***	42 ac (17 ha)
Arnie's Point	Proposed as Subunit 5D, but determined not essential	—	Not proposed	—	Not proposed	—
Proctor Valley (R1-2)	—	—	5F	88 ac (36 ha)	5F	88 ac (36 ha)
Otay Lakes (K3-5)	—	—	5G	140 ac (57 ha)	5G	140 ac (57 ha)
Western Otay Mesa vernal pool complexes	Excluded under section 4(b)(2)	117 ac (47 ha)	5H	143 ac (58ha)	5H	143 ac (58ha)
Eastern Otay Mesa vernal pool complexes	Excluded under section 4(b)(2)	277 ac (112 ha)	5I	221 ac (89 ha)	5I	221 ac (89 ha)
Unit 6: Riverside Management Area						
San Jacinto River	Excluded under section 4(b)(2)	10,774 ac (4,360 ha)	6A	3,550 ac (1,437 ha)	6A***	4,312 ac (1,745 ha)
Salt Creek Seasonally Flooded Alkali Plain	Excluded under section 4(b)(2)	2,233 ac (904 ha)	6B	1,054 ac (427 ha)	6B	930 ac (376 ha)
Wickerd Road and Scott Road Pools	Excluded under section 4(b)(2)	275 ac (111 ha)	6C	205 ac (83 ha)	6C***	235 ac (95 ha)
Skunk Hollow	Excluded under section 4(b)(2)	306 ac (124 ha)	6D	158 ac (64 ha)	Excluded under section 4(b)(2)	158 ac (64 ha)
Mesa de Burro	Excluded under section 4(b)(2)	4,396 ac (1,779 ha)	6E	708 ac (287 ha)	Excluded under section 4(b)(2)	708 ac (287 ha)
Total Area Essential for the Conservation of *Navarretia fossalis***	—	19,399 ac (7,851 ha)	—	7,086 ac (2,868 ha)	—	7,804 ac (3,158 ha)

TABLE 2. A COMPARISON OF THE AREAS IDENTIFIED AS CONTAINING THE PHYSICAL AND BIOLOGICAL FEATURES ESSENTIAL TO THE CONSERVATION OF *Navarretia fossalis* IN THE 2005 CRITICAL HABITAT DESIGNATION, THE 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, AND THIS REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location*	2005 Critical Habitat Designation		2009 Proposed Revised Critical Habitat		2010 Revised Critical Habitat Designation	
	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features	Subunit	Area Containing Essential Features
Total Area Exempt Under Section 4(a)(3)**	—	128 ac (52 ha)	—	213 ac (86 ha)	—	213 ac (86 ha)
Total Area Excluded Under Section 4(b)(2)**	—	18,619 ac (7,535 ha)	—	0 ac (0 ha)	—	871 ac (353 ha)
Total Area Designated as Critical Habitat for *Navarretia fossalis***	—	652 ac (264 ha)	—	N/A	—	6,720 ac (2,720 ha)

*This table does not include all locations that are occupied by *Navarretia fossalis*. It includes only those locations that were designated as critical habitat in 2005 or proposed in 2009 or discussed in this critical habitat rule.
**Values in this table may not sum due to rounding.
***Acreage added in 75 FR 19575 (June 10, 2009) revision.

Summary of Changes From the 2005 Final Designation of Critical Habitat

In the 2005 final rule, we did not designate areas containing essential habitat features if those habitat features were already conserved and managed for the benefit of *Navarretia fossalis* because we concluded that the areas did not meet the second part of the definition of critical habitat under section 3(5)(a)(i) of the Act. We have reconsidered our approach in light of subsequent court decisions and have decided that areas containing essential habitat features that "may require" special management considerations or protection do meet the definition of critical habitat irrespective of whether the habitat features are currently receiving special management or protection. Current protection or management does not disqualify an area from meeting the definition of critical habitat, rather it is a relevant factor to consider under section 4(b)(2) of the Act when we weigh the benefits of including a particular area in critical habitat against the benefits of excluding the area. In this rule we identified essential areas that are conserved and managed for the benefit of the species, determined they meet the definition of critical habitat, and then analyzed whether the benefits of exclusion from critical habitat designation outweigh the benefits of including these areas under section 4(b)(2) of the Act.

This rule also uses a new economic analysis to identify and estimate the potential economic effects on small business entities resulting from implementation of conservation actions associated with the proposed revision of critical habitat. The analysis focuses on the estimated incremental impacts associated with critical habitat designation.

Of the 652 ac (264 ha) of land included in the 2005 final critical habitat rule, approximately 469 ac (190 ha) are included in this revised critical habitat designation. Some areas designated in 2005 are not designated in this final rule because we used a grid of 2.47–ac (1–ha) cells (100 m grid) to identify essential habitat in our GIS analysis in 2005. In this revised critical habitat, we identified essential habitat with heads-up digitizing at various scales using imagery of 1–meter resolution, resulting in a more precise identification.

Additionally, we are designating as critical habitat 6,251 ac (2,530 ha) of land identified as meeting the definition of critical habitat that were not designated in 2005. The primary reason revised designated critical habitat is greater than the 2005 designated area is that we included several areas that were excluded from the 2005 critical habitat designation under section 4(b)(2) of the Act. A summary of specific changes from the 2005 critical habitat designation is provided below. In addition to revisions to specific subunits, we also revised the PCEs, the criteria used to identify critical habitat, the economic impacts to include incremental impacts, and the mapping methodology for this revised critical habitat designation. For a detailed discussion of the changes between the 2005 critical habitat rule and the 2009 proposed revision, please see the **Summary of Changes From Previously Designated Critical Habitat** section in the proposed revised rule (74 FR 27588; June 10, 2009).

In this revised critical habitat designation for *Navarretia fossalis*, comparisons to the 2005 critical habitat designation are described below using three categories:

(1) Areas designated in 2005 and also designated in this rule,

(2) Areas designated in 2005 but not designated in this rule, and

(3) Areas not designated in 2005 that are designated in this rule.

(1) Areas designated in 2005 and also designated in this rule are found in Subunits 1A, 1B, 2, 4C1, 4C2, 4D, 4E, 5A, 5B, and 5C. We analyzed each of these areas and determined these areas are not conserved and managed for the benefit of *Navarretia fossalis* and the benefits of inclusion outweigh the benefits of exclusion.

(2) Areas designated in 2005 but not designated in this rule include land in Subunits 1A, 1B, 2, 4D, 5A, and 5B as described in the 2005 designation. The difference of these subunits between the previous rule and this final rule is mostly due to our discontinued use of a 100–m grid to map critical habitat,

which captured areas that we determined in this rule did not meet the definition of critical habitat. Additionally, the difference in Subunit 1B was due to more precise *Navarretia fossalis* habitat location data in the vicinity of Plum Canyon.

(3) Areas not designated in 2005 that are designated in this rule include areas within Subunits 1B, 3B, 3C, 3D, 4D, 4E, 5A, 5B, 5F, 5G, 5H, 5I, 6A, 6B, and 6C, and part of 5C. Some of these subunits meet the definition of critical habitat based on new information. Subunits 1B, 4D, 4E, and 5B include new areas due to mapping refinements made to better capture local watersheds. Subunits 3B, 3D, 5F, 5G, 5H, and 5I include vernal pool complexes that provide habitat for *Navarretia fossalis* that were not included in the 2005 final rule, but meet the definition of critical habitat for this species (see the 2009 proposed rule for details (74 FR 27588; June 10, 2009)). Other subunits have been designated based on our determination under section 4(b)(2) of the Act that the benefits of inclusion outweigh the benefits of exclusion of these areas because they are not currently conserved and managed for the benefit of *N. fossalis*. All or portions of Subunits 3D, 5A, 5B, 5H, 5I, 6A, and 6C are the same as areas that met the definition of critical habitat in 2005, but were excluded from the 2005 designation under section 4(b)(2) of the Act. The only areas excluded from critical habitat in the current rule under section 4(b)(2) of the Act are those that are conserved and managed for the benefit of *N. fossalis*, and where the exclusion would not result in extinction of the species (see the A**pplication of Section 4(b)(2) of the Act** section of this rule).

Summary of Changes From the 2009 Proposed Rule To Revise Critical Habitat

We evaluated lands considered for exclusion under section 4(b)(2) of the Act to determine if the benefits of exclusion outweigh the benefits of inclusion. We excluded 871 ac (353 ha) of lands under section 4(b)(2) of the Act that are conserved and managed for the benefit of *Navarretia fossalis* We excluded certain lands under two habitat conservation plans (HCPs), summarized below and discussed in detail in the **Exclusions** section.

(1) In the proposed revised rule, we considered for exclusion under section 4(b)(2) of the Act lands covered by the Carlsbad Habitat Management Plan (Carlsbad HMP) under the San Diego Multiple Habitat Conservation Program (MHCP). In this revised rule, we determined the benefits of inclusion outweigh the benefits of exclusion for all of the lands covered by the Carlsbad HMP because these lands are not both conserved and managed for the benefit of *Navarretia fossalis*. However, we recognize the efforts made by permittees of the Carlsbad HMP to assist in the conservation of *N. fossalis* and other listed species. We look forward to continuing to work with these partners to assure that long-term conservation and management is assured for *N. fossalis*. See the **Exclusions** section below for a summary evaluation of lands considered for exclusion under the Carlsbad HMP and our rationale for including these lands in this revised critical habitat designation.

(2) In the proposed revised rule, we considered lands proposed as critical habitat within the County of San Diego Subarea Plan under the San Diego Multiple Species Conservation Program (MSCP; County of San Diego Subarea Plan) for exclusion under section 4(b)(2) of the Act. In this revised rule, we determined the benefits of exclusion outweigh the benefits of inclusion for a portion (5 ac (2 ha) in Subunit 3A) of lands under the County of San Diego Subarea Plan that are both conserved and managed for the benefit of *Navarretia fossalis*, and determined exclusion of these lands will not result in extinction of the species. However, we determined the benefits of inclusion outweigh the benefits of exclusion for 81 ac (33 ha) of lands within the County of San Diego Subarea Plan. As a result, we excluded approximately 5 ac (2 ha) of these lands under section 4(b)(2) of the Act, and included approximately 81 ac (33 ha) within the revised critical habitat designation. For a complete discussion of the benefits of inclusion and exclusion for all lands within the County of San Diego Subarea Plan, see the **Application of Section 4(b)(2) of the Act** section below.

(3) In the proposed revised rule, we considered for exclusion under section 4(b)(2) of the Act lands owned by or under the jurisdiction of the permittees of the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP). In this revised rule, we determined the benefits of exclusion outweigh the benefits of inclusion for 866 ac (351 ha) of the lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP that are conserved and managed (Subunits 6D and 6E), and determined exclusion of these lands will not result in extinction of the species. We determined the benefits of inclusion outweigh the benefits of exclusion for 5,477 ac (2,217 ha) of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP. As a result, we excluded approximately 866 ac (351 ha) of these lands under section 4(b)(2) of the Act, and included approximately 5,477 ac (2,217 ha) within the revised critical habitat designation. For a complete discussion of the benefits of inclusion and exclusion for all lands within the Western Riverside County MSHCP, see the **Application of Section 4(b)(2) of the Act** section below.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(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 that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the

government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to the geographical area occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p.4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may also affect the duration and frequency of drought and these climatic changes may even more dramatic and intense (Graham 1997). Documentation of climate-related changes that have already occurred in California (Croke *et al.* 1998, pp. 2128, 2130; Brashears *et al.* 2005, p. 15144), and future drought predictions for California (such as Field *et al.* 1999, pp. 8–10; Lenihen *et al.* 2003, p. 1667; Hayhoe *et al.* 2004, p. 12422; Brashears *et al.* 2005, p. 15144; Seager *et al.* 2007, p. 1181) and North America (IPCC 2007, p. 9) indicate prolonged drought and other climate-related changes will continue in the foreseeable future.

We anticipate these changes could affect a number of native plants, including *Navarretia fossalis* occurrences and habitat. If the amount and timing of precipitation or the average temperature increases in southern California, the long term viability of *N. fossalis* may be affected in several ways, including the following: (1) Drier conditions may result in a lower germination rate and smaller population sizes; (2) a shift in the timing of annual rainfall may favor nonnative species that impact the quality of habitat for this species; or (3) drier conditions may result in increased fire frequency, making the ecosystems in which *N. fossalis* currently grows more vulnerable to the threats of subsequent erosion and nonnative plant invasion.

At this time, we are unable to identify the specific ways that climate change may impact *Navarretia fossalis*; therefore, we are unable to determine if any additional areas may be appropriate to include in this final critical habitat rule to address the effects of climate change. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific and commercial information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We consider the specific physical and biological features essential to the conservation of the species and laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We derive those specific essential physical and biological features for *Navarretia fossalis* from the biological needs of this species as described in the **Critical Habitat** section of the proposed rule to designate critical habitat for *N. fossalis* published in the **Federal Register** on June 10, 2009 (74 FR 27588).

The area designated as final revised critical habitat consists of ephemeral wetland habitat for the reproduction and growth of *Navarretia fossalis*, intermixed wetland and upland habitats that comprise the local watershed to support ephemeral wetland habitat, and the topography and soils required for ponding during winter and spring months. The methods of dispersal and pollination for *N. fossalis* are not well understood; therefore, elements required for these processes may not be geographically captured by this revised critical habitat designation. Likewise, delineating larger watershed areas that support ephemeral wetland habitat may require hydrological data and modeling that are not available; therefore, areas beyond the local watershed are not included in this revised critical habitat designation. The physical and biological features essential to the conservation of *N. fossalis* are derived from studies of this species' habitat, ecology, and life history as described below, in the **Background** section of the proposed revised critical habitat designation published in the **Federal Register** on June 10, 2009 (74 FR 27588), the critical habitat designation published in the **Federal Register** on October 18, 2005 (70 FR 60658), and the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Habitats That Are Representative of the Historical, Geographical, and Ecological Distribution of *Navarretia fossalis*

Navarretia fossalis is restricted to ephemeral wetlands in southern California and northwestern Baja California, Mexico (Moran 1977, pp. 155–156; Oberbauer 1992, p. 7; Day 1993, p. 847; California Natural Diversity Database (CNDDB) 2008, pp. 1–44), and primarily associated with vernal pools and seasonally flooded alkali vernal plain habitats (Moran 1977, pp. 155–156; Bramlet 1993a, p. 10; Day 1993, p. 847; Ferren and Fiedler 1993, pp. 126–127). In Los Angeles County, *N. fossalis* is known to occur in vernal pools on Cruzan Mesa and the associated drainage of Plum Canyon (such as CNDDB 2008, Element Occurrence (EO) 31, 32, and 41). In Riverside County, *N. fossalis* is known to occur in large vernal pools with basins that range in size from 0.5 ac (0.2 ha) to 10.0 ac (4.0 ha) (such as CNDDB 2008, EO 42, 43, and 44), and in temporary wetlands that are described as seasonally flooded alkali vernal plain habitat along the San Jacinto River and near Salt Creek/Stowe Pool in Hemet (such as CNDDB 2008, EO 22, 23, and 24). In San Diego County, *N. fossalis* is found in vernal pools that are smaller than those in Riverside County, ranging in size from 0.01 ac (0.005 ha) to 0.2 ac (0.09 ha) and are often found in clusters of several vernal pools typically referred to as vernal pool complexes (such as CNDDB 2008, EO 4, 14, and 19). In Mexico, *N. fossalis* is known from fewer than 12 occurrences, most of which are clustered in three areas of Baja California: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977, p. 156).

Ephemeral Wetland Habitat

Despite variation in the types of habitat where *Navarretia fossalis* is found (i.e., vernal pool habitat and seasonally flooded alkali vernal plain habitat), these ephemeral wetlands all share the same temporary nature (i.e., areas fill with water during the winter and spring and dry completely during summer and fall). *Navarretia fossalis* depends on both the inundation and drying of its habitat for survival. This type of ephemerally wet habitat excludes upland plants that live in a dry environment year round, or wetland plants that require year-round moisture to become established (Keeler-Wolf *et al.* 1998).

Navarretia fossalis primarily occurs in ephemeral wetland habitat, more specifically, vernal pool and seasonally flooded alkali vernal plain habitat (Moran 1977, pp. 156–157; Bramlet 1993a, p. 10; Bramlet 1993b, p. 14; Day 1993, p. 847). Vernal pools form during the winter rains in depressions that are part of a gently sloping and undulating landscape, where soil mounds are interspersed with basins (mima-mound topography; Cox 1984, pp. 1397–1398). Water ponds in vernal pools in part due to an underlying impervious soil layer (hard pan or clay pan). *Navarretia fossalis* can also occur in ditches and other artificial depressions associated with degraded vernal pool habitat (Moran 1977, p. 155).

Seasonally flooded alkali vernal plain habitat includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland vegetation types. The hydrologic regime for this habitat involves sporadic seasonal flooding (as described above) combined with slow drainage of the alkaline soils. Large-scale inundation of flood plains occur approximately every 20 to 50 years, which is necessary for long-term maintenance of the habitat by removing scrub vegetation (Roberts 2004, p. 4). During a typical seasonal flooding cycle dry period, alkali scrub vegetation expands its distribution into the seasonally flooded areas of alkali vernal plains habitat and crowds out the species associated more with ephemeral wetlands. During a large-scale flood, standing and slow-draining waters remain for weeks or months and kill alkali scrub vegetation, resulting in favorable conditions for annual ephemeral wetland-associated species (such as *Navarretia fossalis*) to expand their range (Bramlet 2004, p. 8; Roberts 2004, p. 4). Although uncommon, large-scale flooding events maintain *N. fossalis* habitat and likely provide a species dispersal mechanism (Bramlet 2009, p. 3). Seasonally flooded alkali vernal plain can also persist in lightly to moderately disturbed habitat that may obscure or suppress expression of PCEs, especially when disturbance consists of soil amendments or dryland farming activities (Roberts 2009, p. 2).

Subsurface Water Flow That Creates A Local Watershed of Intermixed Wetland and Upland Habitats

Vernal pools within a complex are hydrologically connected by subsurface water, which creates a landscape that is intermixed with wetland and upland habitats. This entire area comprises a local watershed and provides the appropriate physical and biological features necessary to maintain vernal pools within each complex. Seasonally flooded alkali vernal plain habitats are also hydrologically connected by flowing water when it flows over the surface from one vernal pool to another or across the seasonally flooded alkali vernal plain. Due to an impervious hard pan, water flows and collects below ground as the soil becomes saturated. Movement of the water through vernal pool and seasonally flooded alkali vernal plain systems results in pools

filling and holding water continuously for a number of days (Hanes *et al.* 1990, p. 51). For this reason, these ephemeral wetlands are best described from a watershed perspective. The local watershed associated with a vernal pool complex or seasonally flooded alkali vernal plain includes all surfaces in the surrounding area from which water flows into the complex or plain habitat. Some ephemeral wetlands included in this rule (such as the San Jacinto River and the Salt Creek Seasonally Flooded Alkali Plain) have large watersheds where the overland flow of water contributes to the ponding that supports *Navarretia fossalis*, while other ephemeral wetlands have comparatively small watersheds (such as Carroll Canyon and Nobel Drive) and fill almost entirely from direct rainfall (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 38). It is also possible that subsurface flow occurs within a watershed and contributes water to some vernal pools and seasonally flooded alkali vernal plains (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 48). In summary, *N. fossalis* depends on an entire local watershed that includes subsurface water flow over an area that is comprised of intermixed wetland and upland habitats.

Topography and Soils That Support Ponding During Winter and Spring

Topography and soils support ponding that occurs during winter and spring months. Impervious subsurface layers combined with flat to gently sloping topography serve to inhibit rapid infiltration of rainwater, resulting in ponding of vernal pools and seasonally flooded alkali vernal plains (Bramlet 1993a, p. 1; Bauder and McMillian 1998, pp. 57–59). Soils also function to moderate water chemistry and rate of water loss to evaporation (Zedler 1987, pp. 17–30). In Los Angeles County, vernal pools that support *Navarretia fossalis* are found on Cieneba-Pismo-Caperton soils (NRCS SSURGO, ca676. In western Riverside County, seasonally flooded alkali vernal plain habitats that support *N. fossalis* are found on Domino, Traver, Waukena, Chino, (Bramlet 1993a, pp. 1, 10) (59 FR 64812; December 15, 1994) and Willows soils (Bramlet 2009, p. 4). In San Diego County, vernal pool habitats that support *N. fossalis* are found on Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils (NRCS SSURGO, ca073).

Primary Constituent Elements for *Navarretia Fossalis*

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of *Navarretia fossalis*. The physical and biological features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Areas designated as critical habitat for *N. fossalis* were occupied at the time of listing (see the **Geographic Range and Status** section of the proposed revised rule for a more detailed explanation), are currently occupied, are within the species' historic geographical range, and contain sufficient PCEs to support *N. fossalis*.

Based on our current knowledge of the life history, biology, and ecology of *Navarretia fossalis*, and habitat characteristics required to sustain the essential life history functions of the species, we determined that the PCEs specific to *N. fossalis* are:

(1) PCE 1—*Ephemeral wetland habitat.* Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall (i.e., years where average rainfall amounts for a particular area are reached during the rainy season (between October and May)). This period of inundation is long enough to promote germination, flowering, and seed production for *Navarretia fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(2) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools described in PCE 1.

(3) PCE 3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCEs 1 and 2 that have a clay component or other property that creates an impermeable surface or subsurface layer. These soil types include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, Waukena, Chino, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

With this revised designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life-history functions of the species. For *Navarretia fossalis*, the size of the ephemeral wetland habitat can vary a great deal, but the most important factor (i.e., the appropriate quantity and spatial arrangement of the PCEs) in any of the subunits designated as critical habitat is that the vernal pool or alkali playa habitat has intact and functioning hydrology and intact adjacent upland areas that ensure a functioning ecosystem. All units and subunits designated as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and are currently occupied by *N. fossalis*.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and which may require special management considerations or protection.

Researchers estimate that greater than 90 percent of the vernal pool habitat in southern California has been converted as a result of past human activities (Bauder and McMillian 1998, pp. 56–67; Keeler-Wolf *et al.* 1998, pp. 10, 60–61, 63–64). A detailed discussion of threats to *Navarretia fossalis* and its habitat can be found in the final listing rule (63 FR 54975; October 13, 1998), the previous critical habitat designation (70 FR 60658; October 18, 2005), and the Recovery Plan for Vernal Pools of Southern California (Service 1998, pp. 1–113, appendices). The features essential to the conservation of *N. fossalis* may require special management considerations or protection to reduce the following threats: habitat destruction and fragmentation from urban and agricultural development; pipeline construction; alteration of hydrology and floodplain dynamics; excessive flooding; channelization; water diversions; off-road vehicle (OHV) activity; trampling by cattle and sheep; weed abatement; fire suppression practices (including discing and plowing to remove weeds and create fire breaks); competition from nonnative plant species; direct and indirect impacts from some human recreational activities (63 FR 54975, October 13, 1998; Service 1998, p. 7); and manure dumping (Roberts 2009, pp. 2–14).

In particular, manure dumping on private property along the San Jacinto River area is impacting habitat within the Western Riverside County MSHCP

area. These impacts are occurring despite identification of these areas as important for the survival and recovery of *Navarretia fossalis* and other sensitive species (such as *Brodiaea filifolia*) addressed in the Western Riverside County MSHCP. Dumping of manure and sewage sludge should be avoided in all areas containing populations of *N. fossalis*. As outlined in the Western Riverside County MSHCP, we have been working with permittees to implement additional ordinances that will help to control activities (such as manure dumping) that may impact the implementation of the Western Riverside County MSHCP conservation objectives. To date, the City of Hemet is the only Western Riverside County MSHCP permittee that has addressed the negative impacts that manure dumping has on species such as *N. fossalis* and *B. filifolia* and their habitat trough the enactment of Ordinance 1666 (i.e., the ordinance that prevents manure dumping activities and educates its citizens). We will continue to work with Riverside County and permittees of the Western Riverside County MSHCP to address activities that may impact the species within this plan area, as well as other HCPs and plan areas that may have other activities that impact *N. fossalis* and its habitat.

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include (but are not limited to) fencing *Navarretia fossalis* occurrences to prevent soil compaction and providing signage to discourage encroachment by hikers, cattle, sheep, and OHV activity; control of nonnative plants using methods shown to be effective; guiding the design of development projects to avoid impacts to *N. fossalis* habitat; enacting local ordinances to prohibit manure dumping; and restoring and maintaining natural hydrology and floodplain dynamics of watersheds associated with *N. fossalis* occurrences where feasible. These management activities will protect the PCEs for the species by reducing soil compaction to help maintain an impermeable surface (PCE 3) that supports ephemeral wetland habitat (PCE 1), which is needed to promote germination, flowering, and seed production for *N. fossalis*. Additionally, management of critical habitat lands will help maintain both the wetland and upland habitat that acts as the local watershed and provides intermittent flowing water on the surface and subsurface (PCEs 2 and 3).

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available to designate critical habitat. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12 (e)). We are not designating any areas outside the geographical area occupied by *Navarretia fossalis* because occupied areas are sufficient for the conservation of the species.

This revised rule updates our 2005 final designation of critical habitat for *Navarretia fossalis* with the best available scientific information. For some areas analyzed in 2005, we have new information from survey reports and public comments that led us to either add or remove areas from critical habitat designation.

This section provides details of the process and criteria we used to delineate a final revised critical habitat designation for *Navarretia fossalis*. This revised rule is based largely on areas that are identified as required for the conservation of *N. fossalis* in the Recovery Plan for Vernal Pools of Southern California (Service 1998, pp.1–113, appendices), the 2005 final critical habitat designation, and new information obtained since that designation. Table 3 in this rule depicts the areas essential for *N. fossalis* conservation; it does not include all locations occupied by *N. fossalis*. It includes only those locations that were:

(1) Included in Appendix F or G of the Recovery Plan;

(2) designated, excluded, or exempt in the 2005 final critical habitat designation;

(3) proposed as critical habitat in the 2009 rule or proposed as critical habitat in the **Federal Register** notice published on April 15, 2010 (75 FR 19575); or

(4) designated, excluded, or exempt in this final revised critical habitat designation.

The unit names used in this revised critical habitat for *N. fossalis* are based on those used for management areas in the 1998 Recovery Plan. The specific changes made to the 2005 final critical habitat designation are summarized in the **Summary of Changes From Previously Designated Critical Habitat** section of this rule.

We analyzed the biology, life history, ecology, and distribution (historical, at the time of listing, and current) of *Navarretia fossalis*. Based on this information, we are designating revised critical habitat in areas within the geographical area occupied by *N. fossalis* at the time of listing and currently occupied that contain the PCEs in the quantity and spatial arrangement to support life-history functions essential to the conservation of the species (see the **Geographic Range and Status** section in the proposed revised rule (74 FR 27588; June 10, 2009) for more information). We are not designating any areas outside the geographical area occupied by the species at the time of listing. All units and subunits contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of *N. fossalis*.

TABLE 3. AREAS NECESSARY FOR *Navarretia fossalis* CONSERVATION AS DESCRIBED IN THE 1998 RECOVERY PLAN, 2005 FINAL CRITICAL HABITAT DESIGNATION, 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, 2010 REVISIONS PROPOSED IN THE AVAILABILITY OF THE DEA, AND THIS 2010 FINAL REVISED CRITICAL HABITAT DESIGNATION.

Location*	Recovery Plan Appendix	Final Critical Habitat Subunits (2005)	Proposed Revised Critical Habitat Subunits (based on 2009 proposal and 2010 availability of the DEA)	Final Revised Critical Habitat Subunits (2010)
Unit 1: Los Angeles Basin-Orange Management Area				
Cruzan Mesa	F	1A	1A	1A
Plum Canyon	N/A	1B	1B	1B
Unit 2: San Diego: Northern Coastal Mesa Management Area				

TABLE 3. AREAS NECESSARY FOR *Navarretia fossalis* CONSERVATION AS DESCRIBED IN THE 1998 RECOVERY PLAN, 2005 FINAL CRITICAL HABITAT DESIGNATION, 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, 2010 REVISIONS PROPOSED IN THE AVAILABILITY OF THE DEA, AND THIS 2010 FINAL REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location*	Recovery Plan Appendix	Final Critical Habitat Subunits (2005)	Proposed Revised Critical Habitat Subunits (based on 2009 proposal and 2010 availability of the DEA)	Final Revised Critical Habitat Subunits (2010)
Stuart Mesa, Marine Corps Base (MCB) Camp PendletonRecovery plan (RP)** name: Stuart Mesa	F	4(a)(3) exemption	4(a)(3) exemption	4(a)(3) exemption
Wire Mountain, MCB Camp Pendleton RP name: Wire Mountain	F	—	4(a)(3) exemption	4(a)(3) exemption
Poinsettia Lane Commuter Station RP name: JJ 2 Poinsettia Lane	F	2 (partially excluded under section 4(b)(2))	2	2
Unit 3: San Diego: Central Coastal Mesa Management Area				
Santa Fe Valley (Crosby Estates)	N/A	—	3A	Excluded under section 4(b)(2)
Carroll Canyon (D 5-8)	—	—	3B	3B
Nobel Drive (X 5)	—	—	3C	3C
Large Pool northwest of runway, MCAS Miramar	N/A	—	4(a)(3) exemption	4(a)(3) exemption
EE1-2, MCAS Miramar RP name: EE1-2, Miramar Interior	F	4(a)(3) exemption	—	—
Kearny Mesa (U 19)	N/A	4(a)(3) exemption	—	—
New Century (BB 2)RP name: BB 2 New Century	G	—	—	—
Montgomery Field RP name: N1-4, 6 Montgomery Field	F	Excluded under section 4(b)(2)	3D	3D
Unit 4: San Diego: Inland Management Area				
San Marcos (North L 15)RP name: L 7, 8, 14-20	G	—	—	—
San Marcos (Northwest L 14)RP name: L 7, 8, 14-20	G	—	—	—
San Marcos (L 1-6)RP name: L 1-6, 9-13 San Marcos	F	4C1	4C1	4C1
San Marcos (L 9-10)RP name: L 1-6, 9-13 San Marcos	F	4C2	4C2	4C2
San Marcos (L 11-13)RP name: L 1-6, 9-13 San Marcos	F	4D	4D	4D

TABLE 3. AREAS NECESSARY FOR *Navarretia fossalis* CONSERVATION AS DESCRIBED IN THE 1998 RECOVERY PLAN, 2005 FINAL CRITICAL HABITAT DESIGNATION, 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, 2010 REVISIONS PROPOSED IN THE AVAILABILITY OF THE DEA, AND THIS 2010 FINAL REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location*	Recovery Plan Appendix	Final Critical Habitat Subunits (2005)	Proposed Revised Critical Habitat Subunits (based on 2009 proposal and 2010 availability of the DEA)	Final Revised Critical Habitat Subunits (2010)
San Marcos (North L 15)RP name: L 7, 8, 14-20	G	—	—	—
Ramona RP name: Ramona	F	—	—	—
Ramona RP name: Ramona T	G	4E	4E	4E
Unit 5: San Diego: Southern Coastal Mesa Management Area				
Sweetwater Vernal Pools (S1-3)RP name: Sweetwater Lake	F	5A (partially excluded under section 4(b)(2))	5A	5A
Otay River Valley (M2)	—	5B	5B	5B
Otay Mesa (J26)RP name: J 26 Otay Mesa	F	5C	5C	5C
Proctor Valley (R1)RP name: R Proctor Valley	F	—	5F	5F
Otay Reservoir (K3-5)RP name: K3-5 Otay River	F	—	5G	5G
K1, 2 RP name: K 1, 2, 6, 7 Otay River	G	Excluded under section 4(b)(2)	Does not meet the definition of Critical Habitat	—
K 6, 7 RP name: K 1, 2, 6, 7 Otay River	G	—	—	—
Western Otay Mesa vernal pool complexes RP name: J 2, 5, 7, 11-21, 23-30 Otay Mesa / J 3 Otay Mesa	F / G	Excluded under section 4(b)(2)	5H / 5I	5H / 5I
Western Otay Mesa vernal pool complexes (J 32 (West Otay A + B), J 33 (Sweetwater High School))	N/A	—	5H	5H
Eastern Otay Mesa vernal pool complexes RP name: 23-30 Otay Mesa / J 22 Otay Mesa	F / G	Excluded under section 4(b)(2)	5H / 5I	5H / 5I
Eastern Otay Mesa vernal pool complexes RP name: J 19, 27, 28E, 28W Otay Mesa	—	Excluded under section 4(b)(2)	Does not meet the definition of Critical Habitat	—
RP name: J (undescribed)	G	—	—	—
Unit 6: Riverside Management Area				
San Jacinto River RP name: San Jacinto	F	Excluded under section 4(b)(2)	6A	6A

TABLE 3. AREAS NECESSARY FOR *Navarretia fossalis* CONSERVATION AS DESCRIBED IN THE 1998 RECOVERY PLAN, 2005 FINAL CRITICAL HABITAT DESIGNATION, 2009 PROPOSED REVISED CRITICAL HABITAT DESIGNATION, 2010 REVISIONS PROPOSED IN THE AVAILABILITY OF THE DEA, AND THIS 2010 FINAL REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location*	Recovery Plan Appendix	Final Critical Habitat Subunits (2005)	Proposed Revised Critical Habitat Subunits (based on 2009 proposal and 2010 availability of the DEA)	Final Revised Critical Habitat Subunits (2010)
Salt Creek Seasonally Flooded Alkali Plain RP name: Hemet/ Salt Creek	F	Excluded under section 4(b)(2)	6B	6B
Wickerd Road and Scott Road Pools	N/A	—	6C	6C
Skunk Hollow RP name: Skunk Hollow	—	Excluded under section 4(b)(2)	6D	Excluded under Section 4(b)(2)
RP name: Temecula	F	—	—	—
Mesa de Burro RP name: Santa Rosa Plateau	F	Excluded under section 4(b)(2)	6E	Excluded under Section 4(b)(2)
Total Areas (out of 39 areas listed in this table)	27	22	28	28

*This table does not include all locations occupied by *Navarretia fossalis*. It includes only those locations included in Appendix F or G of the Recovery Plan ("RP" in above table); designated, excluded, or exempt in 2005; proposed as critical habitat in the 2009 rule; proposed as revisions to proposed rule as identified in the document making available the DEA; or designated, excluded, or exempt in this final rule. Note: The alpha-numeric vernal pool labels were applied in the Recovery Plan.

**RP name = Name in Recovery Plan, if different from the current rule.

Appendices F and G of the Recovery Plan provide information on the areas needed to stabilize (prevent extinction of) *Navarretia fossalis* (Appendix F) and the areas that should be conserved and managed to reclassify or recover *N. fossalis* (Appendix G). In Table 3, we summarized the data from the Recovery Plan. According to this summary, 27 locations were highlighted as areas that should be conserved and managed to recover *N. fossalis*. Our 2005 final rule to designate critical habitat (70 FR 60658; October 18, 2005) used the Recovery Plan as the basis for designating critical habitat; however, the rule included some additions to and subtractions from those areas deemed essential to the conservation of *N. fossalis* in the Recovery Plan. Nine areas that the Recovery Plan identified as necessary for recovery were not identified in the 2005 final rule as essential to the conservation of *N. fossalis*, and four areas not in the Recovery Plan were added. These nine areas were sites where we did not have specific occurrence data or areas where recent surveys had not found *N. fossalis*. The four areas added to the 2005 final rule were locations where occurrence data indicated that these areas contained the features essential to the conservation of *N. fossalis*. A total of 22 areas were identified in the 2005 final rule as essential to the conservation of *Navarretia fossalis* (see Table 3).

We did not include seven occurrences of *N. fossalis* highlighted in the Recovery Plan in the proposed revised critical habitat designation or this final rule. We do not have detailed information on these occurrences, and *N. fossalis* has not been observed during recent surveys at some of these sites. Additionally, we included areas in this revised critical habitat (based on new data) that were not identified as necessary for recovery in the Recovery Plan. While some of the areas are different, non-inclusion of some areas in the Recovery Plan and inclusion of other areas for which we have better data will achieve the overall goal of the Recovery Plan for *N. fossalis* and provide for conservation of this species.

In this revised designation of critical habitat for *Navarretia fossalis*, using the best scientific and commercial information, we selected areas that possess those physical and biological features essential to the conservation of the species, and which may require special management considerations or protection. We took into account past conservation planning for *N. fossalis* in the Recovery Plan and in the 2005 critical habitat designation. For this revised rule, we completed the following steps to delineate critical habitat:

(1) Compiled all available data on *N. fossalis* into a GIS database;

(2) Reviewed data to ensure accuracy;

(3) Determined which occurrences were known to occur at the time of listing;

(4) Determined which areas are currently occupied;

(5) Defined the areas containing the features essential to the conservation of *N. fossalis* in terms of core habitat areas and satellite habitat areas;

(6) Determined if each occupied area represents core habitat or satellite habitat and, therefore, should be designated as critical habitat; and

(7) For both core and satellite habitat areas, mapped the specific locations that contain the essential physical and biological features (PCEs in the appropriate quantity and spatial arrangement needed to support life-history functions essential to the conservation of *N. fossalis*).

These steps are described in detail below.

(1) We compiled all available data on *Navarretia fossalis* into a GIS database. Data on locations where *N. fossalis* occurs were based on collections and

observations made by botanists (both amateur and professional), biological consultants, and academic researchers. We compiled data from the following sources to create our GIS database for *N. fossalis*: (a) Data used in the Recovery Plan and in the 2005 final critical habitat rule for *N. fossalis* (70 FR 60658); (b) the CNDDB data report for *N. fossalis* and accompanying GIS records (CNDDB 2008, pp. 1–44); (c) data presented in the City of San Diego's Vernal Pool Inventory for 2002–2003 (City of San Diego 2004, pp. 1–125, appendices); (d) the data report for *N. fossalis* from the California Consortium of Herbaria and accompanying Berkeley Mapper GIS records (Consortium of California Herbaria 2008, pp. 1–17); (e) the Western Riverside County MSHCP species GIS database; and (f) the Carlsbad Fish and Wildlife Office's internal species GIS database, which includes the species data used for the San Diego MSCP and the San Diego MHCP, reports from section 7 consultations, and Service observations of *N. fossalis* (Carlsbad Fish and Wildlife Office's internal species GIS database).

(2) We reviewed the *Navarretia fossalis* data that we compiled to ensure its accuracy. We checked each data point in our database to ensure that it represented an original collection or observation of *N. fossalis*. Data that did not represent an original collection or observation were removed from our database. We checked each data point to ensure that it was mapped in the correct location. Data points that did not match the description for the original collection or observation were remapped in the correct location or removed from our database.

(3) We determined which *Navarretia fossalis* occurrences existed at the time of listing. We concluded that all known occurrences, except for a single occurrence translocated after this species was listed, were extant at the time of listing. We drew this conclusion because *N. fossalis* has limited dispersal capabilities. We believe the documentation of additional occurrences after the species was listed was due to an increased effort to survey for this species. In other words, we do not believe this species has naturally colonized any new areas since it was listed.

(4) We determined which areas are currently occupied by *Navarretia fossalis*. For areas where we had past occupancy data for the species, we assumed the area is currently occupied unless: (a) Two or more rare plant surveys conducted during the past 10 years did not find *N. fossalis* (providing the surveys were conducted in years with average rainfall (i.e., years where average rainfall amounts for a particular area are reached during the rainy season between October and May)) and during the appropriate months to find this species (i.e., March, April, and May); or (b) the site was significantly disturbed since the last observation of the species at that location.

(5) We defined the areas necessary for conservation of *Navarretia fossalis* in terms of "core habitat areas" and "satellite habitat areas." See the **Areas Needed for Conservation: Core and Satellite Habitat Areas** section in this rule for definitions of these areas.

(6) We determined if each occupied area represents core habitat or satellite habitat. In the final listing rule (63 FR 54975; October 13, 1998), we stated that 60 percent of the known *Navarretia fossalis* occurrences are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (referred to as the Salt Creek Seasonally Flooded Alkali Plain in this final critical habitat rule). These three areas represent core habitat for *N. fossalis*. In addition to these three core habitat areas, Mesa de Burro in Riverside County represents core habitat for this species due to the large species abundance observed there in 2008, and the large amount of intact vernal pool habitat on this mesa. In total, we identified four core habitat areas for *N. fossalis*. Large populations of *N. fossalis* are currently present in these four areas, but there have been significant impacts to these areas in the form of habitat fragmentation, nonnative plant invasion, agricultural activities, and unauthorized recreational use. Because these four areas represent large, interconnected ephemeral wetland areas and large *N. fossalis* populations, they are essential to, and will serve as anchors for, the overall conservation effort for this species. Additionally, the conservation of these four areas will sustain the largest populations of *N. fossalis*, allowing the species to persist where it will be less constrained by the threats that negatively impact its essential habitat features (PCEs).

Habitat areas outside the four core habitat areas also support stable, intact occurrences of *Navarretia fossalis*. These satellite areas represent unique habitat within this species' range that also contain the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. The satellite habitat areas occur over a wide range of soils and at various elevations that include several occurrences over a range of environmental variables, the preservation of which will help maintain the genetic diversity of *N. fossalis*. The satellite habitat areas are essential to the conservation of *N. fossalis* because they allow for connections between existing occurrences of the species, and together with the core habitat areas, will create a sustainable matrix of habitat for *N. fossalis* that will enable it to evolve and potentially respond to future environmental changes.

Areas of essential habitat that are smaller than core habitat areas were selected as satellite habitat areas if *Navarretia fossalis* persists from year to year (i.e., areas that may be isolated and likely to be genetically unique), and are: (a) on the periphery of this species' geographical distribution; (b) geographically isolated from other occurrences; or (c) provide connections between other satellite or core habitat areas. Additional discussion about exceptions to the assignment of satellite areas is found below in the **Critical Habitat Units** section of this rule.

(7) For the core and satellite habitat areas, we mapped the specific areas that contain the physical and biological features (the PCEs) in the quantity and spatial arrangement needed to support life history functions essential to *Navarretia fossalis*. We first mapped the ephemeral wetland habitat in the occupied area using occurrence data, aerial imagery, and 1:24,000 topographic maps. We then mapped the intermixed wetland and upland habitats that make up the local watersheds and the topography and soils that support the occupied ephemeral wetland habitat. We identified the gently sloping area associated with ephemeral wetland habitat and any adjacent areas that slope toward and contribute to the hydrology of the ephemeral wetland habitat. In most cases, we delineated the border of revised critical habitat around the occupied ephemeral wetlands and associated local watershed areas to follow natural breaks in the terrain such as ridgelines, mesa edges, and steep canyon slopes.

When determining the revised critical habitat boundaries, we made every effort to map precisely only the areas that contain the PCEs and provide for the conservation of *Navarretia fossalis*. However, due to the mapping scale that we use to draft critical habitat boundaries, we cannot guarantee that every fraction of revised critical habitat contains the PCEs. Additionally, we made every attempt to avoid including developed areas such as lands underlying buildings, paved areas, and other structures that lack PCEs for *N.*

fossalis. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat designation are excluded by text in this rule and are not designated as critical habitat. Therefore, Federal actions involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific actions may affect the species or PCEs in adjacent critical habitat.

Revised Critical Habitat Designation

We are designating 6 units that include 19 subunits as critical habitat for *Navarretia fossalis*. Table 4 identifies the approximate area of each critical habitat subunit by land ownership. These subunits, which generally correspond to the geographic area of the subunits delineated in the 2005 designation, replace the current critical habitat designation for *N. fossalis* in 50 CFR 17.96(a). The critical habitat areas we describe below constitute our best assessment of areas determined to be occupied at the time of listing that contain the primary constituent elements in the appropriate quantity and spatial arrangement (i.e., essential features) which may require special management considerations or protection. We are not designating any unoccupied areas or areas outside of the species' historical range because we determined that occupied lands within the species' historical range are sufficient for the conservation of *N. fossalis* provided that these lands are protected or receive special management considerations for *N. fossalis*.

TABLE 4. AREA AND OWNERSHIP FOR LANDS INCLUDED IN THE *Navarretia fossalis* REVISED CRITICAL HABITAT DESIGNATION.

Location	Federal	State Government	Local Government	Private	Total
Unit 1: Los Angeles Basin-Orange Management Area					
1A. Cruzan Mesa	—	—	—	156 ac (63 ha)	156 ac (63 ha)
1B. Plum Canyon	—	—	—	20 ac (8 ha)	20 ac (8 ha)
Unit 2: San Diego: Northern Coastal Mesa Management Area					
2. Poinsettia Lane Commuter Station	—	—	6 ac (3 ha)	3 ac (1 ha)	9 ac (4 ha)
Unit 3: San Diego: Central Coastal Mesa Management Area					
3B. Carroll Canyon	—	—	17 ac (7 ha)	1 ac (< 1 ha)	18 ac (7 ha)
3C. Nobel Drive	—		37 ac (15 ha)	—	37 ac (15 ha)
3D. Montgomery Field	—	—	48 ac (20 ha)	—	48 ac (20 ha)
Unit 4: San Diego: Inland Management Area					
4C1. San Marcos (Upham)	—	—	—	34 ac (14 ha)	34 ac (14 ha)
4C2. San Marcos (Universal Boot)	—	—	15 ac (6 ha)	17 ac (7 ha)	32 ac (13 ha)
4D. San Marcos (Bent Avenue)	—	—	—	5 ac (2 ha)	5 ac (2 ha)
4E. Ramona	—	—	3 ac (1 ha)	132 ac (53 ha)	135 ac (55 ha)
Unit 5: San Diego: Southern Coastal Mesa Management Area					
5A. Sweetwater Vernal Pools (S1-3)	23 ac (9 ha)	1 ac (<1 ha)	71 ac (29 ha)	—	95 ac (38 ha)
5B. Otay River Valley (M2)	—	—	—	24 ac (10 ha)	24 ac (10 ha)
5C. Otay Mesa (J26)	—	2 ac (1 ha)	24 ac (10 ha)	16 ac (7 ha)	42 ac (17 ha)
5F. Proctor Valley (R1-2)	—	—	51 ac (21 ha)	37 ac (15 ha)	88 ac (36 ha)

TABLE 4. AREA AND OWNERSHIP FOR LANDS INCLUDED IN THE *Navarretia fossalis* REVISED CRITICAL HABITAT DESIGNATION.—Continued

Location	Federal	State Government	Local Government	Private	Total
5G. Otay Lakes (K3-5)	—	—	140 ac (57 ha)	—	140 ac (57 ha)
5H. Western Otay Mesa vernal pool complexes	—	—	41 ac (17 ha)	98 ac (40 ha)	139 ac (56 ha)
5I. Eastern Otay Mesa vernal pool complexes	—	—	—	221 ac (89 ha)	221 ac (89 ha)
Unit 6: Riverside Management Area					
6A. San Jacinto River	—	1,504 ac (608 ha)	—	2,808 ac (1,136 ha)	4,312 ac (1,745 ha)
6B. Salt Creek Seasonally Flooded Alkali Plain	—	—	—	930 ac (376 ha)	930 ac (376 ha)
6C. Wickerd Road and Scott Road Pools	—	—	—	235 ac (95 ha)	235 ac (95 ha)
Total	23 ac (9 ha)	1,507 ac (610 ha)	453 ac (183 ha)	4,737 ac (1,917 ha)	6,720 ac (2,720 ha)*

*Values in this table may not sum due to rounding.

Critical Habitat Units

Presented below are brief descriptions of all subunits included in the *Navarretia fossalis* revised critical habitat designation and reasons why they meet the definition of critical habitat for the species. The units in this revised critical habitat correspond to the management areas described in the 1998 Recovery Plan for Vernal Pools of Southern California. Each subunit contains either: (1) A core habitat area; or (2) a satellite habitat area that provides connectivity between core habitat areas or other satellite habitat areas. Areas identified as subunits that harbor satellite habitat areas were identified as containing features essential to the conservation of the species (compared to other areas not identified as essential habitat) due to a combination of their geographic proximity to core habitat areas, their status as an area that supports a stable occurrence (representing occurrences that continue to persist within a given geographic area), and the likelihood that these particular habitat areas support genetically unique occurrences. Other areas not qualifying as satellite areas are occurrences that are represented by one or more of the following characteristics: Occurrence consisting of few individuals; no detailed information on occurrence; lack of observations during recent surveys; locations not identified in the Recovery Plan; or areas have low likelihood of persistence due to fragmentation or enclosure by developed areas.

Unit 1: Los Angeles Basin—Orange Management Area

Unit 1 is located in northwestern Los Angeles County and consists of two subunits totaling 176 ac (71 ha) of private land.

Subunit 1A: Cruzan Mesa

Subunit 1A is located near the City of Santa Clarita in Los Angeles County. This subunit is on Cruzan Mesa, northwest of Forest Park and the Sierra Highway and southwest of Vasquez Canyon Road. Subunit 1A consists of 156 ac (63 ha) of private land and meets our selection criteria as satellite habitat. Cruzan Mesa is one of the only areas in Los Angeles County that supports mesa-top vernal pools. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis*, provides potential connectivity with Subunit 1B, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis*. This subunit and Subunit 1B (described below) represent the most northern occurrences of this species. Subunit 1A contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as mowing or grading) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 1B: Plum Canyon

Subunit 1B is located near the City of Santa Clarita in Los Angeles County. This subunit is in Plum Canyon, west of Forest Park and the Sierra Highway and north of Plum Canyon Road. Subunit 1B consists of 20 ac (8 ha) of private land and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis*, provides potential connectivity with Subunit 1A, and likely supports a genetically distinct occurrence because of the separation of these two northern occurrences from other occurrences of *N. fossalis*. The Plum Canyon vernal pool habitat occurs on a flat area down-slope from the

vernal pools on Cruzan Mesa. The vernal pools on Cruzan Mesa (Subunit 1A) and Plum Canyon represent the only habitat for *N. fossalis* in Los Angeles County and the most northern occurrences of this species. Subunit 1B contains the physical or biological features essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species within this subunit. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 2: San Diego—Northern Coastal Mesa Management Area

Poinsettia Lane Commuter Station

Unit 2 is located in the City of Carlsbad in San Diego County and contains 6 ac (3 ha) of land owned by the North County Transit District and 3 ac (1 ha) of private land. This unit is loosely bounded by Avenida Encinas on the north, a housing development on the east, Poinsettia Lane on the south, and train tracks on the west. Unit 2 meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences on MCB Camp Pendleton and Subunits 4C1, 4C2, and 4D. The Poinsettia Lane vernal pool complex consists of a series of vernal pools that run parallel to a berm created by the train tracks. Unit 2 contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 3: San Diego—Central Coastal Mesa Management Area

Unit 3 is located in central coastal San Diego County and consists of three subunits totaling 103 ac (42 ha). This unit contains 102 ac (42 ha) owned by State and local governments, and approximately 1 ac (less than 1 ha) of private land.

Subunit 3B: Carroll Canyon

Subunit 3B is located in the City of San Diego in San Diego County. This subunit is located to the southwest of the intersection of Parkdale Avenue and Osgood Way, and is loosely bounded by residential development on the north, open space to the east, and a quarry to the south and west. Subunit 3B consists of approximately 18 ac (7 ha) that includes 17 ac (7 ha) of land owned by State or local governments and 1 ac (less than 1 ha) of private land. Subunit 3B meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 3A and 3C. The Carroll Canyon vernal pool complex consists of a group of vernal pools on the edge of a mesa north of Carroll Canyon. Historically, there may have been more habitat for this species; however, the majority of vernal pool habitat in the vicinity of this subunit has been developed. Subunit 3B contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as trespass or illegal trash dumping) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3C: Nobel Drive

Subunit 3C is located in the City of San Diego in San Diego County. This subunit is loosely bounded by the 805 interstate on the northeast, train tracks on the south, and Nobel Drive on the northwest. Subunit 3C consists of 37 ac (15 ha) of land owned by local government and meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 3B and 3D. The Nobel Drive vernal pool complex consists of a group of vernal pools on a mesa-top north of Rose Canyon. Subunit 3C contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 3D: Montgomery Field

Subunit 3D is located in the City of San Diego in San Diego County. This subunit is located at Montgomery Field (airport) to the northeast of the runway area. Subunit 3D consists of 48 ac (20 ha) of land owned by the City of San Diego and meets our selection criteria as satellite habitat. As satellite habitat, this subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with the occurrence in Subunit 3C. The Montgomery Field vernal pool complex consists of a large group of vernal pools east of the runway area at Montgomery Field, although only the northeastern portion of this vernal pool complex is being designated as critical habitat because the southeastern portion of this vernal pool complex has been hydrologically disconnected from other vernal pools by past development, is now isolated, and does not meet the definition of essential habitat. *Navarretia fossalis* has not been documented in the southeastern portion of this vernal pool complex. Subunit 3D contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2),

and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 4: San Diego—Inland Management Area

Unit 4 is located within inland San Diego County and consists of four subunits totaling 206 ac (83 ha). This unit contains 18 ac (7 ha) owned by State and local governments, and 188 ac (76 ha) of private land.

Subunits 4C1, 4C2, and 4D: San Marcos

Subunits 4C1, 4C2, and 4D are located in the City of San Marcos in San Diego County. These three subunits consist of three separate vernal pool complexes. The first (Subunit 4C1) is loosely bounded by La Mirada Drive on the northeast, Las Posas Road on the southeast, Linda Vista Drive on the southwest, and South Pacific Street on the northwest. The second (Subunit 4C2) is loosely bounded by Linda Vista Drive on the northeast, Las Posas Road on the east, West San Marcos Boulevard on the south, and South Pacific Street on the west. The third (Subunit 4D) is loosely bounded by South Bent Avenue on the northeast, commercial development on the southeast and southwest, and Linda Vista Drive on the northwest. Subunit 4C1 consists of 34 ac (14 ha) of private land, Subunit 4C2 consists of 15 ac (6 ha) of land owned by local government and 17 ac (7 ha) of private land, and Subunit 4D consists of 5 ac (2 ha) of private land. These three subunits meet our selection criteria as satellite habitat areas because they support stable occurrences of *Navarretia fossalis* and provide potential connectivity between occurrences in Unit 2 and Subunit 4E. We grouped these vernal pool complexes because of the clustered nature of these occurrences. These subunits have separate subunit numbers to be consistent with the numbering identified in the 2005 critical habitat designation. Subunits 4C1, 4C2, and 4D contain the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats from nonnative plant species and activities (such as commercial development, trespass, or OHV use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 4E: Ramona

Subunit 4E is located in the unincorporated community of Ramona. This subunit is loosely bounded by the Ramona Airport and Ramona Airport Road on the north, Sawday Road on the east, Santa Maria Creek on the south, and a series of rock outcrops on the west. Subunit 4E consists of approximately 135 ac (55 ha) that includes 3 ac (1 ha) of land owned by State or local governments and 132 ac (53 ha) of private land. Subunit 4E meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity with occurrences in Subunits 4C1, 4C2, and 4D. The vernal pools in this subunit occur in gently sloping grassland habitat and are at the highest elevation where *N. fossalis* is known to occur. Subunit 4E contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as agricultural activities or recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 5: San Diego—Southern Coastal Mesa Management Area

Unit 5 is located in southern San Diego County and consists of six subunits totaling 748 ac (303 ha). This unit contains 28 ac (11 ha) of federally owned land, 330 ac (134 ha) of land owned by State and local governments, and 390 ac (158 ha) of private land.

Subunit 5A: Sweetwater Vernal Pools

Subunit 5A is located southwest of the Sweetwater Reservoir. This subunit is loosely bounded by the Sweetwater Reservoir on the north, steeply sloping topography on the east, State Route 125 on the south, and an unnamed drainage on the west. Subunit 5A consists of approximately 95 ac (38 ha) and includes 23 ac (9 ha) of Federal land that is part of the San Diego National Wildlife Refuge Complex, 1 ac (less than 1ha) of land owned by the State, and 71 ac (29 ha) of land owned by local government. This subunit meets our selection criteria as satellite habitat. This satellite habitat subunit supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 5B and 5F. Some of the area occupied by *N. fossalis* was lost during the construction of State Route 125. The soil from that area was salvaged and is being used to restore other vernal pools in this subunit. Subunit 5A contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5B: Otay River Valley

Subunit 5B is located in the City of Chula Vista and unincorporated San Diego County. This subunit is loosely bounded by Olympic Parkway on the north, a housing development on the east, and a landfill to the southwest. Subunit 5B consists of 24 ac (10 ha) of private land and meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5H. Subunit 5B contains the

physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5C: Otay Mesa

Subunit 5C is located on the eastern portion of Otay Mesa, directly northwest of and adjacent to the George F. Bailey Detention Facility at the terminus of Alta Road. Subunit 5C consists of 26 ac (11 ha) of State and local government-owned land, and 16 ac (7 ha) of private land, and it meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5G and 5I. Subunit 5C contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5F: Proctor Valley

Subunit 5F is located between the unincorporated communities of Eastlake and Jamul in San Diego County. This subunit is located along Proctor Valley Road in Proctor Valley. Subunit 5F consists of approximately 88 ac (36 ha) and includes 51 ac (21 ha) of land owned by the City of San Diego and 37 ac (15 ha) of private land. Subunit 5F meets our selection criteria as satellite habitat because it supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5A and 5G. The vernal pools in this subunit occur in Proctor Valley on a flat area that is slightly elevated from the stream channel that runs through this valley. The vernal pools in this subunit to the west of Proctor Valley Road are severely impacted by OHV use, but the vernal pools to the east of Proctor Valley road remain relatively intact. Subunit 5F contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use or OHV use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5G: Otay Lakes

Subunit 5G is located east of the City of Chula Vista in San Diego County. This subunit is loosely bounded by Lower Otay Reservoir to the north and west and by the slopes of Otay Mountain to the southeast. Subunit 5G consists of 140 ac (57 ha) of land owned by State or local governments and meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 5F and 5I. The vernal pool complexes in this subunit are located on the flat areas to the south of Lower Otay Reservoir. Subunit 5G contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5H: Western Otay Mesa vernal pool complexes

Subunit 5H is located within the Otay Mesa Community planning area of the City of San Diego. Subunit 5H consists of approximately 139 ac (56 ha) that includes 41 ac (17 ha) of land owned by local governments and 98 ac (40 ha) of private land. Subunit 5H and Subunit 5I encompass the core habitat on Otay Mesa. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 5G and 5I. This subunit contains several mesa-top vernal pool complexes on western Otay Mesa (Bauder vernal pool complexes J 2N, J 2S, J 2W, J 4, J 13N, J 13S, J 14, J 33, J 34 as in Appendix D of City of San Diego, 2004). Subunit 5H contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use or residential and commercial development) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 5I: Eastern Otay Mesa vernal pool complexes

Subunit 5I is located in the City of San Diego. This subunit contains several mesa top vernal pool complexes on eastern Otay Mesa. Subunit 5I consists of 221 ac (89 ha) of private land. Subunit 5I and Subunit 5H encompass the core habitat on Otay Mesa. As core habitat, Subunit 5I contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 5B and 5H.

This subunit contains several mesa-top vernal pool complexes on eastern Otay Mesa (Bauder vernal pool complexes J 22, J 29, J 30, J 31N, J 31S as in Appendix D of City of San Diego, 2004 and Service GIS). Subunit 5I contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as unauthorized recreational use or residential and commercial development) that occur in the vernal pool basins. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Unit 6: Riverside Management Area

Unit 6 is located in western Riverside County and consists of three subunits totaling 5,477 ac (2,217 ha). This unit contains 1,504 ac (609 ha) of land owned by the State of California's Department of Fish and Game and 3,973 ac (1,608 ha) of private land.

Subunit 6A: San Jacinto River

Subunit 6A is generally located along the San Jacinto River near the cities of Hemet and Perris in Riverside County. This subunit is loosely bounded by Mystic Lake on the northeast and by the Perris Airport on the southwest. Subunit 6A consists of approximately 4,312 ac (1,745 ha), including 1,504 ac (609 ha) of land owned by State or local governments and 2,808 ac (1,136 ha) of private land. Subunit 6A encompasses core habitat along the San Jacinto River. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 6B and 6C. This subunit consists of seasonally flooded alkali vernal plains that occur along the San Jacinto River. Subunit 6A contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as manure dumping or flood control) that occur in the vernal pool basins and associated watershed area. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain

Subunit 6B is located near the City of Hemet and west of the Hemet-Ryan Airport in Riverside County. This subunit is loosely bounded by Devonshire Avenue on the north, the boundary for the City of Hemet on the east, train tracks on the south, and low-lying hills on the west. Subunit 6B consists of 930 ac (376 ha) of private land that encompasses the core habitat along the Upper Salt Creek drainage west of the City of Hemet. As core habitat, this subunit contains a large area of habitat that supports sizable occurrences of *Navarretia fossalis* and provides potential connectivity between occurrences in Subunits 6A and 6C. This subunit consists of seasonally flooded alkali vernal plains not subject to U.S. Army Corps of Engineer jurisdiction. Subunit 6B contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as manure dumping, grazing, flood control, or discing for vegetation control) that occur in the vernal pool basins and associated watershed area. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Subunit 6C: Wickerd and Scott Road Pools

Subunit 6C is located in the City of Menifee in Riverside County, California. This subunit is loosely bounded by low lying hills north of Garbani Road on the north, Briggs Road on the east, Scott Road on the south, and Menifee Road on the west. Subunit 6C consists of 235 ac (95 ha) of private land. This subunit meets our selection criteria as satellite habitat because this location supports a stable occurrence of *Navarretia fossalis* and provides potential connectivity among occurrences of *N. fossalis* in Subunits 6A, 6B, and with Subunit 6D that we are excluding under section 4(b)(2) of the Act (see **Application Section 4(b)(2) of the Action** section). This subunit consists of two large vernal pools. Subunit 6C contains the physical and biological features that are essential to the conservation of *N. fossalis*, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative plant species and activities (such as manure dumping, residential or agricultural development, discing for vegetation control, or maintenance of existing pipelines) that occur in the vernal pool basins and associated watershed area. Please see the **Special Management Considerations or Protection** section of this rule for a discussion of the threats to *N. fossalis* habitat and potential management considerations.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuit Courts of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the

area to periodically support the species) to serve its intended conservation role for the species (Service 2004a, p. 3).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the 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. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or designated critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or designated critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Navarretia fossalis* or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Navarretia fossalis*. As discussed above, the role of critical habitat is to support the life history needs of the species and provide for the conservation of the species. For *N. fossalis*, this includes supporting viable occurrences and recovery of the species in core habitat areas and satellite habitat areas.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for *Navarretia fossalis* include, but are not limited to (please see **Special Management Considerations or Protection** section for a more detailed discussion on the impacts of these actions to the listed species):

(1) Actions that would impact the ability of an ephemeral wetland to continue to provide habitat for *Navarretia fossalis* and other native species that require this specialized habitat type. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the biological and physical features essential to the conservation of *N. fossalis* that provide the appropriate habitat for the species by eliminating ponding habitat; changing the duration and frequency of the ponding events on which this species relies; making the habitat too wet, thus allowing obligate wetland species to become established; making the habitat too dry, thus allowing upland species to become established; causing large amounts of sediment or manure to be deposited in *N. fossalis* habitat; or causing increased erosion and incising of waterways.

(2) Actions that would impact the soil and topography that cause water to pond during the winter and spring months. Such activities could include, but are not limited to, deep ripping of soils, trenching, soil compaction, and development activities. These activities could alter the biological and physical features essential to the conservation of *Navarretia fossalis* that provide the appropriate habitat for the species by eliminating ponding habitat, impacting the impervious nature of the soil layer, or making the soil so impervious that water pools for an extended period that is detrimental to *N. fossalis* (as described in the PCEs).

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented

to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. Any INRMPs developed by military installations located within the range of *Navarretia fossalis* and that contain those features essential to the species' conservation were analyzed for exemption under the authority of section 4(a)(3)(B) of the Act.

Both MCB Camp Pendleton and MCAS Miramar have approved INRMPs that address *Navarretia fossalis,* and the Marine Corps (on both installations) has committed to work closely with us, California Department of Fish and Game (CDFG), and California Department of Parks and Recreation to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. In accordance with section 4(a)(3)(B)(i) of the Act, we determined that conservation efforts identified in the INRMPs will provide a benefit to *N. fossalis* occurring in habitats within or adjacent to MCB Camp Pendleton and MCAS Miramar (see the following sections that detail this determination for each installation). Therefore, 213 ac (86 ha) of habitat on MCB Camp Pendleton and MCAS Miramar are exempt from this revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act.

Marine Corps Base Camp Pendleton (MCB Camp Pendleton)

In the previous final critical habitat designation for *Navarretia fossalis* (70 FR 60658; October 18, 2005) and the proposed revised critical habitat designation (74 FR 27588; June 10, 2009), we exempted MCB Camp Pendleton from the designation of critical habitat. We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCB Camp Pendleton in November 2001 and the updated INRMP that was prepared by MCB Camp Pendleton in March 2007 (Marine Corp Base Camp Pendleton 2007). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat occurring on MCB Camp Pendleton (Marine Corps Base Camp Pendleton 2007, Section 4, pp. 51–76). This conservation protects the 145 ac (59 ha) of habitat that we believe to be essential for the conservation of *N. fossalis* on Stuart Mesa and near the Wire Mountain Housing Complex. Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from this revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act. For more information on the conservation benefits afforded to *N. fossalis* at MCB Camp Pendleton, please see the **Exemptions Under Section 4(a)(3) of the Act** section in the proposed revised critical habitat rule (74 FR 27610).

Marine Corps Air Station Miramar (MCAS Miramar)

In the previous final critical habitat designation for *Navarretia fossalis* (70 FR 60658; October 18, 2005) and the proposed revised critical habitat designation (74 FR 27588; June 10, 2009), we exempted MCAS Miramar from the designation of critical habitat (70 FR 60658; October 18, 2005). We based this decision on the conservation benefits to *N. fossalis* identified in the INRMP developed by MCAS Miramar in May 2000 and the updated INRMP prepared by MCAS Miramar in October 2006 (Gene Stout and Associates *et al.* 2006). We determined that conservation efforts identified in the INRMP provide a benefit to the occurrences of *N. fossalis* and vernal pool habitat on the 69 ac (28 ha) of habitat on the western portion of MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23). Therefore, lands containing features essential to the conservation of *N. fossalis* on this installation are exempt from the revised critical habitat for *N. fossalis* under section 4(a)(3) of the Act. For more information on the conservation benefits afforded to *N. fossalis* at MCAS Miramar, please see the **Exemptions Under Section 4(a)(3) of the Act** section in the proposed revised critical habitat rule (74 FR 27610).

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following paragraphs, we address a number of general issues that are relevant to our analysis under section 4(b)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, national security impacts, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific

area is likely to result in long–term conservation; the continuation, strengthening, or encouragement of partnerships that result in conservation of listed species; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. Specifically, when evaluating a conservation plan we consider, among other factors: whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether the conservation management strategies and actions contained in a management plan are in place and there is a strong likelihood they will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

In the case of *Navarretia fossalis*, the revised critical habitat designation does not include any Tribal lands or trust resources. However, this revised critical habitat designation does include some lands covered by three completed HCPs for *N. fossalis*. No new HCP or conservation plan covering the distribution of this species has been approved since the proposed revised designation that published in the **Federal Register** on June 10, 2009 (74 FR 27588).

Based on the information provided by entities seeking exclusion, as well as other comments we received, we evaluated whether certain lands in the proposed critical habitat Units 3 and 6 were appropriate for exclusion from this final designation.

After considering the following areas under section 4(b)(2) of the Act, we are excluding them from the critical habitat designation for *Navarretia fossalis*: Subunit 3A within the County of San Diego Subarea Plan under the MSCP, and Subunits 6D and 6E within the Western Riverside County MSHCP (see Table 5 below). As described in the following exclusion analyses for the two HCPs, we made this determination because we believe that:

(1) Their value for *N. fossalis* conservation will be preserved for the foreseeable future by existing protective actions, and

(2) They are appropriate for exclusion under the "other relevant factor" provisions of section 4(b)(2) of the Act.

TABLE 5. AREAS BEING EXCLUDED UNDER SECTION 4(B)(2) OF THE ACT FROM THIS REVISED CRITICAL HABITAT DESIGNATION.

Subunit	Area excluded
County of San Diego Subarea Plan under the San Diego MSCP	
3A. Santa Fe Valley: Crosby Estates	5 ac (2 ha)
Subtotal County of San Diego Subarea Plan under the San Diego MSCP	*5 ac (2 ha)*
Western Riverside County MSHCP	
6D. Skunk Hollow	158 ac (64 ha)
6E. Mesa de Burro	708 ac (287 ha)
Subtotal for Western Riverside County MSHCP	*866 ac (351 ha)*
Total	871 ac (353 ha)*

*Values in this table may not sum due to rounding.

Exclusions Based on Other Relevant Factors Habitat Conservation Plans

We believe that the benefits of excluding from critical habitat portions of the essential habitat we identified within the County of San Diego Subarea Plan under the MSCP and the Western Riverside County MSHCP outweigh the benefits of including these areas; therefore, we are excluding these areas from this revised critical habitat designation. Lands covered by the Carlsbad HMP under the MHCP, and portions of the lands covered by the County of San Diego Subarea Plan under the MSCP, and the Western Riverside County MSHCP do not result in the benefits of exclusion outweighing the benefits of inclusion under section 4(b)(2) of the Act, as described in detail below.

Carlsbad Habitat Management Plan (HMP)— San Diego Multiple Habitat Conservation Program (MHCP).

We considered exclusion of a portion of essential habitat covered by the Carlsbad HMP under the MHCP for exclusion under section 4(b)(2) of the Act. The lands that were under consideration for exclusion within the City of Carlsbad include a portion of one vernal pool complex located east of the railroad tracks at the Poinsettia Lane Commuter Station. The vernal pool complex is partially on land that is covered by the Carlsbad HMP (i.e., the 3 ac (1 ha) considered for exclusion under section 4(b)(2) of the Act) and partially on land that is owned by the North County Transportation District (6 ac (2 ha)), which is not a participating entity to the Carlsbad HMP and was not considered for exclusion. We determined that the benefits of inclusion for 3 ac (1 ha) of Unit 2 lands within the Carlsbad HMP area are greater than the benefits of exclusion. In making our final decision with regard to these HMP–covered lands, we considered several factors, including our relationship with the City of Carlsbad, our relationship with other MHCP stakeholders, existing consultations, conservation measures in place on these lands that benefit *Navarretia fossalis*, implementation of long–term management strategies, and impacts to current and future

partnerships. We recognize *N. fossalis* conservation measures outlined in the Carlsbad HMP will be implemented eventually on covered lands as the plan is carried out regardless of critical habitat designation. This vernal pool complex in Unit 2 is also benefiting from conservation efforts as a result of actions associated with four other federally listed vernal pool species (i.e., San Diego fairy shrimp (*Branchinecta sandiegonensis*) and its designated critical habitat, and Riverside fairy shrimp (*Streptocephalus woottoni*) and its designated critical habitat, and *Eryngium aristulatum* var. *parishii* (San Diego button–celery), and *Orcuttia californica* (California Orcutt grass)). However, the 3 ac (1 ha) portion considered for exclusion under section 4(b)(2) of the Act is not conserved and managed for the long–term protection of the species and its habitat at this time. Once this area is conserved and managed, it will help with the long–term protection of this vernal pool complex, not only for *N. fossalis*, but also the four other federally endangered vernal pool species that already receive protection under the plan.

Protection of this vernal pool area is particularly important considering the surrounding area has already been developed. Conservation measures for lands within the Carlsbad HMP are outlined in the Carlsbad HMP biological opinion (Service 2004c, pp. 312–316). We recognize that these lands have been avoided by development associated with the Water's End housing project and have been identified as open space for the protection of the vernal pool habitat, as outlined in a consultation conducted with the Corps (Service 1994) prior to the development of the Carlsbad HMP. The developer of the Water's End project agreed to grant a conservation easement over the *Navarretia fossalis* habitat to CDFG and provide a management plan with an endowment ($100,000) to the City of Carlsbad for management and monitoring in perpetuity. Additionally, the land–owners recently completed a 5–year restoration of the upland portion of the vernal pool complex with coastal sage scrub vegetation (City of Carlsbad 2009, p. 7). However, a conservation easement has not yet been placed over the property and long–term management of the property is not yet in place. Thus, we made the determination that the benefits of inclusion outweigh the benefits of exclusion and have included all lands in this area (i.e., 9 ac (4 ha in Unit 2)) as critical habitat for *N. fossalis*. We recognize and appreciate the conservation actions taken to date at this location, such as the $100,000 provided by the Water's End project along with an additional $50,000 from the North Coast Transit District that are being held by CDFG and will be used to develop and implement long–term management to benefit vernal pool species occurring at this site, including *N. fossalis.* We look forward to working with the North Coast Transit District and CDFG in the near future to ensure that both conservation and long–term management are implemented for *N. fossalis* and its essential habitat at this location.

San Diego Multiple Species Conservation Program (MSCP)—County of San Diego Subarea Plan.

We determined approximately 86 ac (35 ha) of habitat in Subunits 3A, 5B, 5F, and 5I within the County of San Diego Subarea Plan of the MSCP contain the physical and biological features essential to the conservation of *Navarretia fossalis* that may require special management considerations or protection and therefore, these lands meet the definition of critical habitat under the Act. In making our final decision with regard to lands within the County of San Diego Subarea Plan, we considered several factors, including our relationship with the participating MSCP jurisdiction, our relationship with other MSCP stakeholders, non–covered activities, existing consultations, long–term conservation measures management in place on these lands that benefit *N. fossalis*, and impacts to current and future partnerships. We recognize *N. fossalis* conservation measures outlined in the County of San Diego Subarea Plan will be implemented as the plan is carried out regardless of whether covered areas are designated as critical habitat. Under section 4(b)(2) of the Act, we are excluding 5 ac (2 ha) of land in Subunit 3A covered by the County of San Diego Subarea Plan from this revised critical habitat designation that are currently assured of long–term conservation and management. The remaining 81 ac (33 ha) of land in Subunits 5B, 5F, and 5I covered by the County of San Diego Subarea Plan are not excluded, and we have designated these areas as critical habitat for *N. fossalis*.

The MSCP is a subregional HCP made up of several subarea plans that has been in place for more than a decade. The subregional plan area encompasses approximately 582,243 ac (235,626 ha) (County of San Diego 1997, p. 1–1; MSCP 1998, pp. 2–1, and 4–2 to 4–4) and provides for conservation of 85 federally listed and sensitive species ("covered species") through the establishment and management of approximately 171,920 ac (69,574 ha) of preserve lands within the Multi–Habitat Planning Area (MHPA) (City of San Diego) and Pre–Approved Mitigation Areas (PAMA) (County of San Diego). The MSCP was developed in support of applications for incidental take permits for several federally listed species by 12 participating jurisdictions and many other stakeholders in southwestern San Diego County. Under the umbrella of the MSCP, each of the 12 participating jurisdictions is required to prepare a subarea plan that implements the goals of the MSCP within that particular jurisdiction. *Navarretia fossalis* was evaluated in the subregional plan as well as the permitted subarea plans.

Upon completion of the plan that identifies where mitigation activities should be focused, approximately 171,920 ac (69,574 ha) of the 582,243 ac (235,626 ha) MSCP plan area will be preserved (MSCP 1998, pp. 2–1 and 4–2 to 4–4). San Diego County Subarea Plan identifies areas where mitigation activities should be focused to assemble its preserve areas (i.e., PAMA). Those areas of the MSCP preserve that are already conserved, as well as those areas that are designated for inclusion in the preserve under the plan, are referred to as the "preserve area" in this revised critical habitat designation. When the preserve is completed, the public sector (i.e., Federal, State, and local governments, and general public) will have contributed 108,750 ac (44,010 ha) (63.3 percent) to the preserve, of which 81,750 ac (33,083 ha) (48 percent) was existing public land when the MSCP was established and 27,000 ac (10,927 ha) (16 percent) will have been acquired. At completion, the private sector will have contributed 63,170 ac (25,564 ha) (37 percent) to the preserve as part of the development process, either through avoidance of impacts or as compensatory mitigation for impacts to biological resources outside the preserve. Currently and in the future, Federal and State governments, local jurisdictions, special districts, and managers of privately owned lands will manage and monitor their lands in the preserve for species and habitat protection (MSCP 1998, pp. 2–1 and 4–2 to 4–4).

We considered excluding lands within the County of San Diego Subarea Plan. After reviewing the areas covered by the County of San Diego Subarea Plan, we are excluding approximately 5 ac (2 ha) in Subunit 3A that are currently conserved and managed. The areas within the plan boundaries of the County of San Diego Subarea Plan in

Subunits 5B, 5F, and 5I were not excluded because we do not believe that the benefits of exclusion outweigh the benefits of inclusion at this time. The lands in these subunits are not currently conserved under this HCP, and non–covered activities (such as illegal OHV use) that could adversely affect *Navarretia fossalis* and its essential habitat are occurring on these lands. Therefore, we believe the conservation benefit of including these areas as critical habitat for *N. fossalis* may be significant. Additionally, portions of Subunits 5B and 5I are designated as major/minor Amendment Areas under the subarea plan and their conservation depends upon the approval of future amendments to the plan. Therefore, we did not consider these major/minor amendment areas for exclusion under section 4(b)(2) of the Act.

The County of San Diego Subarea Plan provides additional conservation for the *Navarretia fossalis* habitat in Subunit 3A (Crosby Estates) beyond what occurred when the area was initially developed and conserved (i.e., in 1995 prior to the Subarea Plan development). Subunit 3A consists of 5 ac (2 ha) of private land within the northern portion of the County of San Diego Subarea Plan. This area was set aside in 1995 when the surrounding area was developed, and the vernal pool habitat area was restored and managed for a 5–year period to ensure the conservation of *N. fossalis* and other vernal pool species. Under the County of San Diego Subarea Plan, the area will continue to receive periodic monitoring beyond the initial 5–year period. The long–term management requirements applicable for this area are explained in the "The Crosby at Rancho Santa Fe, Habitat Management Plan, Annual Report, 2008" (Rincon Consultants, Inc. 2008, pp. 1–6). Such management will include monitoring and management of invasive species, implementing erosion control measures, monitoring and removal of trash/debris, creating natural fencing barriers to address unauthorized off–trail activity, installing signage, and developing educational website and materials (Rincon Consultants, Inc. 2008, pp. 4–15).

Benefits of Inclusion—County of San Diego Subarea Plan

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including *Navarretia fossalis*), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Critical habitat may provide a regulatory benefit for *Navarretia fossalis* when there is a Federal nexus present for a project that might adversely modify critical habitat. Also, where federally listed animal species, such as the Riverside fairy shrimp or San Diego fairy shrimp co–occur with *N. fossalis* and are likely to be taken by a proposed action that otherwise lacks a Federal nexus, the project proponent would be required to obtain an incidental take permit under section 10 of the Act, thus resulting an intra–Service section 7 consultation that would also include *N. fossalis*. In the areas that we considered for exclusion within the County of San Diego Subarea Plan, Riverside fairy shrimp or San Diego fairy shrimp are present in Subunits 3A, 5F, and 5I. In this context, we anticipate that projects that meet the definition of critical habitat within Subunits 3A, 5F, and 5I will require a consultation with the Service regardless of whether critical habitat is designated. It is possible that in Subunit 5B (where no federally listed fairy shrimp are known to exist) the designation of critical habitat will result in an increase in the likelihood that consultations with the Service will occur. It is also possible that the number of consultations that occur in the local watershed areas of Subunits 5F and 5I would increase by approximately 20 percent as a result of critical habitat designation for *N. fossalis* within the non–ponded/watershed areas (Service 2009, p. 2). Therefore, for Subunit 5B and to a certain extent Subunits 5F and 5I, it is probable that conservation achieved under the Act would increase if the areas are designated as critical habitat for *N. fossalis*, resulting in a small regulatory benefit associated with the designation of critical habitat in these subunits.

When consulting under section 7 of the Act in designated critical habitat, we conduct independent analyses for jeopardy and adverse modification. However, with regard to vernal pool species such as *Navarretia fossalis*, the outcomes of those analyses (in terms of potential restrictions on development) are almost always the same. In general, a properly functioning hydrologic regime is critical to sustain listed vernal pool species and their immediate vernal pool habitat (i.e., local watershed). Avoidance or adequate minimization of impacts to the wetland area and its associated watershed (which collectively creates the hydrologic regime necessary to support *N. fossalis*) is important not only to enable the critical habitat unit to carry out its conservation function (i.e., to avoid adverse modification), but also to avoid jeopardy to the listed species. *Navarretia fossalis* is completely dependent on a properly functioning vernal pool system for its survival; therefore, it is not possible to differentiate conservation measures needed to avoid adverse modification of critical habitat from those needed to avoid jeopardy to the species. Impacts to both wetland features where *N. fossalis* occurs and to the associated local watershed necessary to maintain those wetland features should generally be avoided to prevent jeopardy to *N. fossalis* or to prevent adverse modification to *N. fossalis* critical habitat. Service biologists regularly negotiate with project proponents to avoid impacts to vernal pool and ephemeral wetland habitat. Whenever possible; these negotiations include conservation measures that would avoid impacts to both the pools and the associated local watershed area. Therefore, we do not believe conservation achieved under the Act would differ greatly whether or not the areas are designated as critical habitat for *N. fossalis*. However, while the outcome of individual section 7 consultation may not differ, we believe designation of lands in Subunits 5B, 5F, and 5I as critical habitat may provide a small regulatory benefit by increasing

the likelihood and number of consultations in these areas and thereby increase the overall level of conservation for *N. fossalis*.

Another possible benefit of including lands in a critical habitat designation is the educational value of the designation to landowners and the public regarding the potential conservation value of an area. For example, a critical habitat designation for *Navarretia fossalis* may help local governments or the public focus conservation efforts on areas of high conservation value for this species. Past efforts have highlighted the importance of the essential habitat for *N. fossalis* within the jurisdiction of the County of San Diego Subarea Plan. These past efforts include public meetings and opportunities for public comment that occurred during the process of creating the HCP, the development of the Habitat Management Plan for the Crosby at Rancho Santa Fe, and development of our Recovery Plan for Southern California Vernal Pool Species (Service 1998). While these efforts have helped to identify important conservation areas for *N. fossalis* in the County of San Diego Subarea Plan, some of these areas (i.e., Subunits 5B, 5F, and 5I) still suffer impacts from activities such as grazing on non–agricultural lands (an activity covered by the plan), and illegal off–highway vehicle (OHV) use. By designating critical habitat in these areas that continue to receive impacts, we will better educate the public regarding these and other threats to *N. fossalis* and the physical and biological features essential to the conservation of the species. The educational information provided in this revised rule and the 2005 final rule (70 FR 60658; October 18, 2005) can be used by the public to learn about *N. fossalis* priority conservation areas. The inclusion in revised critical habitat of the approximately 81 ac (33 ha) of lands in subunits 5B, 5F, and 5I that are not currently protected and managed would formally identify these areas as essential for the conservation and recovery of *N. fossalis* and in doing so provide a significant educational benefit to the conservation of *N. fossalis*. In contrast, we believe the educational benefit of designating Subunit 3A would be insignificant because this area is already conserved.

We considered that the designation of critical habitat for *Navarretia fossalis* may strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect aspects of the environment. In this case for *N. fossalis*, vernal pools and vernal pool species have been a focus of conservation in San Diego County for more than 20 years and have been addressed in CEQA and NEPA throughout this time period; therefore, we do not believe designation of critical habitat for *N. fossalis* will provide a significant additional benefit to analyses conducted under these laws.

In summary, we believe designating Subunits 3A, 5B, 5F, and 5I as revised critical habitat may provide some regulatory benefits under section 7 of the Act, particularly in Subunits 5B, 5F, and 5I, where designation may increase the likelihood and number of consultations and thus the overall level of conservation for this species and its essential habitat, but we do not believe that the outcome of these consultations will change greatly with the designation of critical habitat. Additionally, we believe that there may be a significant benefit associated with the designation of critical habitat due to the educational component provided by critical habitat in areas that are not currently conserved; specifically, we believe that these benefits are significant in Subunits 5B, 5F, and 5I.

Benefits of Exclusion—County of San Diego Subarea Plan

We believe significant benefits would be realized by forgoing designation of critical habitat on lands covered by the County of San Diego Subarea Plan including:

(1) Continuance and strengthening of our effective working relationships with all MSCP jurisdictions and stakeholders to promote conservation of *Navarretia fossalis* and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward recovering this species, including conservation benefits that might not otherwise occur;

(3) Encouragement for other jurisdictions to complete subarea plans under the MSCP (including the City of Santee); and

(4) Encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

The County of San Diego Subarea Plan provides substantial protection and management for *Navarretia fossalis* and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project–by–project approach (as would occur under sections 7 and 9 of the Act). Many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction–wide HCPs, such as the MSCP. Exclusion of these lands from critical habitat could help preserve the partnerships we developed with the County of San Diego in the development of the MSCP and County of San Diego Subarea Plan, and foster future partnerships and development of future HCPs.

The primary benefit of excluding lands owned by or under the jurisdiction of the County of San Diego Subarea Plan permittees from critical habitat under the MSCP is strengthening of our existing partnership with the County of San Diego. The County of San Diego requested that we exclude lands covered by their subarea plan during the public comment period. If the County of San Diego believes that a revised critical habitat designation will impact its ability to implement their subarea plan, then designating County of San Diego lands may affect our partnership with them.

In summary, we believe that excluding lands covered by the County of San Diego Subarea Plan from critical habitat provides the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—County of San Diego Subarea Plan

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands within the County of San Diego Subarea Plan under the MSCP proposed as critical habitat for *Navarretia fossalis*. The benefits of including lands currently conserved under the MSCP in the critical habitat designation are small. All of the approximately 5 ac (2 ha) of land in Subunit 3A are already conserved and managed for the preservation of vernal pool species, including *N. fossalis*. Therefore, designating this area as critical habitat is unlikely to provide significant regulatory or educational benefits. This area is currently being managed under a habitat management plan developed in part because the area is covered by the County of San Diego Subarea Plan. The exclusion of conserved areas of Subunit 3A will benefit the partnership that we have with the County of San Diego and encourage the conservation of lands associated with the development and implementation of future HCPs.

Including lands in Subunits 5B, 5F, and 5I in the critical habitat designation for *Navarretia fossalis* that are not currently conserved or protected from activities such as illegal OHV use and unregulated grazing in critical habitat will provide additional regulatory protection for *N. fossalis* and its essential habitat under section 7(a) of the Act when there is a Federal nexus, and designation will act as an educational tool for the public regarding the conservation of *N. fossalis.* Therefore, designating these areas as critical habitat for *N. fossalis* is likely to provide additional regulatory benefits as well as a significant educational benefit to the species. We believe that excluding these areas under section 4(b)(2) of the Act would provide a significant benefit to the partnership that we have with the County of San Diego, but we believe that the conservation benefits of including these lands as critical habitat outweighs the benefit of exclusion.

In summary, we find that the benefits of excluding lands in areas that are conserved and managed for the purpose of protecting *Navarretia fossalis* (Subunit 3A) outweigh the benefits of including those lands as critical habitat for *N. fossalis*. We find that the benefits of including lands that are being impacted by activities covered under the County of San Diego Subarea Plan and are not yet conserved and managed (Subunits 5B, 5F, and 5I) outweigh the benefits of excluding those lands as critical habitat for *N. fossalis*.

Exclusion Will Not Result in Extinction of the Species—County of San Diego Subarea Plan

We determined that the exclusion of approximately 5 ac (2 ha) of habitat in Subunit 3A within the County of San Diego Subarea Plan from the revised designation of critical habitat for *Navarretia fossalis* will not result in extinction of the species. The County of San Diego Subarea Plan and "The Crosby at Rancho Santa Fe Habitat Management Plan" provide protection and long–term management of lands that meet the definition of critical habitat for *N. fossalis* in Subunit 3A. Additionally, the jeopardy standard of section 7 of the Act for *N. fossalis* in Subunit 3A provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation. The consultation requirements of section 7(a)(2) and the attendant requirement to avoid jeopardy to *N. fossalis* for projects with a Federal nexus will provide significant protection to the species. Therefore, based on the above discussion we are excluding approximately 5 ac (2 ha) of habitat in Subunit 3A within the County of San Diego Subarea Plan from this revised critical habitat designation.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

We determined that approximately 6,343 ac (2,567 ha) of land owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP contain the physical and biological features essential to the conservation of *Navarretia fossalis* that may require special management considerations or protection, and therefore, these lands meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions, our relationships with other stakeholders, existing consultations, conservation measures and management in place on these lands that benefit *N. fossalis*, and impacts to current and future partnerships. We recognize *N. fossalis* conservation measures outlined in the Western Riverside County MSHCP will be implemented as the plan is carried out regardless if covered areas are designated as revised critical habitat. Under section 4(b)(2) of the Act, we are excluding 866 ac (351 ha) of land meeting the definition of critical habitat owned by or under the jurisdiction of the Western Riverside County MSHCP permittees within Unit 6 (Subunits 6D and 6E) from this revised critical habitat designation. We are including 5,477 ac (2,217 ha) of land that meets the definition of critical habitat owned by or under the jurisdiction of Western Riverside County MSHCP permittees within Unit 6 (Subunits 6A, 6B, and 6C) in this revised critical habitat designation. As described in our section 4(b)(2) analysis below, we reached this determination in consideration of the benefits associated with the designation of each area in revised critical habitat balanced against the benefits of excluding the area in the final critical habitat designation, including such factors as (but not limited to) the existence of co–occurring listed species (such as the San Diego and Riverside fairy shrimp species) resulting in redundant conservation measures, implementation of conservation measures, and non–covered activities.

The Western Riverside County MSHCP is a large–scale, multi–jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. The Western Riverside County MSHCP addresses 146 listed and unlisted "covered species," including *Navarretia fossalis*. Participants in the Western Riverside County MSHCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP is a multi–species conservation program that minimizes and mitigates the expected loss of habitat and associated incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (Service 2004b, TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of pre–existing natural and open space areas (Public/Quasi–Public (PQP) lands) in the plan area. These PQP lands include those under Federal ownership, primarily managed by the United States Forest Service (USFS) and Bureau of Land Management (BLM), and also permittee–owned or controlled open–space areas, primarily managed by the State and Riverside County. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified ("hard–lined") in the Western Riverside County MSHCP. Rather, it is based on textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000 ac (125,453 ha) Criteria Area and is interpreted as implementation of the Western Riverside County MSHCP takes place.

Specific conservation objectives in the Western Riverside County MSHCP for *Navarretia fossalis* include providing 6,900 ac (2,792 ha) of occupied or suitable habitat for the species in the MSHCP Conservation Area. This acreage goal can be attained through acquisition or other dedications of land assembled from within the Criteria Area (i.e., the Additional Reserve Lands) or Narrow Endemic Plan Species Survey Area and

through coordinated management of existing PQP lands. We internally mapped a "Conceptual Reserve Design," which illustrates existing PQP lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals. Our Conceptual Reserve Design was intended to predict one possible future configuration of the eventual approximately 153,000 ac (61,916 ha) of Additional Reserve Lands. The Western Riverside County MSHCP states that at least 6,900 ac (2,792 ha) of vernal pool and playa habitat suitable for *N. fossalis* within the San Jacinto River, Mystic Lake, and Salt Creek areas will be included within the MSHCP Conservation Area (Service 2004b, p. 376; FWS–WRIV–870.19).

Preservation and management of approximately 6,900 ac (2,792 ha) of *Navarretia fossalis* habitat under the Western Riverside County MSHCP will contribute to the conservation and ultimate recovery of this species. *Navarretia fossalis* is threatened primarily by agricultural activities, development, manure dumping (Roberts 2009, pp. 2–14), and fuel modification actions within the plan area (Service 2004b, pp. 369–378). The Western Riverside County MSHCP will remove and reduce threats to *N. fossalis* and the physical and biological features essential to the conservation of the species as the plan is implemented by placing large blocks of occupied and unoccupied habitat into preservation throughout the Conservation Area. Areas identified for preservation and conservation include 13 of the known locations of the species at Skunk Hollow, the Santa Rosa Plateau, the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway to Railroad Canyon, and upper Salt Creek west of Hemet.

The Western Riverside County MSHCP Conservation Area will maintain floodplain processes along the San Jacinto River and along Salt Creek to provide for the distribution of *Navarretia fossalis* to shift over time as hydrologic conditions and seed bank sources change. Additionally, the Western Riverside County MSHCP requires surveys for *N. fossalis* as part of the project review process for public and private projects where suitable habitat is present within a defined narrow endemic species survey area (see Narrow Endemic Species Survey Area Map, Figure 6–1 of the Western Riverside County MSHCP, Volume I, in Dudek 2003). For locations with positive survey results for *N. fossalis*, 90 percent of those portions of the property that provide long–term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met. Once the objectives are met, avoided areas would be evaluated to determine whether they should be released for development or included in the MSHCP Conservation Area (see Protection of Narrow Endemic Plant Species; Western Riverside County MSHCP, Volume 1, section 6.1.3, in Dudek and Associates, Inc. 2003).

The survey requirements, avoidance and minimization measures, and management for *Navarretia fossalis* and its PCEs provided for in the Western Riverside County MSHCP are expected to benefit this species on public and private lands covered by the plan. We determined that approximately 6,343 ac (2,567 ha) of private and permittee–owned or controlled PQP lands in Unit 6 (Subunits 6A through 6E), within the Western Riverside County MSHCP Plan Area, meet the definition of critical habitat for *N. fossalis*. Projects in areas meeting the definition of critical habitat for *N. fossalis* conducted or approved by Western Riverside County MSHCP permittees are subject to the conservation requirements of the MSHCP. For projects that may impact *N. fossalis*, various HCP policies (i.e., Narrow Endemic Plant Species Policy, and the Riparian/Riverine and Vernal Pool Policy in Dudek and Associates, Inc. 2003) provide additional conservation requirements.

The Western Riverside County MSHCP incorporates several processes that allow for Service oversight and participation in program implementation. These processes include:

(1) Consultation with the Service on a long–term management and monitoring plan;

(2) Submission of annual monitoring reports;

(3) Annual status meetings with the Service; and

(4) Submission of annual implementation reports to the Service (Service 2004b, pp. 9–10).

Below, we provide a brief analysis of the lands in Unit 6 that we are excluding under section 4(b)(2) of the Act and lands we are including in the revised critical habitat designation, and how each area is covered by the Western Riverside County MSHCP or other conservation measures.

Two of the subunits, Subunit 6D (Skunk Hollow) and Subunit 6E (Mesa de Burro), consist of lands that are managed and already in permanent conservation. The majority of Subunit 6D was conserved as a result of the Rancho Bella Vista HCP (Rancho Bella Vista 1999, p. 2; CNLM 2009a, p. 1) and the remainder of the land in Subunit 6D was conserved as a result of the Assessment District 161 HCP (CNLM 2009b, p. 1), both HCPs of which were incorporated into the larger, subregional Western Riverside County MSHCP upon its completion. In total, 100 percent of the lands in Subunit 6D are conserved and managed specifically for the purpose of preserving the vernal pool habitat. Subunit 6E is conserved as part of the Santa Rosa Plateau Ecological Reserve. This Reserve has four landowners: the CDFG, the County of Riverside, the Metropolitan Water District of Southern California, and The Nature Conservancy. The landowners and the Service (which owns no land on the Plateau) signed a cooperative management agreement on April 16, 1991 (Dangermond and Associates, Inc. 1991), and meet regularly to implement management of the Reserve (Riverside County Parks 2009, p. 2). The vernal pools within Subunit 6E are managed and monitored to preserve the unique vernal pool plants and animals that occur on the Santa Rosa Plateau.

The other three units (Subunit 6A, 6B, and 6C) are not conserved or managed for *Navarretia fossalis* at this time; however, as the Western Riverside County MSHCP is implemented, we believe that additional areas in these subunits may be conserved. Subunit 6A is 99 percent within the Narrow Endemic Plant Species Survey Area (NEPSSA), and Subunits 6B and 6C are entirely within the NEPSSA. Therefore, biological surveys for *N. fossalis* will occur prior to development of any suitable habitat within these subunits. Furthermore, Subunits 6A and 6B have additional protections in place either from past conservation efforts (such as the establishment of the San Jacinto Wildlife Area and the Metropolitan Water District Upper Salt Creek Wetland Preserve), or through additional project review requirements within the Criteria Area (Joint Project/Acquisition Review Process as described in the Western Riverside County MSHCP (Service 2004b, pp. 23, 25; Western Riverside County MSHCP, Volume 1, section 6.6.2 in Dudek and Associates, Inc. 2003, pp. 6–82–6–84)). We anticipate that these areas will receive management that would benefit *N. fossalis* at some point in the near future; however, at this time these areas do not receive active management that would benefit *N. fossalis,* as described further below.

A large portion of Subunit 6A (1,504 ac (609 ha), or approximately 35 percent) is within the San Jacinto

Wildlife Area, a wildlife area owned and operated by CDFG. This area consists of restored wetlands that provide habitat for waterfowl and wading birds, and seasonally flooded vernal plain habitat along the San Jacinto River north of the Ramona Expressway that supports *Navarretia fossalis*. Though conserved from development, the CDFG has not implemented a management plan that is beneficial to *N. fossalis* (E. Konno, CDFG Biologist, pers. comm. 2010) . In addition to the portion of Subunit 6A owned by CDFG, 68 percent (2,919 ac (1,181 ha)) of the remaining land is within the Criteria Area. Projects in this area will be implemented through the Joint Project Review Process to ensure that the requirements of the MSHCP permit and the Implementing Agreement are properly met (Western Riverside County MSHCP, Volume 1, section 6.6.2 in Dudek and Associates, Inc. 2003, p. 6–82); however, these areas are not currently conserved and managed to benefit *N. fossalis*.

The majority of Subunit 6B is within the Criteria Area (56 percent; 525 ac (212 ha) out of a total 943 ac (382 ha)) and projects in this area will be implemented through the Joint Project Review Process. A portion of this subunit is in the area referred to as West Hemet, which is under the jurisdiction of the City of Hemet. Although the West Hemet area is not conserved, the City is actively working on addressing issues on sensitive vernal pool resources (such as updating the general plan), and recently implemented an ordinance against manure dumping, which is a threat to the species in this subunit (see the **Special Management Considerations and Protection** section).

Subunit 6C is not within the Criteria Area for the Western Riverside County MSHCP; however, impacts to the pools in this subunit should be avoided, minimized, or offset through implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools guidelines and NEPSSA guidelines. For example, the NEPSSA guidelines include protection measures that require surveys in suitable habitat for narrow endemic species in an attempt to find areas that should be considered as priorities for Western Riverside County MSHCP Conservation Area acquisition (Western Riverside County MSHCP, Volume 1, section 6.0 in Dudek and Associates, Inc. 2003). Additionally, for populations identified in NEPSSA surveys, impacts to 90 percent of those portions of the property that provide for long–term conservation value of the identified Narrow Endemic Plant Species shall be avoided until it is demonstrated that Conservation goals for the particular species are met (Western Riverside County MSHCP, Volume 1, section 6.1.3 in Dudek and Associates, Inc. 2003, p. 6–39). The Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools guidelines require assessments of potentially significant project effects as required by CEQA (Western Riverside County MSHCP, Volume 1, section 6.1.2 in Dudek and Associates, Inc. 2003, p. 6–20).

The Benefits of Inclusion—Western Riverside County MSHCP

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including *Navarretia fossalis*), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for *Navarretia fossalis* when there is a Federal nexus present for a project that might adversely modify critical habitat. However, all of the approximately 866 ac (351 ha) of land we are excluding within Units 6 (Subunits 6D and 6E) are protected open space or on private property, with no expected Federal nexus, including no areas connected to navigable waters that would typically result in a U.S. Army Corps of Engineers' Federal nexus. For *N. fossalis* critical habitat where no federally listed fairy shrimp occur, we believe it is unlikely there will be Federal nexus because projects that will adversely modify critical habitat should not occur in areas conserved under the Western Riverside County MSHCP, and the U.S. Army Corps of Engineers (Corps) typically does not assume jurisdiction under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) when vernal pool complexes are not hydrologically connected to navigable waters of the United States. Furthermore, two federally listed fairy shrimp species, Riverside fairy shrimp and vernal pool fairy shrimp (*Branchinecta lynchii*), are also present in some of the vernal pool habitat managed under the Western Riverside County MSHCP, and the terms and conditions of the biological opinion (USFWS 2004b, pp. 11441153) would also conserve *N. fossalis*. Therefore, we believe there will be indirect benefits to *N. fossalis* in excluded areas covered by the Western Riverside County MSHCP based on conservation actions achieved under the Act in habitat also occupied by a federally listed fairy shrimp species.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for *Navarretia fossalis* when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects along the San Jacinto River would require a 404 permit under the Clean Water Act from the Corps. Therefore, critical habitat designation in Subunits 6A, 6B, and 6C will provide an additional regulatory benefit to the conservation of *N. fossalis* by prohibiting adverse modification of habitat essential for the conservation of this species.

As discussed above, the Western Riverside County MSHCP mandates protection of *Navarretia fossalis* habitat considered necessary for survival and recovery of the species. For locations with positive survey results, impacts to 90 percent of portions of the property that provide long–term conservation

value for the species will be avoided (referring to the ephemeral wetland habitat that supports *N. fossalis* and the local watershed area that allows the ephemeral wetland habitat to function properly) until it is demonstrated that the conservation objectives for the species have been met (see Protection of Narrow Endemic Plant Species; Western Riverside County MSHCP, Volume 1, section 6.1.3, in Dudek and Associates, Inc. 2003). However, the MSHCP does not prohibit manure dumping and other soil amendments in habitat that has not yet been conserved. As discussed in Comments 6, 13, and 22 below, this threat is significant and ongoing within the Western Riverside County MSHCP plan area (specifically in Subunits 6A, 6B, and 6C) in habitat that has not been conserved and managed to benefit the species. Manure dumping is not a covered activity under the plan. Therefore, for activities covered under the plan, we believe that protections provided by the designation of critical habitat will be partially redundant with protections provided by the HCP; however, additional regulatory protection from manure dumping and other soil amendments is needed in Subunits 6A, 6B, and 6C.

Local ordinances may address activities not covered by an HCP that impact threatened or endangered species, particularly if they accompany permanent conservation and management of an area. For example, the City of Hemet enacted local Ordinance No. 1666 on April 9, 2002, to control the practice of dumping manure on biologically sensitive sites such as the vernal pool complex along Salt Creek (Subunit 6B). Although Ordinance No. 1666 provides an added level of protection above and beyond that provided by the Western Riverside County MSHCP (because manure dumping is not a covered activity under the Western Riverside County MSHCP), and complements the regulatory protection that would be provided by critical habitat designation, these lands are not yet conserved and managed for *N. fossalis*.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about *Navarretia fossalis* and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the *N. fossalis* critical habitat designation that are owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP could be beneficial to the species because while the plan establishes conservation goals for *N. fossalis* and identifies criteria for identifying habitat to be conserved, the critical habitat designation specifically identifies those lands essential to the conservation of the species and which may require special management considerations or protection. The process of proposing revised critical habitat provided an opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Information on *N. fossalis* and its habitat also has been provided to the public in the past, through meetings, educational materials provided by the County of Riverside, and recommendations provided in our Recovery Plan for Southern California Vernal Pool Species (Service 1998). In general, we believe the designation of critical habitat for *N. fossalis* will provide additional information for the public concerning the importance of essential habitat in Subunits 6A, 6B, and 6C that has not already been available.

The benefit of educating the public about *Navarretia fossalis* habitat is significant because the distribution of vernal pool and alkali playa habitat in Riverside County is not well known and the importance of these habitat areas may not be known to the public. Activities that harm habitat where *N. fossalis* occurs (including the associated local watershed areas) are taking place in Riverside County possibly due to the lack of public awareness. For example, manure dumping on private property along the San Jacinto River and in the vicinity of the Wicker Road Pool is adversely affecting habitat within the Western Riverside County MSHCP plan area (Roberts 2009, pp. 2–14). We have been working with permittees to implement ordinances that will help to control activities (such as manure dumping) that may impact the implementation of the Western Riverside County MSHCP conservation objectives. To date, the City of Hemet is the only Western Riverside County MSHCP permittee that has addressed the negative impacts (alters the physical and biological features essential to the conservation of *N. fossalis*) that manure dumping has on *N. fossalis* and its habitat through the enactment of Ordinance 1666 (i.e., the ordinance that prevents manure dumping activities, thereby educating its citizens and reducing the educational benefits of including this land as critical habitat). We believe including areas in the *N. fossalis* revised critical habitat designation where manure dumping still occurs on non–conserved and non–managed lands will provide information to the public and local jurisdictions regarding the importance of addressing this threat throughout the areas where manure dumping occurs. Therefore, we believe there is an overall significant educational conservation benefit of critical habitat designation of essential habitat within Subunits 6A, 6B and 6C in the Western Riverside County MSHCP because designation will specifically identify for the public and plan participants those areas essential for conservation of the species that are not currently protected and managed under the plan, and particularly for areas outside of the City of Hemet where Ordinance 1666 has been enacted, will help educate the public about the threats to these areas posed by manure dumping.

The designation of *Navarretia fossalis* critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Riverside County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of habitat that is not conserved or protected that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat is unlikely to provide regulatory benefits under the Act in essential habitat areas that are currently conserved and managed. In areas that are not currently conserved and managed, we believe that there are significant regulatory and educational benefits that would result from critical habitat designation. The educational benefits of designation are somewhat reduced in the non-conserved portion of Subunit 6B within the City of Hemit where an ordinance exists to protect *N. fossalis* habitat from manure dumping.

Benefits of Exclusion—Western Riverside County MSHCP

We believe benefits would be realized by forgoing designation of critical habitat for *Navarretia fossalis* on lands covered by the Western Riverside County MSHCP including:

(1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP

jurisdictions and stakeholders to promote conservation of *N. fossalis* and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward recovering this species, including conservation benefits that might not otherwise occur;

(3) Encouragement for local jurisdictions to fully participate in the Western Riverside County MSHCP; and

(4) Encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

The Western Riverside County MSHCP provides substantial protection and management for *Navarretia fossalis* and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act or smaller HCPs). Many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP (as discussed further in Comment 22 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of the Western Riverside County MSHCP lands from critical habitat would help preserve the partnerships we developed with the County of Riverside, the City of Hemet, and other local jurisdictions in the development of the Western Riverside County MSHCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Western Riverside County MSHCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees as critical habitat for *Navarretia fossalis*. The benefits of including conserved and managed lands in the critical habitat designation are small. All of the approximately 158 ac (64 ha) of land in Subunit 6D at Skunk Hollow and all of the approximately 708 ac (287 ha) of land in Subunit 6E at Mesa de Burro are already managed and conserved, and provide a benefit to *N. fossalis*. It is also unlikely that a project with a Federal nexus will occur in Subunits 6D, and 6E; therefore, designating these areas as critical habitat is unlikely to provide significant regulatory benefit.

Additionally, the educational benefits of critical habitat designation and the potential benefits designation may confer under other statutes (such as CEQA and NEPA) are also small in Subunits 6D and 6E because these areas are already conserved and managed in perpetuity. Therefore, designation of *N. fossalis* critical habitat in Subunits 6D or 6E will not provide a substantial educational benefit.

In summary, we find that excluding lands from critical habitat in areas that are receiving long-term conservation and management for the purpose of protecting *Navarretia fossalis* (Subunits 6D and 6E) will help preserve our partnership with the County of Riverside and other permittees in the Western Riverside County MSHCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory and educational benefits of including these already conserved and managed lands as critical habitat for *N. fossalis*. With regards to lands within the City of Hemet, we acknowledge the City's proactive efforts to protect *N. fossalis* through enactment of Ordinance 1666 prohibiting manure dumping in essential *N. fossalis* habitat. This effort somewhat reduces the regulatory and educational benefits of designation of that portion of Subunit 6B within the City of Hemit. However, these lands are not receiving long-term conservation and management to benefit *N. fossalis*. We find that including City of Hemet lands (Subunit 6B) and other non-conserved and non-managed lands within the Western Riverside County MSHCP (Subunits 6A and 6C) as critical habitat outweigh the benefits of exclusion. We believe that critical habitat designation in these areas will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and act as an educational tool for the public to lead to conservation and management of *N. fossalis* and its essential habitat. Therefore, designating these areas as critical habitat for *N. fossalis* is likely to provide a regulatory as well as educational benefit to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a significant benefit to the partnership that we have with the Western Riverside County MSHCP permittees (including the City of Hemet), we believe that the conservation value of including these non-conserved, non-managed lands as critical habitat outweighs the benefit of exclusion.

Exclusion Will Not Result in Extinction of the Species—Subunits 6D and 6E, Western Riverside County MSHCP

We determined that the exclusion of 866 ac (351 ha) of land in Unit 6 (Subunits 6D and 6E) owned by or under the jurisdiction of Western Riverside County MSHCP permittees from the revised designation of critical habitat for *Navarretia fossalis* will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to *N. fossalis* and its habitat. Additionally, the jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation. The consultation requirements of section 7(a)(2) and the attendant requirement to avoid jeopardy to *N. fossalis* for projects with a Federal nexus will provide significant protection to the species. Therefore, based on the above discussion, we are excluding approximately 866 ac (351 ha) of conserved and managed land in Unit 6 (Subunits 6D and 6E) owned by or under the jurisdiction of Western Riverside County MSHCP permittees from this revised critical habitat designation.

Economics

An analysis of the economic impacts for the previous proposed critical habitat designation for *Navarretia fossalis* was conducted and made available to the public on August 31, 2005 (70 FR 51742). That economic analysis was finalized for the final rule to designate critical habitat for *N. fossalis* published in the **Federal Register** on October 18, 2005 (70 FR 60658). The analysis determined that the costs associated with critical habitat for *N. fossalis* across the entire area considered for designation (across designated and excluded areas) were primarily a result of the potential effects of critical habitat designation on land development, flood control, and transportation. After excluding land in Riverside and San Diego Counties from the 2004 proposed critical habitat (69 FR 60110; October 7, 2004), the economic impact was estimated to be between $13.9 and $32.1 million over the next 20 years. Based on the 2005 economic analysis, we concluded that

the designation of critical habitat for *N. fossalis,* as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the document making available the economic analysis published in the **Federal Register** on August 31, 2005 (70 FR 51742).

We prepared a new economic impact analysis associated with this revised critical habitat designation for *Navarretia fossalis*. In the revised DEA, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for *N. fossalis*. The analysis is based on the estimated incremental impacts associated with the proposed rulemaking as described in sections 3 through 10 of the analysis. We announced the availability of the draft economic analysis in the **Federal Register** on April 15, 2010 (75 FR 19575).

The final economics analysis determined that the costs associated with critical habitat for *Navarretia fossalis*, across the entire area considered for designation (both designated and excluded areas), are primarily a result of the potential effects of critical habitat designation on transportation, land development, and flood control. The incremental economic impact of designating critical habitat was estimated to be between $846,000 and $1.2 million over the next 20 years using a 7 percent discount rate ($70,000 and $100,000 annualized) (Entrix 2010, p. ES-3). The difference between the economic impacts projected with this designation compared to those in the 2005 designation are due to the use of an incremental analysis in this designation rather than the broader coextensive analysis used in the 2005 designation. Additionally, the economic analysis for the 2005 designation included all 31,086 ac (12,580 ha) of essential habitat while the 2010 analysis included only the 7,609 ac (3,079 ha) that were proposed for designation. Based on the 2010 final economic analysis, we concluded that the designation of critical habitat for *N. fossalis,* as proposed in 2009, would not result in significant small business impacts. This analysis is presented in the Final Economic Analysis of Proposed Revised Critical Habitat Designation for Spreading Navarretia (FEA)(Entrix 2010).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule to revise critical habitat for the *Navarretia fossalis* during two comment periods. The first comment period opened with the publication of the proposed revised rule in the **Federal Register** on June 10, 2009 (74 FR 27588), and closed on August 10, 2009. The second comment period opened with the publication of the availability of the DEA published in the **Federal Register** on April 15, 2010 (75 FR 19575) and closed on May 17, 2010. During both public comment periods, we contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule to revise critical habitat for this species and the associated DEA. During the comment periods, we requested all interested parties submit comments or information related to the proposed revisions to critical habitat, including (but not limited to) the following: unit boundaries; species occurrence information and distribution; land use designations that may affect critical habitat; potential economic effects of the proposed designation; benefits associated with critical habitat designation; areas proposed for designation and associated rationale for the non-inclusion or considered exclusion of these areas; and methods used to designate critical habitat.

During the first comment period, we received 12 comments directly addressing the proposed revised critical habitat designation, 4 from peer reviewers and 8 from public organizations or individuals. During the second comment period, we received one comment from local government addressing the proposed critical habitat designation and the DEA. We did not receive any requests for a public hearing.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which it occurs, and conservation biology principles pertinent to the species. We received responses from all four peer reviewers who provided additional information, clarifications, and suggestions that we incorporated into the rule to improve the revised critical habitat designation.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the designation of critical habitat for *Navarretia fossalis*. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: One peer reviewer was supportive of the proposed revised critical habitat rule. The reviewer stated the proposed rule was well thought-out, based on sound data, and presented a thorough analysis. The reviewer further stated that *Navarretia fossalis'* specific needs for ephemerally wet habitats and limited dispersal ability were appropriately analyzed and considered in the proposed revised rule. The reviewer concluded our revised methods were thorough, logical and biologically supported, and limited the proposed designation to areas necessary for maintaining *N. fossalis* persistence.

Our Response: We appreciate the peer reviewer's critical review.

Comment 2: One peer reviewer stated that large, well-established *Navarretia fossalis* populations need to be protected; therefore, the reviewer believe the definition of "core habitat areas" as relatively large areas of intact habitat with existing populations in the proposed revised rule was reasonable. The reviewer further stated that limited gene flow among populations and the range of soil and water conditions among habitats suggest significant range-wide genetic variability of *N. fossalis*; therefore, the reviewer believes populations on the periphery of the geographical range and those that occupy unique non-core habitats are important to species preservation. The reviewer stated that designating only relatively large intact habitat areas as critical habitat could lead to significant loss of genetic diversity and preclude species' survival and recovery and therefore, agreed with our inclusion of both large and smaller areas for *N. fossalis*.

Our Response: We appreciate the peer reviewer's critical review and have incorporated their comments into the rule as appropriate.

Comment 3: One peer reviewer offered technical and organizational comments. The reviewer stated the proposal writing style was professional and understandable. The reviewer noted the proposal was better organized than past critical habitat proposals on *Navarretia fossalis*, as well as other critical habitat designations for listed species that occur in similar habitat, and the use of tables to help explain

differences between the 2005 and 2009 proposals was helpful. The reviewer further stated the usefulness of maps in the printed rule for public review of specific units was limited, and the lack of UTM coordinates and a 100-m grid made it difficult for the public to reproduce maps at different scales, overlay features with mapping programs, and confirm map accuracy.

Our Response: We appreciate the peer reviewer's comments and will consider this advice when publishing future proposed critical habitat designations.

Comment 4: One peer reviewer commented on text in the **Areas Needed for Conservation: Core and Satellite Habitat Areas** section of the proposed rule. The reviewer stated since the Service clearly based these proposed areas on new information, there should have been a citation or explanation as to why Mesa de Burro was considered a "core population." The reviewer stated they were able to verify reports of large populations qualifying Mesa de Burro as a "core population," but the Mesa de Burro site may not be biologically equivalent with the other "core population complexes." The reviewer defined "core population complexes" as numerous vernal pools and argued the Mesa de Burro occurrence appears to be restricted to a small number of pools. The reviewer suggested it was probably best to describe Mesa de Burro as a "large and important population," since it is not really a complex of populations or occurrences.

Our Response: We understand the peer reviewer's concern regarding the ecological connotation of terms used for the *Navarretia fossalis* critical habitat designation; however, we never used the terms "core population" or "core population complexes" in the proposed rule. The only term used in the proposed revised rule and in this document with the word "core" is "core habitat area," which is a descriptive term of convenience. As described in the proposed revised rule (74 FR 27588) and the **Areas Needed for Conservation: Core and Satellite Habitat Areas** section of this rule, "core habitat area" denotes those areas that contain the highest concentrations of *N. fossalis* and the largest contiguous blocks of habitat for this species and are therefore the most critical areas for conservation of this species. The term was not intended to be synonymous with similar terms used in other documents. The term "vernal pool complex" is used in Table 3 to refer to more than one geographically proximal pool, but was not further defined.

Regarding the peer reviewer's suggested description of Mesa de Burro as a "large important population," we do not share this opinion. We are not aware of any formal definition of "occurrences" or descriptions of associated pools in a biologically delineated population. Mesa de Burro contains a relatively large abundance of observed individuals occupying multiple vernal pools, and we believe this description appropriately describes the current level of scientific knowledge. In general, we are conservative with use of the term "population" because of the term's frequent misapplication in gray literature. We refrain from using the term "population" to describe a geographically specific occupied area unless data indicate appropriate rates of genetic exchange exist among spatially clustered individuals and a geographical population distribution has been delineated. Therefore, we believe the peer reviewer's concerns regarding our use of inappropriate terminology are not well founded. We have edited the **Areas Needed for Conservation: Core and Satellite Habitat Areas** section to clarify the above issues.

Comment 5: Regarding the discussion of the PCEs in the proposed rule, one peer reviewer recommended changing, "During a typical seasonal flooding period, alkali scrub vegetation expands its distribution into deeper areas of the seasonally flooded alkali vernal plain habitat and crowds out the more ephemeral wetland species" to "During a typical seasonal flooding cycle, alkali scrub vegetation expands its distribution during the dry periods into deeper areas of the seasonally flooded alkali vernal plains habitat..." The peer reviewer also stated that light to moderate disturbance can mask or suppress some PCEs within seasonally flooded vernal alkali plains habitat. Therefore, the reviewer recommended the final rule include the following qualification regarding habitat quality: "Seasonally flooded alkali vernal plain can persist in light to moderately disturbed habitat that may obscure or suppress expression of PCEs, especially soil amendments and dryland farming activities. Reasonably restorable habitat is considered to have the applicable PCEs within the San Jacinto River flood plain and at Old Salt Creek. Many of these sites, although currently in degraded condition, are restorable and may be necessary to the recovery of the species." The peer reviewer also noted an apparent omission of the species' occurrence within the alkali Chino series soils at Old Salt Creek.

Our Response: We considered the suggested edits provided by the peer reviewer and made changes to the text above as appropriate (see **Primary Constituent Elements** section).

Comment 6: Regarding the **Special Management Considerations or Protection** section of the proposed rule, one peer reviewer recommended adding soil chemistry alteration and manure dumping to the list of threats for *Navarretia fossalis.* The reviewer stated manure dumping has reduced or eliminated alkali vernal pools over large portions of the San Jacinto River flood plain and may now be the most significant immediate threat to *N. fossalis*. The reviewer cited numerous communications with the Carlsbad Fish and Wildlife Office in which the reviewer had documented manure dumping in vernal pool habitat.

Our Response: We considered the suggested text edits to this revised critical habitat rule and made changes as appropriate (see **Special Management Considerations or Protection** section). We agree that manure dumping is a significant threat to *Navarretia fossalis*, and we agree that this activity is ongoing. We are in the process of working with local jurisdictions in Western Riverside County (including the County of Riverside) to address manure dumping through initiatives like Ordinance No. 1666 that was enacted by the City of Hemet. We hope to work further with our partners in Riverside County to reduce the threat of manure dumping (see also responses to Comments 12 and 13 below, and the **Special Management Considerations or Protection** section of this rule).

Comment 7: Regarding the **Criteria Used To Identify Critical Habitat** section of the proposed revised rule, one peer reviewer argued that based on data for similar species, two or more negative surveys during the past 10 years is an insufficient effort to confirm extirpation in lightly disturbed habitat. The reviewer advised that a lack of positive surveys for a decade suggests a population is declining or scarce, but without significant habitat disturbance as well, does not mean it is extirpated. The peer reviewer recommended that in circumstances where habitat has not been significantly altered, the Service should not conclude absence based on lack of documentation. In the case of comprehensive but negative survey results, the peer reviewer believes 20 years would be a more reliable indicator of population extirpation. The peer reviewer further noted that while this change in methodology may not change what areas meet the definition of critical habitat for *Navarretia fossalis*, the limitations of current methods should be considered in future critical habitat analyses.

Our Response: We appreciate the peer reviewer's concerns and have considered the argument that more than 20 years without positive survey data in suitable habitat is an appropriate criterion for determining likely absence of *Navarretia fossalis*. We would like to reassure the peer reviewer that we used more complex criteria than two negative surveys over a period of 10 years to determine occupancy. Negative surveys must have occurred under appropriate conditions, while habitat status was also considered. As discussed in the **Criteria Used To Identify Critical Habitat** section, we assume an area is currently occupied for areas where we had past occupancy data unless: (a) Two or more rare plant surveys conducted during the past 10 years did not find *N. fossalis* (providing the surveys were conducted in years where average rainfall amounts for a particular area are reached during the rainy season (between October and May)) and during the appropriate months to find this species (March, April, and May); or (b) the site was significantly disturbed since the last observation of the species at that location. Therefore, we believe our current methodology is appropriate.

Comment 8: One peer reviewer expressed concerns regarding occupancy status of specific pools. The reviewer argued the description of a vernal pool in Subunit 5G (Otay Lakes) as partly unoccupied may be inappropriate, because *Navarretia fossalis* is likely still present if habitat is intact and minimally disturbed. The reviewer stated a better criterion for occupancy determination would be habitat status within the vicinity of vernal pools, rather than a lack of occupancy data for the past 10 years. The peer reviewer stated they were not necessarily suggesting that the vernal pool "populations" at Otay River Valley and Otay Lakes (Unit 5) be included in critical habitat, only that the assumption of species' absence may be false.

The peer reviewer also stated that because the vernal pool complex in Subunit 5C occurs within a core habitat area (Otay Mesa) that has experienced significant habitat loss, faces significant threats, and is identified in the Recovery Plan as necessary for recovery, it seems prudent to include it in critical habitat, or offer a more compelling argument for non-inclusion.

Our Response: In such a scenario of limited survey periods, we use the available surveys as the best available science. This situation underscores the need for us to address new information as it is received. We understand the peer reviewer's concern and have considered their argument; however, habitat availability and condition does not always necessarily equate to occupancy for vernal pools species because other habitat characteristics such as hydroperiod, pool depth, soil type and other physical features also play a role. Critical habitat designations are to use the best available commercial and scientific data to identify lands that we believe contain the physical and biological features essential to the conservation of the species. Without more site specific investigation on occupancy for Subunit 5G, we cannot ascertain for certain that all of the areas are occupied solely on habitat status as recommended by the peer reviewer and have relied on our criteria for occupancy as stated above. Please see the response to Comment 7 above for further discussion regarding occupancy data and criteria used to identify critical habitat.

We agree with the peer reviewer that Subunit 5C meets the definition of critical habitat. Based on information in our files inadvertently excluded from our initial Geographic Information System (GIS) analysis, we determined that the previously proposed Subunit 5C (69 FR 60110; October 1, 2004) has documented occupancy within the past 10 years and meets the definition of critical habitat. We proposed designation of subunit 5C in our revision to the 2009 proposed. We proposed adding subunit 5C in the document that made available the DEA for the proposed revised critical habitat published in the **Federal Register** on April 15, 2010 (72 FR 19575). We are designating subunit 5C as critical habitat in this final rule. Please see edited **Summary of Changes From the 2009 Proposed Rule To Revise Critical Habitat** and **Critical Habitat Units** sections for more information.

Comment 9: One peer reviewer noted that although the proposal stated that slopes facing away from Cruzan Mesa were removed from Subunit 1A (compared to the 2005 designation), an examination of Google Earth imagery indicated some of the mesa top was also removed. The reviewer recommended subunit boundaries be modified to include the full mesa top.

Our Response: We appreciate the peer reviewer's critical review. We considered the suggested changes and revised the designated critical habitat boundary for Subunit 1A to include those areas containing the physical and biological features essential to the conservation of the species. We explained the revised proposed boundary in the document we published in the **Federal Register** on April 15, 2010 (75 FR 19575). The revision increased the designated total for Subunit 1A by 27 ac (11 ha), reflected in Table 2. For more information, see the **Summary of Changes From Previously Designated and Proposed Revised Critical Habitat** section.

Comment 10: One peer reviewer suggested there may not be sufficient data to demonstrate the Plum Canyon vernal pool in Subunit 1B meets the definition of critical habitat. The reviewer noted that although there are two collection records from 1996 and 2003, the CNDDB notes the "site requires more field work," which usually means there is some debate on specific location or population status. The peer reviewer added they were not able to confirm the location of this vernal pool through examination of aerial photographs. The peer reviewer also recommended the western portion of Subunit 3B should not be designated critical habitat because Google Earth imagery indicates this area has been graded and is unlikely to ever support the PCEs for this species.

Our Response: We appreciate the peer reviewer's critical review. We considered the suggested changes and revised this final designation by removing the western portion of Subunit 3B as discussed in the document making available the DEA (75 FR 19575; April 15, 2010). However, we believe Subunit 1B (Plum Canyon) meets the definition of critical habitat because this subunit supports a stable occurrence of *Navarretia fossalis*, provides potential connectivity with Subunit 1A, and likely supports a genetically distinct occurrence. We believe Subunit 3B (Carroll Canyon) meets the definition of critical habitat because it supports a stable occurrence of *N. fossalis* and provides potential connectivity between occurrences of *N. fossalis* in Subunits 3A and 3C. For more information, see the **Critical Habitat Units**, **Criteria Used To Identify Critical Habitat**, and **Summary of Changes From Previously Designated and Proposed Revised Critical Habitat** sections.

Comment 11: One peer reviewer recommended multiple changes to the boundary of Subunit 6B as follows:

(1) Remove a central section south of Stetson Road that has been developed or disturbed for many years;

(2) expand the eastern edge boundary to include vernal pools at the western end of the airport because this site includes the PCEs, has documented historical occupation, includes pools that are more reliably filled than pools that were proposed for designation, and

this land has a likely Federal Aviation Administration Federal nexus;

(3) include vernal pools and wet depressions that form fairly reliably in the northwest portion of the subunit;

(4) remove the drier area at the northern end just south of Devonshire Road; and

(5) remove the eastern corner because it either has active residential development or an approved development proposal and is heavily degraded.

Our Response: We appreciate the peer reviewer's critical review. We considered the suggested changes and revised the final critical habitat boundary as noticed in the NOA of the DEA (75 FR 19575; April 15, 2010). For more information see the **Summary of Changes From the Proposed Revised Rule and the Previous Critical Habitat Designation**.

Comment 12: One peer reviewer believes that manure dumping should be specifically mentioned in the section of this critical habitat designation that outlines activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for *Navarretia fossalis*: **Effects of Critical Habitat Designation** section, subsection (2) titled **Application of the 'Adverse Modification' Standard** section, paragraph describing "Actions that would impact soil and topography." The peer reviewer argued that widespread manure dumping along the San Jacinto River, which alters soil chemistry (reducing alkalinity and clay and silt composition ratios) and topography (elevates soil surface and suppresses depressions formation), is a significant threat to the species.

Our Response: We considered the peer reviewer's suggested edits when preparing this revised critical habitat rule and made changes to the **Effects of Critical Habitat Designation**, **Application of the 'Adverse Modification' Standard** section. We agree that manure dumping is a significant threat to *Navarretia fossalis* and the PCEs require special management considerations or protection to reduce the threat (see the **Special Management Considerations or Protection**). The Western Riverside County MSHCP does not prohibit permittees from engaging in manure dumping on non-conserved lands where a Federal nexus is present and there is no local ordinance to prevent dumping; therefore, we determined that designation of critical habitat would provide significant additional habitat protection. We also determined that education has been inadequate in some areas with regard to the severity of this threat; therefore, designation of critical habitat where manure dumping can occur would provide a significant educational conservation benefit (see also response to Comments 6 and 13, and the **Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)** section).

Comment 13: One peer reviewer believes that exclusion of lands owned under the jurisdiction of the Western Riverside County MSHCP permittees should not be excluded from critical habitat based on partnership benefits. As an example, the peer reviewer stated that areas along the San Jacinto River and near the city of Hemet have not been adequately protected. These areas were identified in the Western Riverside County MSHCP as necessary for the conservation of *Navarretia fossalis* and were excluded from the 2005 final critical habitat designation. The peer reviewer asserted that habitat vandalism and incidental destruction in all vernal pools within the Western Riverside County MSHCP plan area have continued, and in some areas increased, since the Western Riverside County MSHCP was permitted. The peer reviewer discussed at length and in detail evidence that they believe suggests land-owners who are aware of the conservation value of vernal pools are working to eradicate habitat rather than "partnering with regulators" to conserve it. Additionally, the peer reviewer argued that unlike other approved HCPs, the reviewers believe the Service has evidence that the Western Riverside County MSHCP is not providing the benefits "claimed to justify exclusion in the proposed revised critical habitat rule." The reviewers further hypothesized that should impacts continue at the rate and magnitude as occurred during the first 5 years of the Western Riverside County MSHCP implementation, there could be almost no habitat left in 5 years outside the San Jacinto Wildlife Area and the Metropolitan Water District Vernal Pool Preserve.

Our Response: We appreciate the peer reviewer's concerns regarding adequate protection of *Navarretia fossalis* under the Western Riverside County MSHCP. Although not specifically stated by the peer reviewer, the comment indicates the reviewer believes:

(1) The benefits of exclusion (based primarily on partnerships benefits) would be lower than the benefits of inclusion because these partnerships have provided less benefit to *N. fossalis* to-date than anticipated; and

(2) The benefits of inclusion (non-redundant protections and education provided by critical habitat designation) are greater because conservation actions mandated by the HCP are not being implemented.

Benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. As described in the **Application of Section 4(b)(2) of the Act** section, the likelihood of a project with a Federal nexus occurring in Subunits 6D (Barry Jones Wetland Mitigation Bank) and 6E (PQP lands) in the Western Riverside County MSHCP revised critical habitat is small because these areas are currently conserved and managed; therefore, the regulatory and educational benefits of inclusion are insignificant. Additionally, the portion of Subunit 6B that is in the City of Hemet is protected by an ordinance that addresses illegal manure dumping, an activity that is not covered by the Western Riverside County MSHCP; however, this area does not receive long-term conservation and management for the benefit of *Navarretia fossalis* and its habitat. Due to this additional protection from manure dumping, the benefits of inclusion of this portion of Subunit 6B as critical habitat are somewhat lessened.

Regarding the benefits of exclusion, the adequacy of *Navarretia fossalis* protection under an HCP is relevant to the value of partnerships to the extent it demonstrates the overall conservation value of a regional HCP permit. We believe the Western Riverside County MSHCP generally incorporates ongoing management and protection that should benefit the conservation of *N. fossalis* and its habitat over the long term. Please refer to the **Application of Section 4(b)(2) of the Act** section for further discussion on the Western Riverside County MSHCP, including discussion on areas receiving long-term conservation and management that we have excluded under section 4(b)(2) of the Act.

Based on new information, we did find the benefits of inclusion in critical habitat to be greater in some areas within the Western Riverside County MSHCP than we estimated in the October 18, 2005, critical habitat rule (70 FR 60658). We determined that designation of critical habitat for *Navarretia fossalis* would provide significant additional habitat protection

in Subunits 6A, 6B, and 6C. We came to this determination because the Western Riverside County MSHCP does not currently provide for the long-term conservation and management of *N. fossalis* in these subunits, and the HCP does not prohibit permittees from engaging in manure dumping activities (a significant new threat on non-conserved lands that was not identified in the HCP or the associated biological opinion (Service 2004b, pp. 369–378)). Therefore, in areas where a Federal nexus exists (see also Comments 6 and 12 above), we concluded that the significant regulatory benefit of including the areas in critical habitat outweigh the partnership benefits of exclusion. We also determined that education to date has been inadequate in some areas with regard to the severity of manure dumping; therefore, designation of *N. fossalis* critical habitat where manure dumping can occur would provide a significant educational conservation benefit.

In summary, we found the benefits of exclusion of lands covered by the Western Riverside County MSHCP to be greater than the minimal benefits of including these lands in the critical habitat designation for those areas that are currently conserved and managed (i.e., Subunits 6D and 6E). Alternatively, the benefits of inclusion are greater for non-conserved, non-managed lands within the plan area (i.e., Subunit 6A, 6B, and 6C). See the **Application of Section 4(b)(2) of the Act** section (particularly the **Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP** section) for a complete discussion of the Western Riverside County MSHCP exclusion analysis.

Issues discussed by the peer reviewer, while they may reflect valid concerns with regard to HCP implementation, do not reduce the benefits of exclusion for Subunits 6D and 6E. We believe that conservation is adequate in these areas as a result of the long-term conservation and management of Subunits 6D and 6E (see **Benefits of Exclusion—Western Riverside County MSHCP** and the **Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP** sections). However, we will consider the information submitted by the peer reviewer in our ongoing assessments of the Western Riverside County MSHCP, and continue to work with permittees to ensure that the HCP is properly implemented to benefit *Navarretia fossalis* and its habitat.

Comment 14: One peer reviewer stated that the Service should not exclude habitat within the plan area of HCP permits that are not yet issued. The reviewer stated draft plans provide no guarantee that the final HCPs will provide adequate species conservation.

Our Response: We did not exclude any habitat from this revised critical habitat designation that falls within the plan area of an HCP permit that has not yet been issued.

Other Comments

Comment 15: Two commenters provided biological information for our consideration.

(1) One commenter provided information about the presence of *Navarretia fossalis* at one location in San Marcos, California, including reference to a website with detailed biological information about this location. The commenter indicated that they believe the future of the site is uncertain and *N. fossalis* grows in the larger vernal pools onsite.

(2) A second commenter stated that although "scrub" habitat elements may expand into alkali playa, the more common process currently observed is replacement of alkali playa by alkali grassland (regarding the **Primary Constituent Elements– Ephemeral Wetland Habitat** section of the proposed rule). The second commenter also noted that in some of the known species' localities, alkali grassland has become dominated by species less commonly found in the wetter areas of the alkali playa, possibly due to alteration of hydrology.

(3) The second commenter described distinct "riverine pools" characterized by unique floristic elements, such as *Trichocoronis wrightii* (limestone bugheal), which only occur with *Navarretia fossalis* within the San Jacinto River Unit.

(4) The second commenter stated that "general anecdotal observations" of habitat conditions at the Salt Creek Seasonally Flooded Alkali Plain indicate a recent decline in *Navarretia fossalis* densities, especially at the Stowe vernal pool. The commenter acknowledged these observations may reflect a response to rainfall patterns, but stated the habitat does appear to have experienced drying of the ephemeral wetlands and vernal pools, along with an expansion of *Hordeum marinum* subsp. *gussoneanum* (cheat grass).

(5) The second commenter stated that a number of the larger vernal pools in the Perris plain region occur on Willows soils.

(6) Finally, the second commenter noted the proposed expansion of waterfowl ponds and wet soil management in portions of the San Jacinto Wildlife Area (under the Western Riverside County MSHCP) may negatively affect *Navarretia fossalis*. The expansion could benefit *N. fossalis* by providing more habitat for this species; however, ponding duration and exotic plant species used to increase the waterfowl habitat suitability could conflict with existing or expanded *N. fossalis* populations within the San Jacinto Wildlife Area.

Our Response: We appreciate all information provided. We are aware of the San Marcos vernal pools information, which is identified in Table 2 as Subunit 4C1 in the San Marcos Upham location. Additionally, the Service regularly works with CDFG to ensure that the seasonally flooded alkali vernal plain habitat in the San Jacinto Wildlife Area continues to function and provide a benefit to *Navarretia fossalis* and other sensitive species that use this habitat. We will consider the information regarding the proposed expansion of waterfowl ponds and wet soil management in portions of the San Jacinto Wildlife Area in future conservation recommendations and decisions; however, we do not believe it is relevant to this revised critical habitat designation for *N. fossalis*.

We considered the other information provided and edited this revised critical habitat rule as appropriate (see **Primary Constituent Elements—Ephemeral Wetland Habitat** and **Background—Geographic Range and Status** sections above).

Comment 16: One commenter recommended that the total number of *Navarretia fossalis* localities be carefully reviewed and possibly updated (regarding the **Background—Geographic Range and Status** section of the proposed rule). The commenter stated that they believe the section failed to cite some potentially important references, including Brown's (2003) listing of ephemeral pools in western Riverside County, and CNDDB collection records from the Elsinore-Murrieta area and from San Luis Obispo County.

Our Response: Regarding the suggested **Background** section citations, the data in Brown's (2003) record table is part of our Service files and was incorporated in our GIS database, we are not aware of any CNDDB collection records from the Elsinore-Murrieta area (and none were provided by the commenter), and the San Luis Obispo County record has never been verified; therefore, we did not include those suggested record citations in this final rule.

Comment 17: Two commenters expressed general opposition to revising

critical habitat because of the resulting costs to taxpayers and private companies.

Our Response: According to sections 3(5)(A) and 4(b) of the Act and our implementing regulations under 50 CFR 424.12, we are required to designate critical habitat for federally listed species. Following the listing of *Navarretia fossalis* in 1998 and the subsequent designation of the species' critical habitat in 2005, the Center for Biological Diversity filed a complaint on December 19, 2007, in the U.S. District Court for the Southern District of California challenging the 2005 designation. This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *N. fossalis*. On July 25, 2008, the parties reached a settlement agreement, in which we agreed to reconsider the critical habitat designation for the species. The action of revising the designation is the result of our following a court order. Therefore, while we acknowledge the commenters' concern that revising critical habitat is costly, we do not have discretion with regard to completion of court-ordered actions (see **Previous Federal Actions** section above for more information regarding completion of this revised rule).

Comment 18: Two commenters provided suggestions regarding the proposed critical habitat designation review process. One commenter stated that graphics provided in the proposed rule did not allow detailed review of areas proposed as revised critical habitat and thus recommended the Service post topographic maps or aerial photographs on the Internet during open comment periods. A second commenter requested that no additional areas be proposed as revised critical habitat without recirculation of the entire rule for notice and comment.

Our Response: We agree it would be advantageous to provide more detailed graphics for public review and will consider the practicality of doing so when publishing future proposed critical habitat designations.

According to section 4(b)(5) of the Act and the Administrative Procedure Act (5 U.S.C. Subchapter II), we are required to provide an adequate opportunity for the public to comment on any critical habitat rule. Although it is not fiscally practical for us to recirculate an entire rule for notice and comment, any areas proposed as revised critical habitat for *Navarretia fossalis* that are in addition to those listed in the proposed revised critical habitat rule (74 FR 27588; June 10, 2009) were described in the document that made available the DEA (75 FR 19575; April 15, 2010). As a result, the opportunity for public review and comment prior to designation of this revised critical habitat designation occurred as a result of an initial public comment period between June 10, 2009, and August 10, 2009, and a second public comment period between April 15, 2010, and May 17, 2010.

Comment 19: Two commenters recommended adding or removing areas from the *Navarretia fossalis* proposed revised critical habitat. The first commenter recommended proposed revised critical habitat be expanded at the "northern and southern boundaries" of the San Jacinto River subunit (Subunit 6A). Specifically they recommended proposed revised critical habitat be expanded at the following locations:

(1) At the northern boundary east to include pond areas within the San Jacinto Wildlife Area;

(2) Around 13th Street east of the County owned property;

(3) Eastward near Simpson Road in the area of San Jacinto Avenue to include areas north of Ellis Avenue;

(4) North of the San Jacinto river to near Redlands Avenue;

(5) To include the entire vernal pool found south off Case Road;

(6) South of the San Jacinto River, possibly to the boundary of Green Valley Parkway;

(7) Westward to include pools in the northwestern corner of the Hemet Airport within the Salt Creek Seasonally Flooded Alkali Plain; and

(8) At the southern end of the Wickerd Road and Scott Road locality.

A second commenter asserted that the proposed critical habitat designation falls short of the Act's "recovery requirement" by focusing solely on species' survival. They asserted in particular that additional areas need to be proposed to ensure ecological features required for species' recovery are maintained, such as water quality, inundation frequency, and habitat connectivity.

Our Response: We considered the changes suggested by the first commenter and revised this final revised critical habitat designation as appropriate as discussed in the document making available DEA (75 FR 19575; April 15, 2010). For more information see the **Summary of Changes From the Proposed Revised Rule and the Previous Critical Habitat Designation** section and our response to Comment 11

Regarding the second commenter's assertion that additional critical habitat areas need to be proposed to meet the "[Act's] recovery requirement," we believe we have designated all the specific occupied areas which are found those physical or biological features that are essential to the conservation of the species. We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of *Navarretia fossalis*, and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery. Areas outside the revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act if actions occurring in these areas may affect *N. fossalis*; these protections and conservation tools will continue to contribute to recovery of this species. The second commenter did not suggest specific additional areas for inclusion in the proposed revised critical habitat designation, and we are not aware of any additional areas required for species recovery that should be proposed as revised critical habitat.

Comment 20: One commenter suggested edits to the proposed revised critical habitat rule text. The commenter stated that more information could have been included in the **Background** section of the proposed rule regarding the different substrates, hydrology, and habitat status of each core habitat area. The commenter also recommended we expand our discussion of the extent of protection during the early phase of HCP implementation and for plant species under the Act. The commenter specifically recommended the following edits:

(1) Note that *Navarretia fossalis* is generally restricted to vernal pools and alkali playas, and that in the alkali grasslands, this species is restricted to small vernal pools or other depressions within this community (**Background—Habitat** subsection);

(2) Note that suitability of hydrological conditions for the germination of this species vary on an annual basis, which means that *N. fossalis* can be absent for a number of years and the total number of plants can vary depending on the timing, duration, and extent of ponding (**Background—Habitat** subsection);

(3) Describe the unique nature of the ephemeral wetlands found along the San Jacinto River, especially how large scale flooding events, although uncommon, appear to maintain *N. fossalis* habitat and provide a species dispersal mechanism (**Primary**

Constituent Elements; **Ephemeral Wetland Habitat** subsection);

(4) Discuss the importance of specific microtopography required to provide sufficient ponding duration (hydrology) to support this species and the threat posed by alteration of microtopography (**Primary Constituent Elements**; **Ephemeral Wetland Habitat** subsection); and

(5) Mention a number of the larger vernal pools in the Perris Plain region occur on the Willows Soil Series (**Primary Constituent Elements**: **Topography and Soils that Support Ponding During Winter and Spring** subsection).

With regard to PCEs in general, the commenter stated:

(1) The importance of overland water flow and the size of the local watershed required to maintain ephemeral wetlands needs to be emphasized; and

(2) More information should be provided on the current condition of the PCEs in each subunit.

The commenter made the following specific edit recommendations for the **Criteria Used to Identify Critical Habitat** section:

(1) Step 3 should be expanded to note how total proposed area reductions in essential habitat were determined and the extent of local watershed inclusion in a unit; and

(2) Step 4 should include notes of any recent field or site condition observations.

The commenter made the following specific edit recommendations for the **Summary of Changes from Previously Designated Critical Habitat** section of the proposed revised rule:

(1) Regarding "Cruzan Mesa" subsection, they stated the pools could not fill by overland flow of water on the mesa, and recommended we explain how the habitat could be self-sustaining if the watershed area outside of proposed revised critical habitat boundaries was lost;

(2) Regarding "Wickerd Road and Scott Road" subsection, they stated more information should be provided on the current condition at this pool complex; and

(3) Regarding the "Santa Rosa Plateau" subsection, they recommended providing a summary of known Mesa de Burro species' distribution information.

The commenter made the following specific edit recommendations for the **Critical Habitat Units** section of the proposed revised rule:

(1) Expand the discussion of current habitat conditions and threats regarding the "San Jacinto River" and "Salt Creek Seasonally Flooded Alkali Plain" subsections;

(2) Discuss what habitat conservation has been or will be achieved under the Western Riverside County MSHCP at important occupied localities; and

(3) Note the presence of regionally significant vernal pools in addition to the areas of alkali playa and grassland; generally these pools are floristically distinct from these communities.

Our Response: We appreciate these editorial recommendations and have made changes to the text of this final rule, where appropriate (see **Background, Primary Constituent Elements**, **Criteria Used to Identify Critical Habitat**, **Summary of Changes From the Proposed Revised Rule and the Previous Critical Habitat Designation**, and **Critical Habitat Units** sections above). In some cases, the amount of detail requested by the commenter was not appropriate for the purpose of designating critical habitat; therefore some information was not incorporated.

Comment 21: Two commenters stated that they believe lands owned or under the jurisdiction of the Western Riverside County MSHCP permittees should be excluded from the revised *Navarretia fossalis* critical habitat designation. The commenters argued for exclusion because the HCP already adequately provides for the survival and recovery of the species, and under section 6.9 of the HCP and section 14.10 of the associated Implementing Agreement, no critical habitat should be designated in the HCP Plan Area. The first commenter also argued that case law ("15 vernal pool species court case") supports exclusion where the court upheld the exclusion of the Western Riverside County MSHCP. The second commenter stated that although the Western Riverside Flood Control and Water Conservation District is a Western Riverside County MSHCP permittee whose projects are currently subject to the provisions of the HCP, critical habitat designation may affect the continued operation, maintenance, and restoration of existing flood control facilities as well as the construction of future flood control improvements along the San Jacinto River and within the Salt Creek watershed. The second commenter also argued designating critical habitat within the Western Riverside County MSHCP Plan boundaries would create duplicative regulatory efforts without any additional benefits to the species.

Our Response: With regard to the commenters' assertions that lands owned or under the jurisdiction of the Western Riverside County MSHCP should be excluded because the HCP adequately provides for the survival and recovery of the species, or because the HCP is being fully implemented, we agree that the protection afforded *Navarretia fossalis* and its essential habitat under the MSHCP is a relevant consideration in our section 4(b)(2) exclusion analysis. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. We found the benefits of exclusion of lands covered by the Western Riverside County MSHCP to be greater than the minimal benefits of including these lands in the critical habitat designation in areas that receive long-term conservation and management for the species and its habitat (i.e., Subunits 6D and 6E). For more information, see response to Comment 13 and the **Application of Section 4(b)(2) of the Act** section for a detailed discussion.

After public review and comment on the proposed revision to critical habitat for *Navarretia fossalis*, we determined through our analysis under section 4(b)(2) of the Act that the maximum extent of allowable exclusions under the Western Riverside County MSHCP was limited to the exclusion of lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Subunits 6D and 6E where lands are conserved and managed in perpetuity (see **Application of Section 4(b)(2) of the Act—Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)** section above for a detailed discussion of the exclusion analysis.

We do not foresee additional effects of critical habitat designation on flood control operations along the San Jacinto River and within the Salt Creek watershed as a result of mandated habitat conservation actions. We believe any impacts to partnerships (a benefit of exclusion) would be outweighed by the benefits of inclusion as explained above. Therefore, the commenter's argument that lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees should be excluded because of possible impacts to the flood control facilities and future flood control improvements is not adequately supported.

Comment 22: Two commenters suggested that the Service should not exclude lands owned or under the jurisdiction of the Western Riverside County MSHCP permittees from the revised *Navarretia fossalis* critical habitat designation. The first commenter opposed to exclusion argued that no biological benefits are achieved by excluding habitat within HCP Plan areas

from critical habitat designation because:

(1) Research demonstrates species with designated critical habitat are less likely to be declining, and twice as likely to be recovering, than species without critical habitat (cited Taylor *et al.* 2005);

(2) The Western Riverside County MSHCP fails to address degradation of habitat inside the reserves, especially the ongoing problem of manure dumping activities; and

(3) There are nonsignatory agencies that have jurisdiction within the Western Riverside County MSHCP plan area who conduct activities outside of the HCP process that require section 7 consultation.

The second commenter opposed to exclusion gave the following reasons:

(1) Critical habitat designation provides potential for enhanced protection and recovery of this species within the HCP plan area, because these areas require "special management considerations or protection," and it is not a "hindrance to the conservation process";

(2) Habitat continues to be lost due to the common practices of disking, soil amendment, and hydrology alteration within the plan area because the Western Riverside County MSHCP does not address these existing land use practices and did not provide procedures for conserving specific populations of *Navarretia fossalis*;

(3) The benefits of critical habitat designation are especially great along the San Jacinto River, (Upper) Salt Creek, and the Wickerd Road and Scott Road vernal pools because threats are high and there is a potential Federal nexus in this area; and

(4) The proposed flood control plan for the San Jacinto River is a covered activity under the Western Riverside County MSHCP and the loss of infrequent, major flooding events may negatively affect the "metapopulation ecology" (dispersal required to recolonize pools where subpopulations have been extirpated) of *N. fossalis*.

Our Response: With regard to the commenters' assertions that lands owned or under the jurisdiction of the Western Riverside County MSHCP should not be excluded because the HCP may not adequately provide for the survival and recovery of the species, or because is not being fully implemented, we agree that the protection afforded *Navarretia fossalis* and its essential habitat under the Western Riverside County MSHCP is a relevant consideration in our section 4(b)(2) exclusion analysis. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. We found the benefits of exclusion of lands covered by the Western Riverside County MSHCP to be greater than the minimal benefits of including these lands in the critical habitat designation in areas that are currently receiving long-term conservation and management to benefit the species (i.e., Subunits 6D and 6E). For more information, see response to Comment 13 and the **Application of Section 4(b)(2) of the Act** section for a detailed discussion.

We do not agree with the commenter that Taylor *et al.*'s (2005, pp. 360–367) conclusions compel a finding that lands covered by the Western Riverside County MSHCP should be included in the revised *Navarretia fossalis* critical habitat designation. The results of Taylor *et al.* (2005, pp. 360–367) do indicate a significant conservation benefit of critical habitat designation; however, that study did not analyze or discuss the effects of HCP-based exclusions or the above-described exclusion determination process for *N. fossalis*. The benefits of excluding lands covered by a particular HCP based on partnerships must be analyzed independently and balanced against the benefits of inclusion (based on protections provided by critical habitat that are not redundant with HCP protections) because HCPs:

(1) Are variable in scope;

(2) Contain variable conservation and management planning efforts; and

(3) Use species abundance trends that may not be apparent for many years to determine effects of conservation measures.

Therefore, the general conclusions in the literature cited by the commenter do not warrant the specific conclusion that all essential habitat covered by HCPs should be included in critical habitat.

We agree with the commenter that when there are agencies with jurisdiction in the HCP plan area that are not HCP signatories who may conduct activities requiring section 7 consultation; the regulatory benefits of critical habitat designation may be higher in situations where the likely protections afforded through the section 7 consultation are not redundant with, but would go beyond, those afforded under the HCP. However the benefits of including or excluding particular areas may vary even within a specific HCP, and determining those relative benefits requires an evaluation of the circumstances affecting each area. The mere fact that a Federal nexus exists does not mean that regulatory benefits of designation will outweigh the benefits of exclusion.

Regarding the comment that areas should be included in critical habitat designation because they require special management considerations or protection, this language refers to the definition of critical habitat, not the exclusion process. Section 3(5)(A)(i) of the Act defines critical habitat, in part, as areas which may require special management considerations or protection. Section 4(b)(2) of the Act directs the Secretary to consider the impacts of designating such areas as critical habitat and provides the Secretary with discretion to exclude particular areas if the benefits of exclusion outweigh the benefits of inclusion. In this rule, we do not state that areas that are being adequately managed and protected do not meet the definition of critical habitat under section 3(5)(A) of the Act. Rather, we considered the management and protection of particular areas that do meet the definition of critical habitat in our exclusion analyses under section 4(b)(2) of the Act. Please see **Critical Habitat** and **Application of Section 4(b)(2) of the Act** sections above for more detailed discussions of the definition of critical habitat and exclusion analyses.

Comment 23: One commenter requested that if we designate new critical habitat, the revised critical habitat rule should include clear guidance to other Federal agencies by stating that proof of Western Riverside County MSHCP compliance will allow the agency to make a "no effect" determination with regard to projects in designated critical habitat to ensure that section 7 consultations are consistent with the Western Riverside County MSHCP and are completed in a timely manner.

Our Response: A "no effect" determination is the appropriate determination when the Federal action agency determines its proposed action will not affect a listed species or designated critical habitat. This requires a project (and species-specific) evaluation and analysis of effects to reach a "no effect" determination. Therefore, we are unable at this time to concur with any "no effect" determinations made by other Federal agencies for any future projects that may occur in *Navarretia fossalis* critical habitat.

Comment 24: One commenter requested that we exclude Subunit 4E from the revised critical habitat designation for *Navarretia fossalis* based on partnership benefits. They stated the Ramona Grasslands Open Space

Preserve in Subunit 4E is being managed and monitored according to Area Specific Management Directives built from the scientific framework laid out in the *Framework Management and Monitoring Plan for the Ramona Grasslands Open Space Preserve: San Diego County*. The commenter further stated that preserve management goals will be revised and updated to comply with the requirements of the North County MSCP once it is approved. The commenter provided a list of current management actions and specific goals for the conservation of *N. fossalis*.

Our Response: As discussed in the responses to Comments 13 and 21, exclusions under section 4(b)(2) of the Act are not based on partnership benefits alone, but whether the benefits of exclusion outweigh the benefits of inclusion. We reviewed the Area Specific Management Directives referenced by the commenter and determined that they do describe and provide beneficial conservation measures for *Navarretia fossalis* that are redundant with conservation measures provided by critical habitat designation, and therefore would reduce the benefits of inclusion in critical habitat if implementation were assured into the future. When considering the benefits of exclusion, we consider a variety of factors, including but not limited to whether the plan is finalized (i.e., approved by all parties) and there is a reasonable expectation that conservation management strategies and actions will be implemented into the future (see **Application of Section 4(b)(2) of the Act** section for further discussion). The HCP under which these measures will be assured of future implementation is not yet finalized; therefore, we determined the benefits of exclusion do not outweigh the benefits of inclusion for lands within the Ramona Grasslands Open Space Preserve portion of Subunit 4E from *N. fossalis* critical habitat designation at this time.

Comment 25: Two commenters expressed concerns regarding the inclusion or exclusion of lands owned or under the jurisdiction of MSCP permittees in the *Navarretia fossalis* final revised critical habitat designation. The first commenter opposed to exclusion argued that no biological benefits are achieved by excluding habitat within HCP plan areas from critical habitat designation because:

(1) Research demonstrates species with designated critical habitat are less likely to be declining, and twice as likely to be recovering, than species without critical habitat (cited Taylor *et al.* 2005);

(2) The MSCP fails to address degradation of habitat inside the conserved areas, especially where illegal OHV activities have "severely" impacted vernal pools; and

(3) There are nonsignatory agencies that have jurisdiction within the MSCP plan area who conduct activities outside of the HCP process that require section 7 consultation.

The second commenter stated the MSCP provides for the conservation of *Navarretia fossalis* and therefore lands owned by or under the jurisdiction of permittees should be excluded from critical habitat designation under section 4(b)(2) of the Act.

Our Response: A decision to exclude lands from critical habitat is based on an evaluation of the benefits of exclusion in comparison to the benefits of inclusion. Please see response to Comment 13 above regarding arguments for and against exclusion of lands owned by or under the jurisdiction of regional HCP permittees. We found the benefits of exclusion of lands covered by the County of San Diego Subarea Plan under the MSCP outweighed the benefits of inclusion for areas that are receiving long-term conservation and management (Subunit 3A); however, we found that the benefits of inclusion outweighed the benefits of exclusion on lands that are currently not conserved and being impacted by activities that were not covered by the County of San Diego Subarea Plan because there were potential significant benefits to the conservation of *Navarretia fossalis* that may come from the designation of critical habitat on these lands (Subunits 5B, 5F, and 5I). See response to Comment 13 and 22 and **Application of Section 4(b)(2) of the Act** section for a complete discussion.

Comment 26: One commenter recommended critical habitat be designated on military bases where applicable, and stated it is not appropriate to rely on integrated natural resources management plans (INRMPs) for protection of *Navarretia fossalis*.

Our Response: We do not have discretion to designate critical habitat on the military bases within proposed revised critical habitat as suggested by the commenter. The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." (See **Application of Section 4(a)(3) of the Act** section above for further discussion). We determined the INRMPs for MCB Camp Pendleton and MCAS Miramar (Marine Corps Base Camp Pendleton 2007; Gene Stout and Associates *et al.* 2006) provide benefits to *Navarretia fossalis*; therefore, the Act mandates we exempt these military bases from critical habitat designation (see **Application of Section 4(a)(3) of the Act** section above for further discussion).

Comment 27: One commenter stated that no areas should be excluded from critical habitat designation based on HCPs that have not been finalized and implemented because there is no guarantee that proposed HCPs will be finalized.

Our Response: We did not exclude any habitat from this revised critical habitat designation within the plan area of an HCP permit that has not yet been issued (see responses to Comments 14 and 24).

Comment 28: One commenter stated that areas of Unit 6 covered by the Western Riverside County MSHCP should be excluded from critical habitat designation based on the Service's permitting Biological Opinion for the Western Riverside County MSHCP (Service 2004b) for several reasons:

(1) The Service's reasoning in the 2005 rule that excluded the same areas in the 2005 designation;

(2) The proposed designation of these areas covered by the Western Riverside County MSHCP is not beneficial to the species;

(3) The Western Riverside County MSHCP precludes designation of critical habitat;

(4) Several species for which critical habitats were not designated occur on Western Riverside County MSHCP covered lands; and

(5) The idea that designations of critical habitat within the Western Riverside County MSHCP ultimately function as disincentives to such planning processes.

Our Response: For lands within the jurisdiction of the Western Riverside County MSHCP, this rule excludes a portion (Subunits 6D and 6E) and includes the remaining covered lands (Subunits 6A, 6B, and 6C) as designated critical habitat. When we conduct an exclusion analysis under section 4(b)(2) of the Act, each exclusion is based on weighing the benefits of exclusion with

the benefits of inclusion. We found the benefits of exclusion of lands covered by the Western Riverside County MSHCP to be greater than the minimal benefits of including these lands in the critical habitat designation in areas that receive long-term conservation and management of the species and its habitat (i.e., Subunits 6D and 6E). Please see the **Application of Section 4(b)(2) of the Act** section for a detailed discussion on our exclusion analyses (including why areas covered by the Western Riverside County MSHCP that are designated as critical habitat are beneficial to the species) for those areas we considered for exclusion in the proposed revised critical habitat designation (74 FR 27588), the associated document announcing the DEA (75 FR 19575), and our response to Comment 13.

With regard to the commenters concern of designating areas in this rule that were excluded in the 2005 critical habitat designation, we did not designate areas containing essential habitat features if those habitat features were already conserved and managed for the benefit of *Navarretia fossalis* because we concluded that the areas did not meet the second part of the definition of critical habitat under section 3(5)(a)(i) of the Act. We have reconsidered our approach in this rule in light of subsequent court decisions and have decided that areas containing essential habitat features that "may require" special management considerations or protection do meet the definition of critical habitat irrespective of whether the habitat features are currently receiving special management or protection. See the **Summary of Changes From the 2005 Final Designation of Critical Habitat** section for further discussion of why some areas were included as critical habitat in this rule that were excluded in the 2005 rule.

With regard to the commenter's belief that critical habitat should not be designated in the Western Riverside County MSHCP Plan Area based on language in section 6.9 of the HCP and the associated Implementing Agreement, section 14.10 of the Implementing Agreement does not preclude critical habitat designation within the plan area (Dudek and Associates 2003, p. 63). See our response to Comment 20 for a discussion of why critical habitat is not precluded under an HCP Implementing Agreement.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency 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 (small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for *Navarretia fossalis* will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 rule, 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 revised designation of critical habitat for *Navarretia fossalis* would significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the *Navarretia fossalis* is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate

consultation for ongoing Federal activities (see **Application of the "Adverse Modification" Standard** section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the revised designation of critical habitat for *Navarretia fossalis*. The analysis is based on the estimated impacts associated with the rulemaking as described in sections 3 through 9 of the analysis and evaluates the potential for economic impacts related to: residential, commercial and industrial development; conservation lands management; transportation; pipeline projects; flood control; agriculture; and fire management (Entrix 2010, p. A-1). The FEA estimates the total incremental impacts associated with development as a whole to be $112,000 to $431,000 over the 20–year timeframe of the FEA. The FEA identifies incremental impacts to small entities to occur only in the development sector (Entrix 2010, p. A-2). The other categories of projects either will have no impacts (conservation land management, pipeline projects, agriculture, or fire management) or are Federal, State, or public entities not considered small or exceed the criteria for small business status (Entrix 2010, pp. A-1–A-2). Of the approximately 3,143 ac (1,272 ha) land considered developable in the designation, only 1,130 ac (457 ha) has been forecasted to be developed over the next 20–year timeframe (Entrix 2010, p. A-3). The FEA equates this acreage to 38 projects, with one developer per project (Entrix 2010, p. A-3). The FEA summarizes that two developers annually may be affected by the designation of critical habitat resulting in total annualized incremental impacts to small entities of $10,565 to $40,644 (Entrix 2010, pp. A-3, A-4). The FEA assumes all developers are considered small and states that this estimate may overstate impacts if not all of the developers are small (Entrix 2010, p. A-4). The FEA also states (Section 3 of the FEA) that where substitute land is readily available to developers, costs will be passed on to affected landowners in the form of decreased land value and that under such circumstances most of the costs will not be borne by developers (Entrix 2010, p. A-4). Please refer to our final economic analysis of critical habitat designation for *N. fossalis* for a more detailed discussion of potential economic impacts.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. The total number of small businesses impacted annually by the designation is estimated to be two, with an annualized impact of approximately of $10,565 to $40,644. This impact is less than 10 percent of the total incremental impact identified for development activities and may be an overestimate of the impacts considering that not all developers will be small and that some of these costs may be passed on to landowners. Based on the above reasoning and currently available information, we concluded this rule would not result in a significant economic impact on a substantial number of small entities for transportation, development, and flood control impacts as identified in the FEA (Entrix 2010, pp. A-1–A-4). Therefore, we are certifying that the designation of critical habitat for *Navarretia fossalis* will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use") 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. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with *Navarretia fossalis* conservation activities within critical habitat are not expected. As such, the designation of critical habitat 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, the Service makes the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat

shift the costs of the large entitlement programs listed above onto State governments.

(2) As discussed in the FEA of the revised designation of critical habitat for *Navarretia fossalis*, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act . The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects activities; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, California Department of Transportation, CDFG, Riverside County, Riverside County Flood Control and Water Conservation District, and City of Perris, which are not considered small governments. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Navarretia fossalis* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *N. fossalis* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior, we requested information from, and coordinated development of the proposed critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), this rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the subspecies within the designated areas to assist the public in understanding the habitat needs of *Navarretia fossalis*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation of the species, nor are there any unoccupied tribal lands that are essential for the conservation of *Navarretia fossalis*. Therefore, we are not designating critical habitat for *N. fossalis* on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.96(a), revise the entry for "*Navarretia fossalis* (spreading navarretia)" under family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Polemoniaceae: *Navarretia fossalis* (spreading navarretia)

(1) Critical habitat units are depicted for Los Angeles, Riverside, and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements (PCEs) for *Navarretia fossalis* consist of three components:

(i) PCE 1—*Ephemeral wetland habitat.* Vernal pools (up to 10 ac (4 ha)) and seasonally flooded alkali vernal plains that become inundated by winter rains and hold water or have saturated soils for 2 weeks to 6 months during a year with average rainfall (i.e., years where average rainfall amounts for a particular area are reached during the rainy season (between October and May)). This period of inundation is long enough to promote germination, flowering, and seed production for *Navarretia fossalis* and other native species typical of vernal pool and seasonally flooded alkali vernal plain habitat, but not so long that true wetland species inhabit the areas.

(ii) PCE 2—*Intermixed wetland and upland habitats that act as the local watershed.* Areas characterized by mounds, swales, and depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools described in PCE 1.

(iii) PCE 3—*Soils that support ponding during winter and spring.* Soils found in areas characterized in PCEs 1 and 2 that have a clay component or other property that creates an impermeable surface or subsurface layer. These soil types include, but are not limited to: Cieneba-Pismo-Caperton soils in Los Angeles County; Domino, Traver, Waukena, Chino, and Willows soils in Riverside County; and Huerhuero, Placentia, Olivenhain, Stockpen, and Redding soils in San Diego County.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of 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 map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5' quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) *Note*: Index Map of critical habitat units for *Navarretia fossalis* (spreading navarretia) follows:

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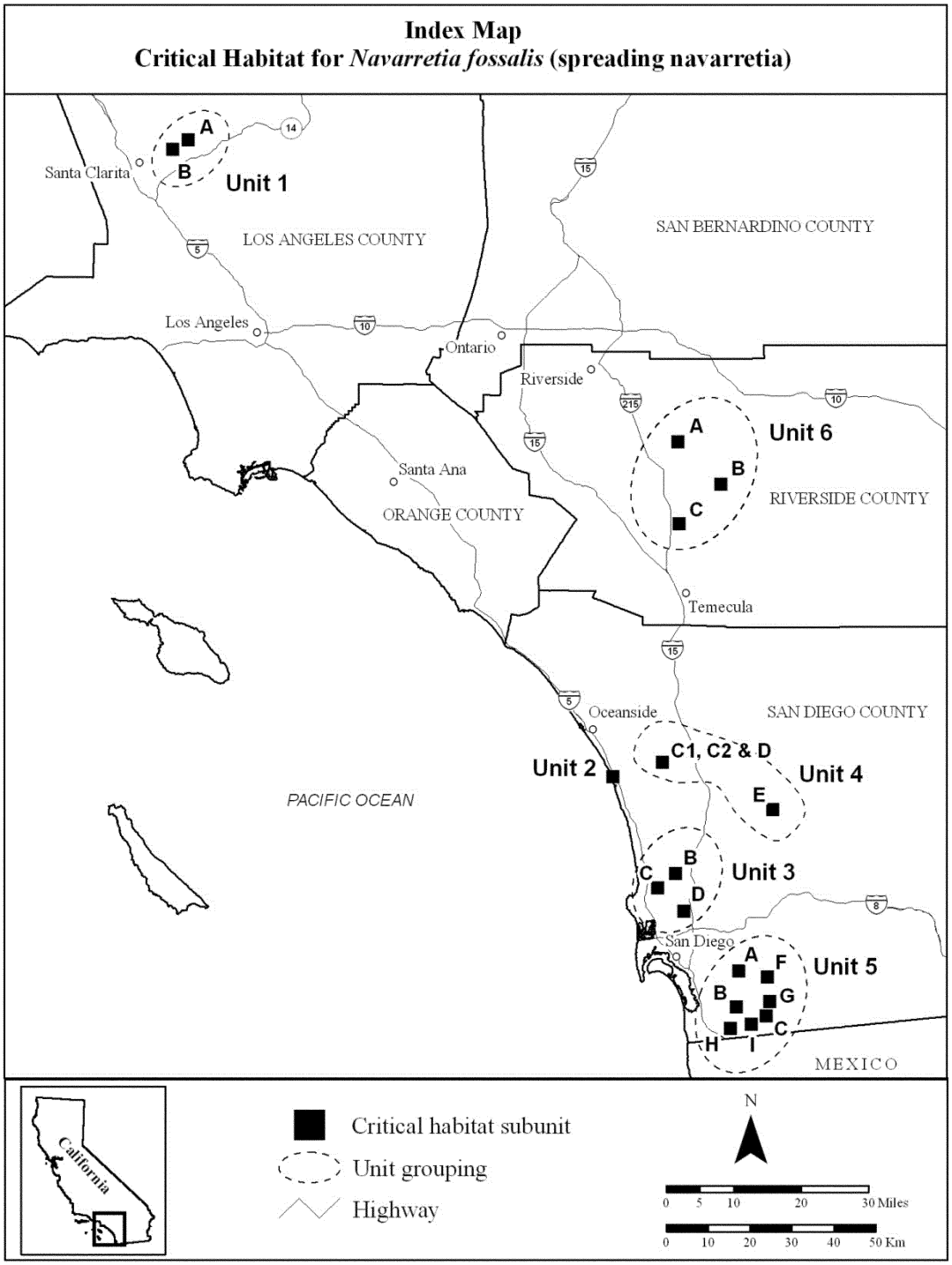


(6) Unit 1: Los Angeles Basin–Orange Management Area, Los Angeles County, CA. Subunit 1A: Cruzan Mesa.

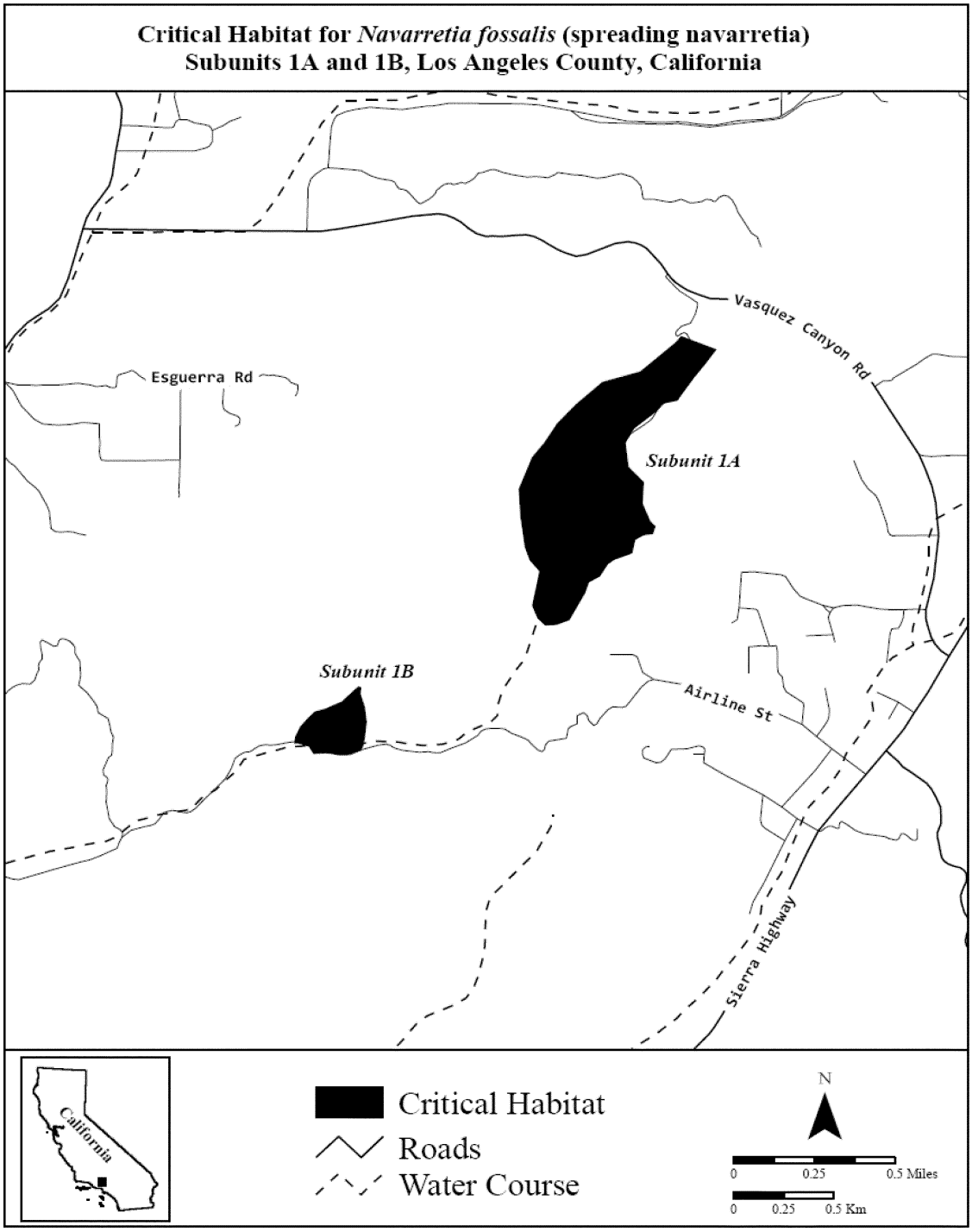
(i) From USGS 1:24,000 quadrangle Mint Canyon. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates (E, N): 367454, 3813696; 367493, 3813876; 367443, 3813933; 367418, 3814003; 367396, 3814159; 367387, 3814304; 367454, 3814474; 367517, 3814549; 367580, 3814651; 367676, 3814752; 367807, 3814866; 367996, 3814923; 368172, 3815075; 368198, 3815107; 368375, 3815036; 368318, 3814957; 368262, 3814889; 368198, 3814795; 368181, 3814768; 368108, 3814754; 368073, 3814710; 367963, 3814624; 367921, 3814549; 367938, 3814421; 368014, 3814343; 368006, 3814230; 368048, 3814134; 368070, 3814110; 368060, 3814070; 368014, 3814065; 367972, 3814041; 367955, 3813970; 367935, 3813962; 367866, 3813938; 367834, 3813913; 367795, 3813849; 367740, 3813818; 367720, 3813762; 367640, 3813619; 367577, 3813595; 367520, 3813592; 367481, 3813628; 367454, 3813696; thence returning to 367454, 3813696.

(ii) *Note:* Map of Subunit 1A (Cruzan Mesa) is provided at paragraph (7)(ii) of this entry.

(7) Unit 1: Los Angeles Basin–Orange Management Area, Los Angeles County, CA. Subunit 1B: Plum Canyon.

(i) From USGS 1:24,000 quadrangle Mint Canyon. Land bounded by the following UTM NAD83 coordinates (E, N): 366405, 3812925; 366364, 3812918; 366339, 3812957; 366287, 3812974; 366266, 3812973; 366271, 3813010; 366295, 3813063; 366333, 3813106; 366370, 3813141; 366424, 3813157; 366448, 3813168; 366505, 3813193; 366585, 3813271; 366601, 3813269; 366600, 3813233; 366619, 3813163; 366628, 3813088; 366619, 3813004; 366612, 3812959; 366602, 3812939; 366532, 3812913; 366490, 3812911; 366441, 3812920; 366405, 3812925; thence returning to 366405, 3812925.

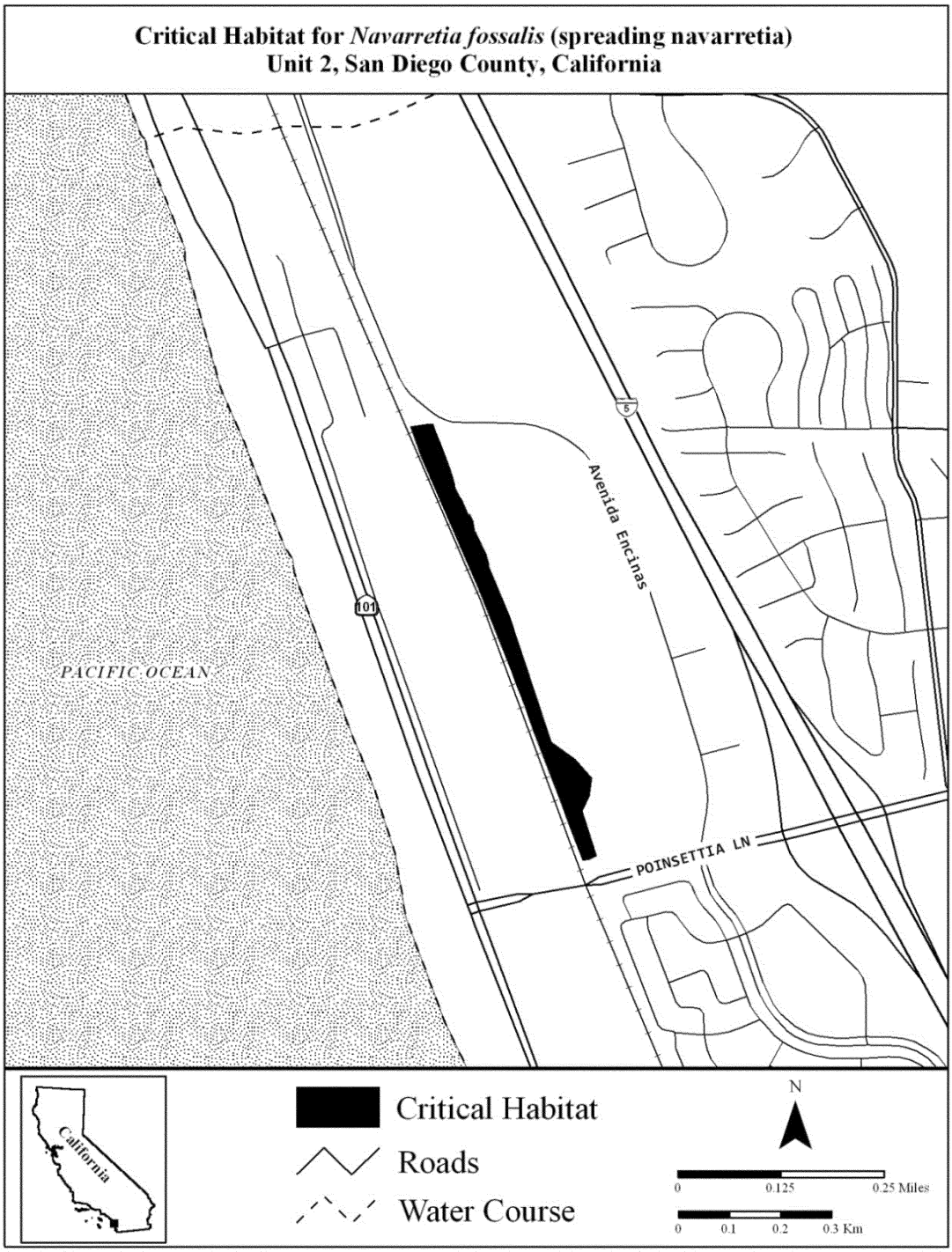
(ii) *Note:* Map of Unit 1, Subunits 1A (Cruzan Mesa) and 1B (Plum Canyon) follows:



(8) Unit 2: San Diego: Northern Coastal Mesa Management Area—Poinsettia Lane Commuter Station, San Diego County, CA.

(i) From USGS 1:24,000 quadrangle Encinitas. Land bounded by the following UTM NAD83 coordinates (E, N): 470268, 3663409; 470278, 3663384; 470281, 3663385; 470287, 3663371; 470291, 3663351; 470291, 3663350; 470312, 3663306; 470317, 3663288; 470319, 3663280; 470359, 3663184; 470392, 3663084; 470440, 3662935; 470487, 3662900; 470520, 3662863; 470515, 3662828; 470501, 3662798; 470529, 3662710; 470522, 3662706; 470515, 3662703; 470501, 3662700; 470476, 3662766; 470454, 3662825; 470429, 3662892; 470404, 3662960; 470386, 3663008; 470368, 3663055; 470361, 3663075; 470296, 3663238; 470184, 3663499; 470163, 3663558; 470195, 3663563; 470209, 3663563; 470210, 3663559; 470213, 3663548; 470223, 3663527; 470234, 3663498; 470242, 3663476; 470248, 3663458; 470251, 3663445; 470251, 3663440; 470260, 3663420; 470264, 3663415; thence returning to 470268, 3663409.

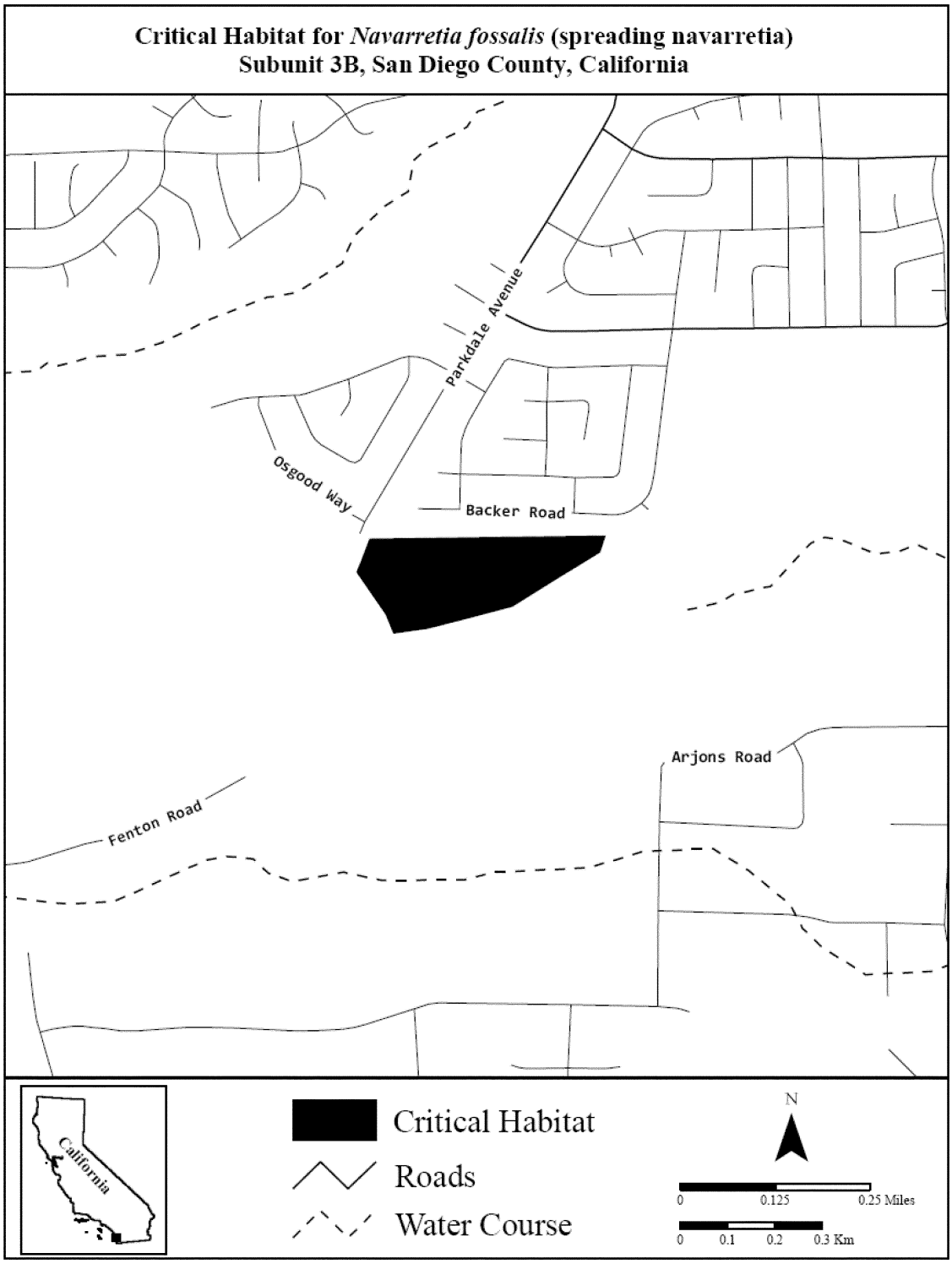
(ii) *Note:* Map of Unit 2 (Poinsettia Lane Commuter Station) follows:



(9) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3B: Carroll Canyon.

(i) From USGS 1:24,000 quadrangle Del Mar. Land bounded by the following UTM NAD83 coordinates (E, N): 485008, 3639919; 485017, 3639943; 485017, 3639943; 485018, 3639947; 485035, 3639991; 485533, 3639996; 485537, 3639996; 485537, 3639996; 485525, 3639961; 485476, 3639931; 485440, 3639908; 485440, 3639908; 485338, 3639845; 485223, 3639815; 485221, 3639814; 485179, 3639804; 485179, 3639803; 485158, 3639798; 485086, 3639788; 485070, 3639828; 485008, 3639919; thence returning to 485008, 3639919.

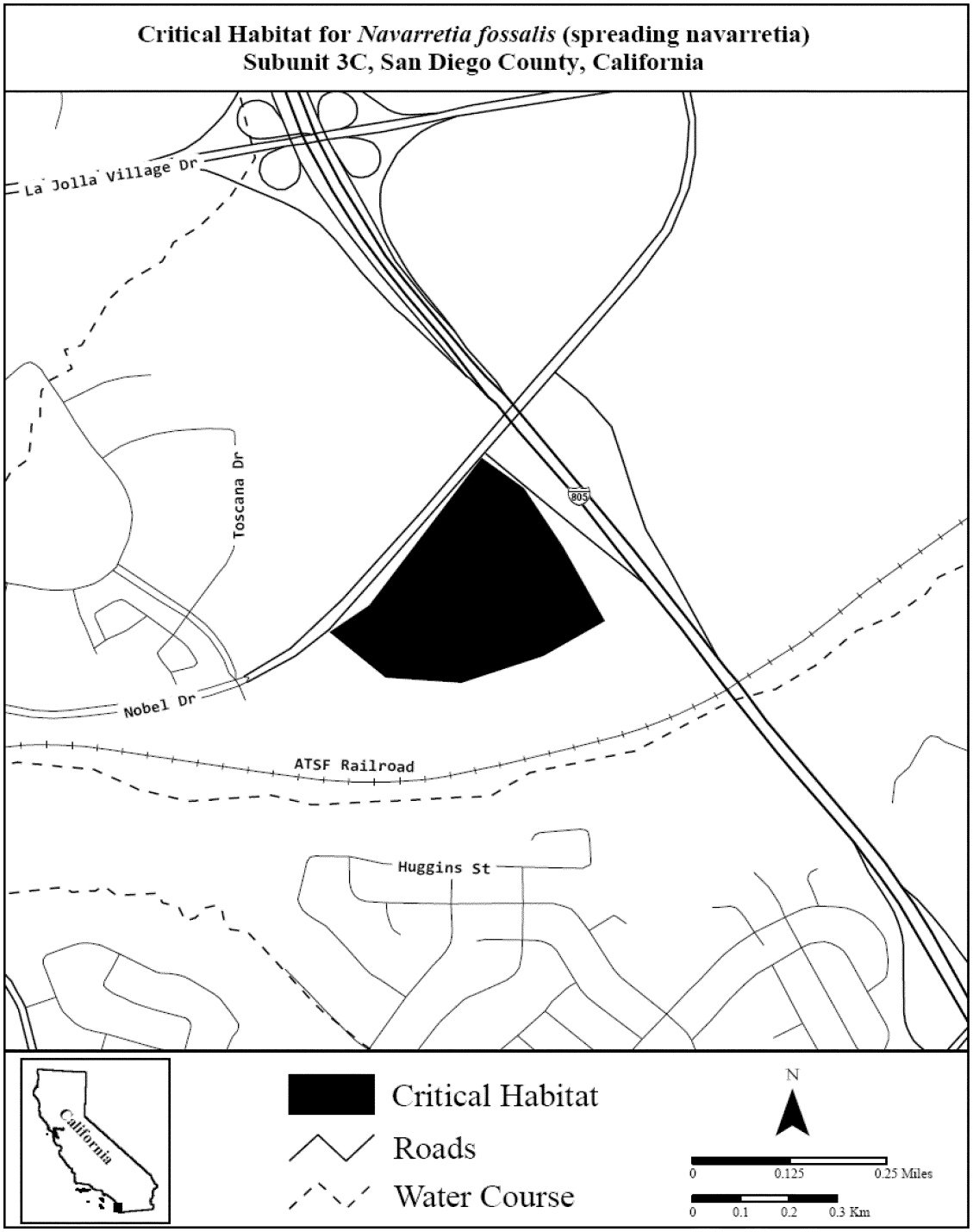
(ii) *Note*: Map of Unit 3, Subunit 3B (Carroll Canyon) follows:



(10) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3C: Nobel Drive.

(i) From USGS 1:24,000 quadrangle La Jolla. Land bounded by the following UTM NAD83 coordinates (E, N): 481837, 3636331; 481667, 3636273; 481510, 3636284; 481409, 3636370; 481393, 3636384; 481475, 3636442; 481708, 3636763; 481796, 3636699; 481797, 3636697; 481797, 3636697; 481877, 3636570; 481965, 3636407; 481837, 3636331; thence returning to 481837, 3636331.

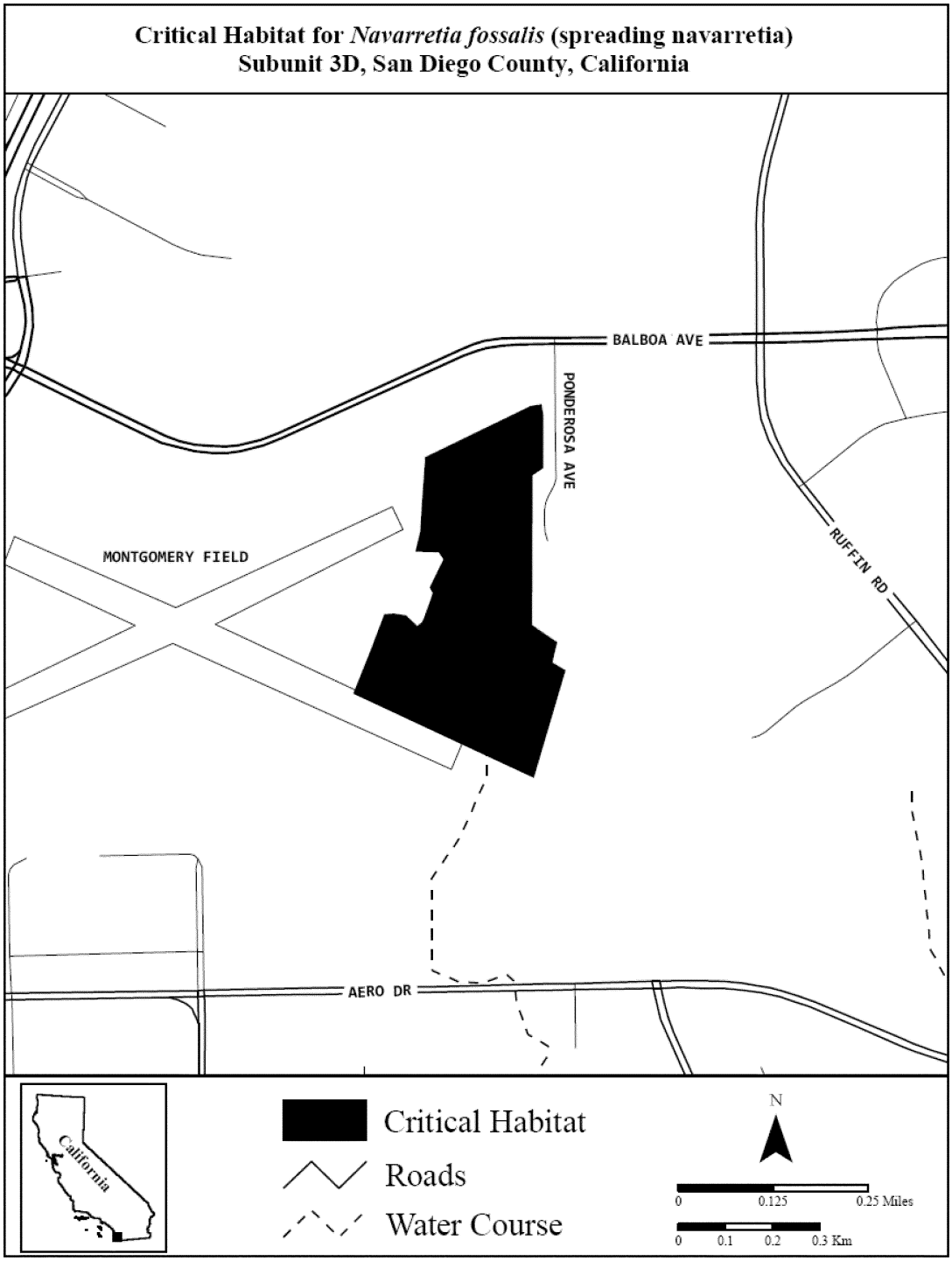
(ii) *Note*: Map of Unit 3, Subunit 3C (Nobel Drive) follows:



(11) Unit 3: San Diego: Central Coastal Mesa Management Area, San Diego County, CA. Subunit 3D: Montgomery Field.

(i) From USGS 1:24,000 quadrangle La Jolla. Land bounded by the following UTM NAD83 coordinates (E, N): 487573, 3630977; 487591, 3630964; 487627, 3630940; 487619, 3630908; 487617, 3630896; 487645, 3630880; 487577, 3630651; 487447, 3630712; 487233, 3630813; 487194, 3630830; 487232, 3630926; 487248, 3630966; 487260, 3630999; 487281, 3631001; 487306, 3630997; 487327, 3630977; 487330, 3630975; 487334, 3630978; 487336, 3630979; 487341, 3630983; 487343, 3630991; 487359, 3631033; 487363, 3631045; 487361, 3631049; 487357, 3631057; 487377, 3631099; 487386, 3631117; 487376, 3631131; 487375, 3631131; 487326, 3631133; 487336, 3631175; 487340, 3631237; 487346, 3631328; 487347, 3631333; 487384, 3631352; 487437, 3631378; 487571, 3631443; 487594, 3631446; 487598, 3631422; 487598, 3631310; 487575, 3631296; 487573, 3630977; thence returning to 487573, 3630977.

(ii) *Note*: Map of Unit 3, Subunit 3D (Montgomery Field) follows:



(12) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C1: San Marcos (Upham).

(i) From USGS 1:24,000 quadrangle San Marcos. Land bounded by the following UTM NAD83 coordinates (E, N): 481857, 3666532; 481841, 3666524; 481458, 3666685; 481587, 3666988; 481974, 3666823; 481857, 3666532; thence returning to 481857, 3666532.

(ii) *Note*: Map of Unit 4, Subunit 4C1 is provided at paragraph (14)(ii) of this entry.

(13) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4C2: San Marcos (Universal Boot).

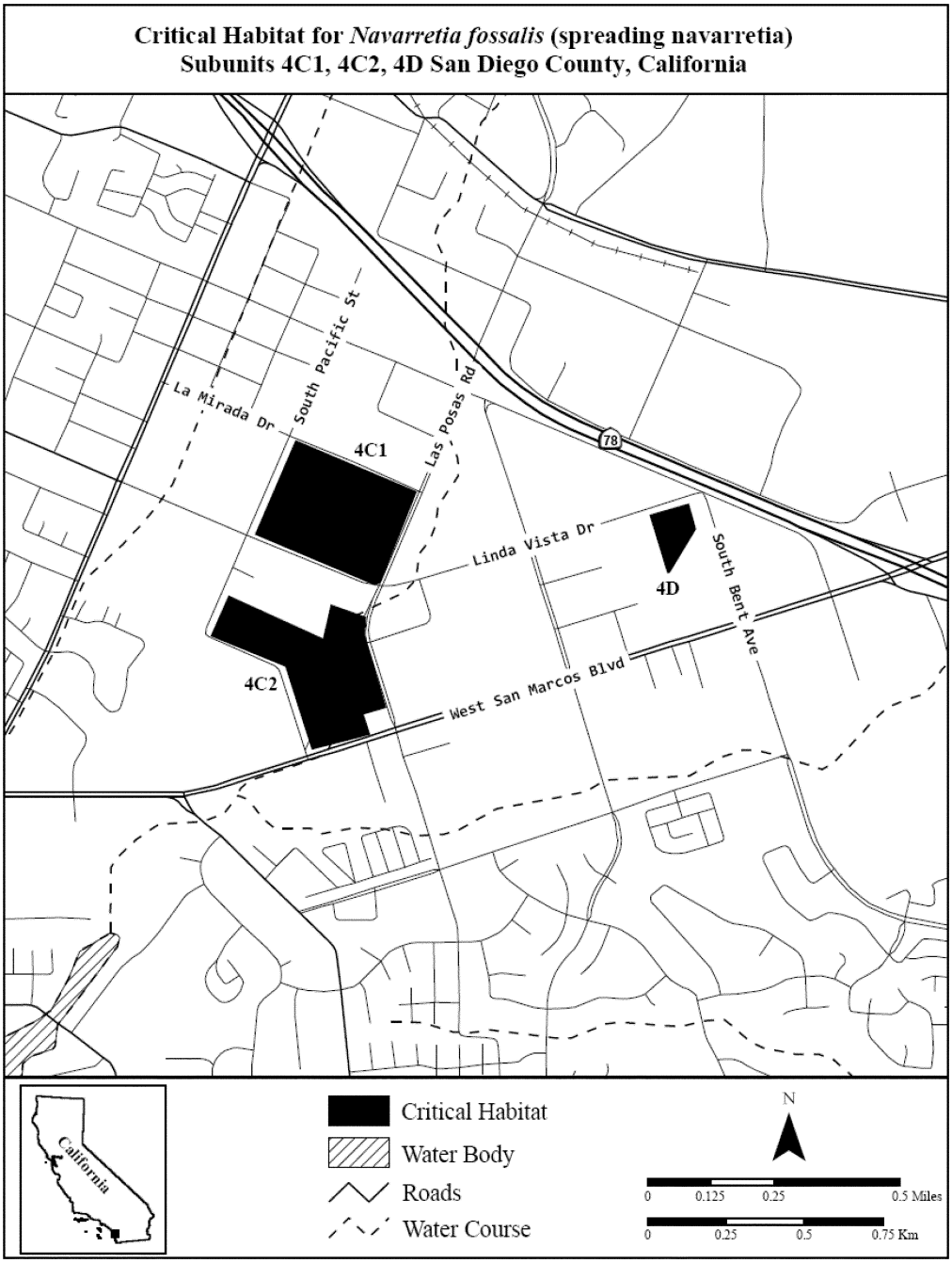
(i) From USGS 1:24,000 quadrangle San Marcos. Land bounded by the following UTM NAD83 coordinates (E, N): 481373, 3666492; 481676, 3666355; 481700, 3666464; 481813, 3666423; 481809, 3666367; 481877, 3666133; 481805, 3666113; 481825, 3666048; 481669, 3666007; 481641, 3666000; 481639, 3666000; 481639, 3666002; 481618, 3666066; 481555, 3666266; 481317, 3666363; 481373, 3666492; thence returning to 481373, 3666492.

(ii) *Note*: Map of Unit 4, Subunit 4C2 is provided at paragraph (14)(ii) of this entry.

(14) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4D: San Marcos (Bent Avenue).

(i) From USGS 1:24,000 quadrangle San Marcos. Land bounded by the following UTM NAD83 coordinates (E, N): 482781, 3666563; 482772, 3666562; 482716, 3666750; 482842, 3666785; 482865, 3666703; 482781, 3666563; thence returning to 482781, 3666563.

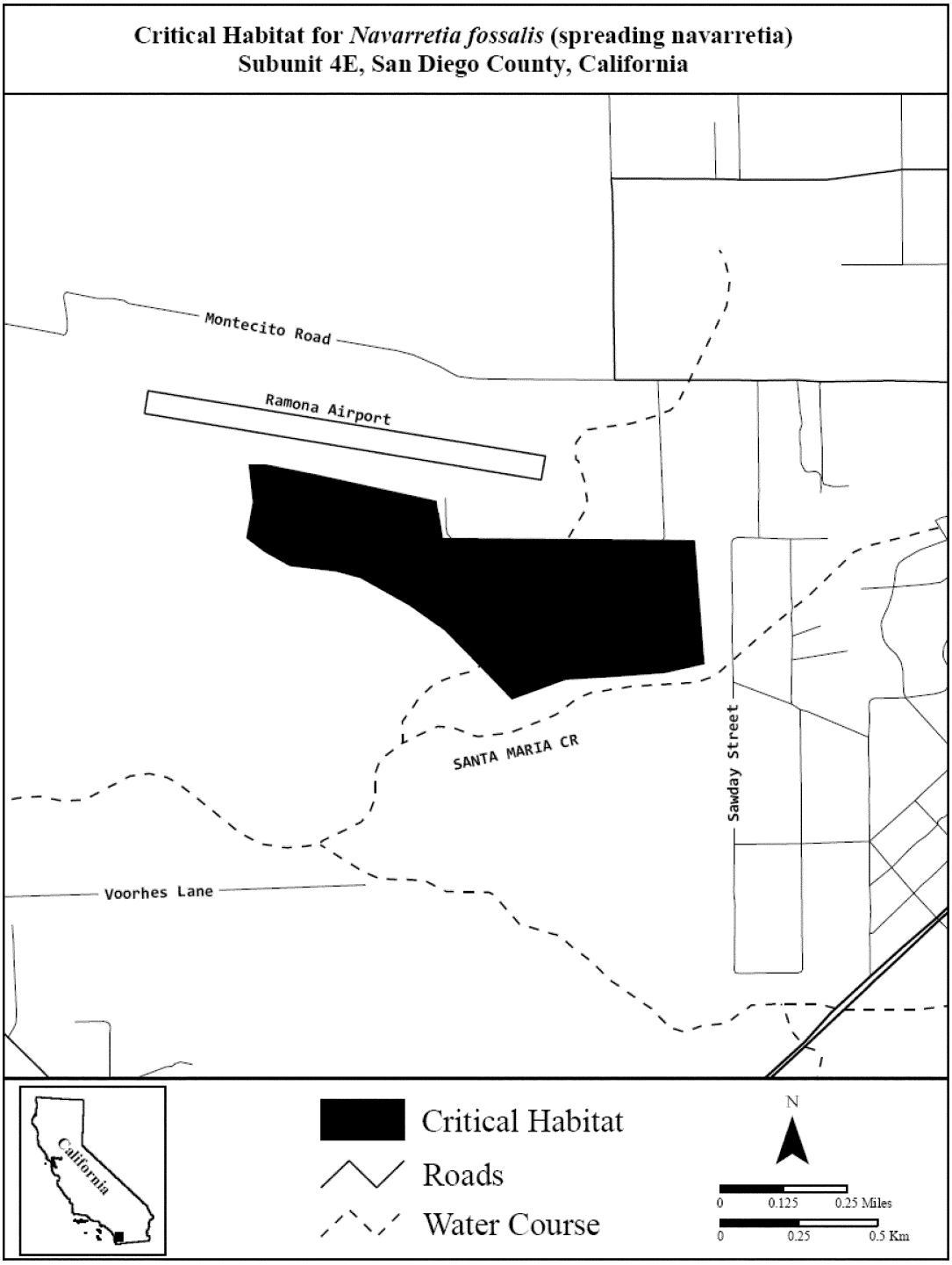
(ii) *Note*: Map of Unit 4, Subunits 4C1, 4C2, and 4D (San Marcos) follows:



(15) Unit 4: San Diego: Inland Management Area, San Diego County, CA. Subunit 4E: Ramona.

(i) From USGS 1:24,000 quadrangle San Pasqual. Land bounded by the following UTM NAD83 (E, N): 508768, 3654813; 508597, 3654751; 508493, 3654857; 508382, 3654971; 508373, 3654977; 508373, 3654977; 508366, 3654982; 508357, 3654989; 508270, 3655050; 508115, 3655137; 508036, 3655159; 507889, 3655176; 507807, 3655222; 507750, 3655265; 507772, 3655380; 507758, 3655500; 507813, 3655500; 507965, 3655470; 508357, 3655383; 508363, 3655347; 508363, 3655345; 508375, 3655275; 508376, 3655265; 509073, 3655260; 509073, 3655260; 509073, 3655260; 509180, 3655257; 509181, 3655234; 509181, 3655233; 509209, 3654862; 509082, 3654835; 508896, 3654822; 508768, 3654813; thence returning to 508768, 3654813.

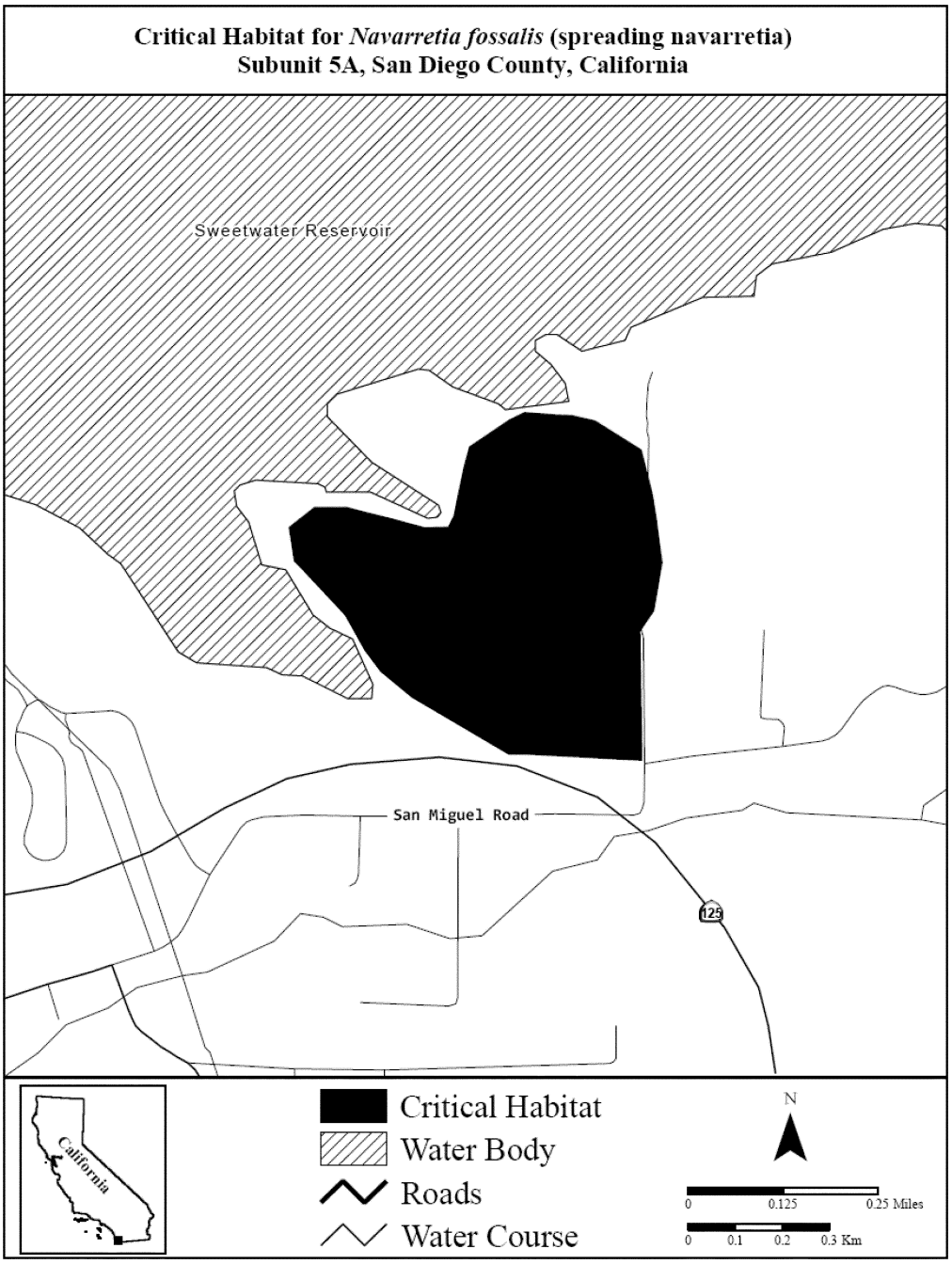
(ii) *Note*: Map of Unit 4, Subunit 4E (Ramona) follows:



(16) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5A: Sweetwater Vernal Pools.

(i) From USGS 1:24,000 quadrangle Jamul Mountains. Land bounded by the following UTM NAD83 coordinates (E, N): 501084, 3616605; 501096, 3616520; 501078, 3616418; 501054, 3616382; 501054, 3616382; 501051, 3616377; 501051, 3616376; 501051, 3616376; 501051, 3616376; 501049, 3616374; 501052, 3616122; 501052, 3616122; 501052, 3616121; 501053, 3616099; 501005, 3616101; 501004, 3616101; 501002, 3616102; 500915, 3616106; 500913, 3616107; 500913, 3616107; 500814, 3616112; 500775, 3616112; 500775, 3616112; 500775, 3616112; 500769, 3616112; 500562, 3616233; 500497, 3616288; 500462, 3616334; 500436, 3616380; 500420, 3616409; 500402, 3616428; 500327, 3616508; 500312, 3616524; 500300, 3616596; 500356, 3616639; 500425, 3616639; 500468, 3616628; 500511, 3616617; 500591, 3616596; 500640, 3616597; 500651, 3616619; 500670, 3616713; 500671, 3616718; 500685, 3616767; 500770, 3616826; 500802, 3616841; 500872, 3616836; 500903, 3616834; 500952, 3616822; 501051, 3616760; 501075, 3616669; 501075, 3616667; 501076, 3616663; 501084, 3616607; 501084, 3616605; 501084, 3616605; thence returning to 501084, 3616605.

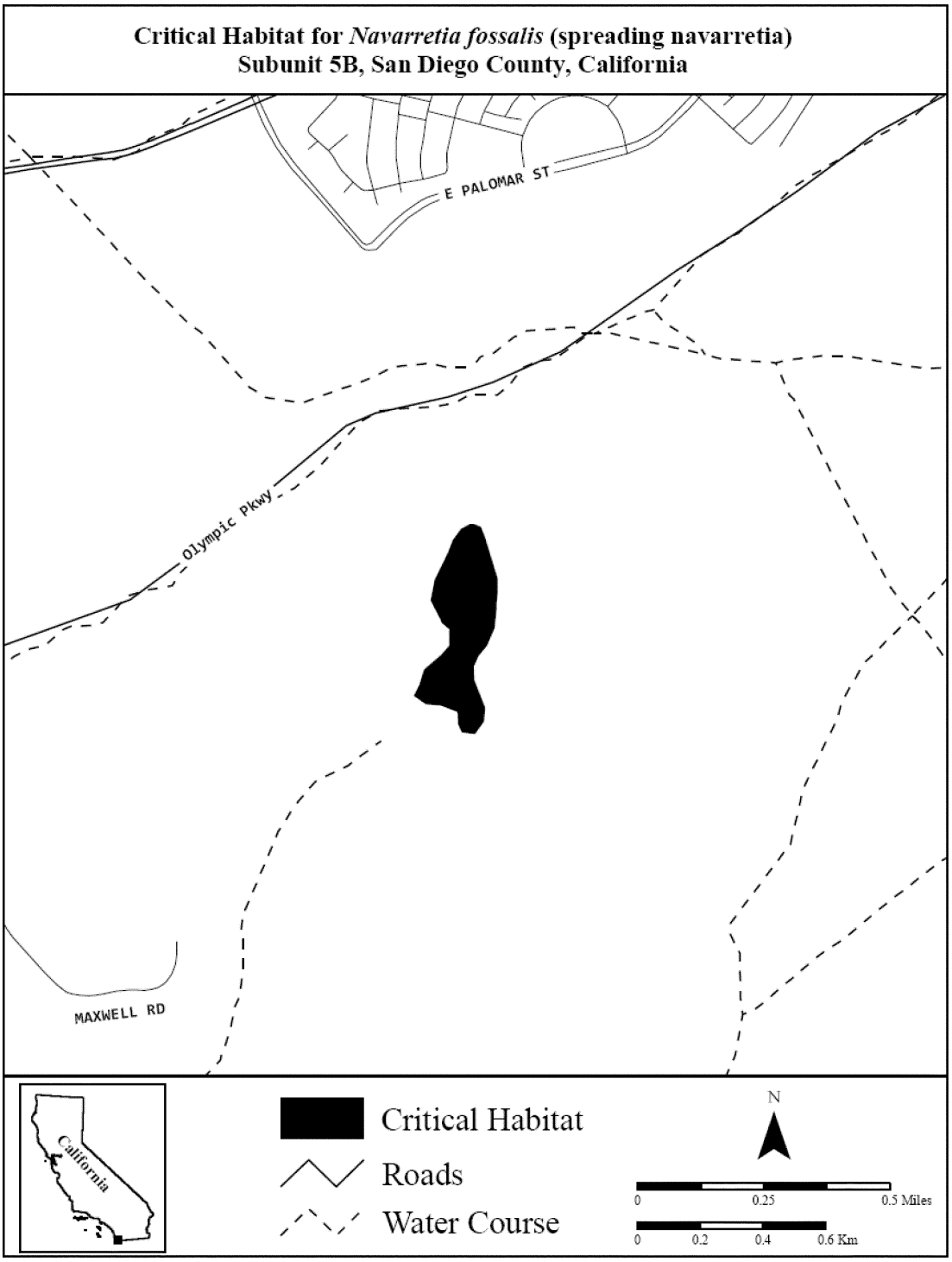
(ii) *Note*: Map of Unit 5, Subunit 5A (Sweetwater Vernal Pools) follows:



(17) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5B: Otay River Valley.

(i) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499953, 3607783; 499924, 3607743; 499882, 3607749; 499871, 3607775; 499868, 3607814; 499815, 3607834; 499768, 3607839; 499731, 3607866; 499747, 3607899; 499762, 3607949; 499818, 3607996; 499843, 3608025; 499843, 3608079; 499818, 3608100; 499815, 3608107; 499784, 3608170; 499796, 3608236; 499838, 3608323; 499855, 3608364; 499880, 3608400; 499909, 3608415; 499921, 3608415; 499944, 3608404; 499957, 3608370; 499997, 3608238; 499997, 3608196; 499994, 3608161; 499992, 3608144; 499988, 3608082; 499962, 3608026; 499936, 3607993; 499920, 3607960; 499923, 3607916; 499939, 3607872; 499957, 3607827; 499953, 3607783; thence returning to 499953, 3607783.

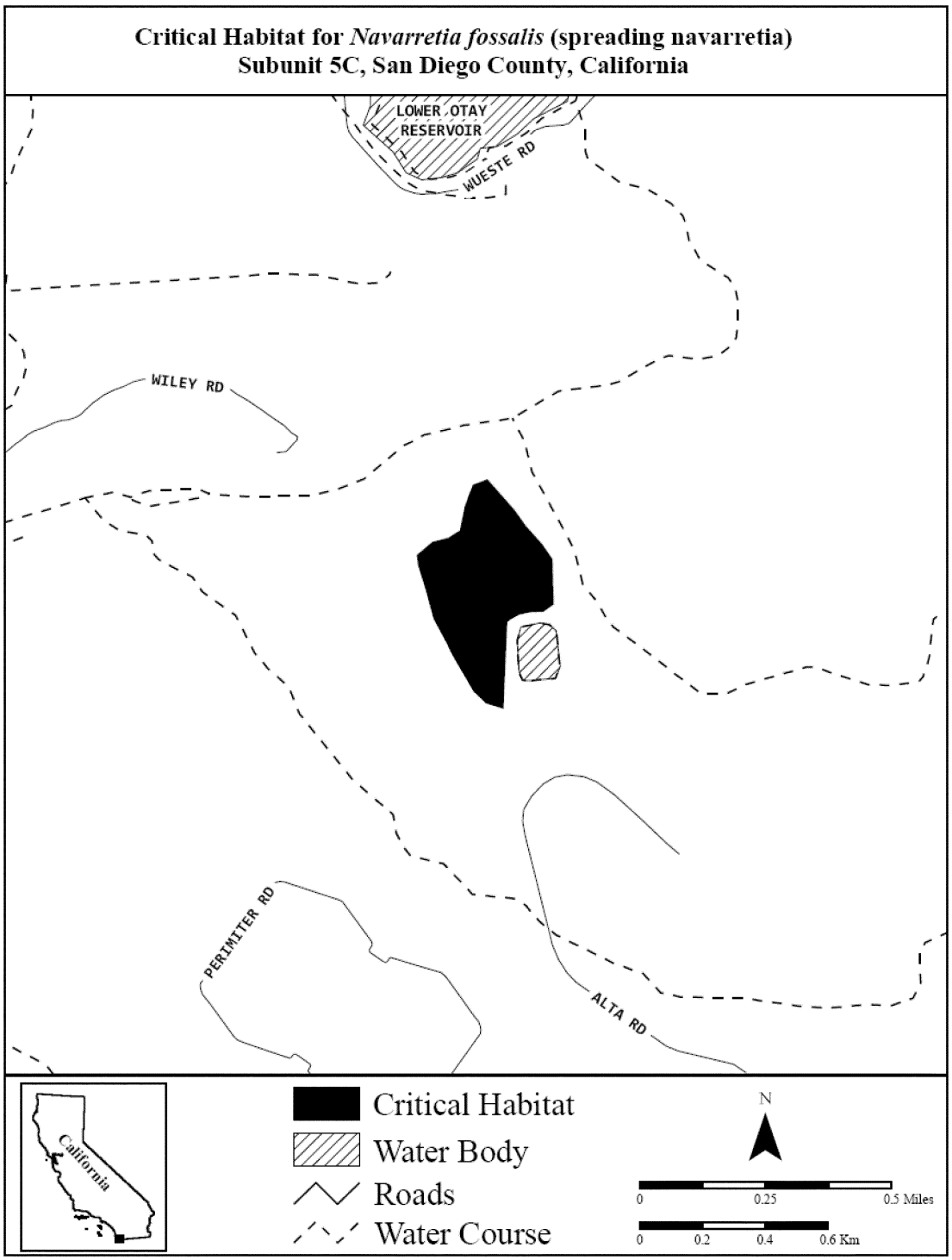
(ii) *Note*: Map of Unit 5, Subunit 5B (Otay River Valley) follows:



(18) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5C: Otay Mesa.

(i) From USGS 1:24,000 quadrangle Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 506759, 3606253; 506757, 3606201; 506702, 3606219; 506663, 3606258; 506601, 3606362; 506590, 3606382; 506575, 3606411; 506575, 3606411; 506535, 3606490; 506509, 3606580; 506503, 3606601; 506485, 3606661; 506481, 3606693; 506531, 3606734; 506581, 3606748; 506599, 3606760; 506600, 3606760; 506617, 3606771; 506634, 3606848; 506641, 3606869; 506642, 3606870; 506660, 3606918; 506706, 3606936; 506750, 3606885; 506777, 3606855; 506777, 3606854; 506792, 3606837; 506829, 3606785; 506880, 3606730; 506913, 3606679; 506915, 3606602; 506915, 3606597; 506918, 3606535; 506901, 3606523; 506901, 3606523; 506885, 3606512; 506841, 3606510; 506807, 3606502; 506776, 3606485; 506776, 3606485; 506768, 3606480; 506768, 3606473; 506768, 3606473; 506759, 3606253; 506759, 3606253; thence returning to 506759, 3606253.

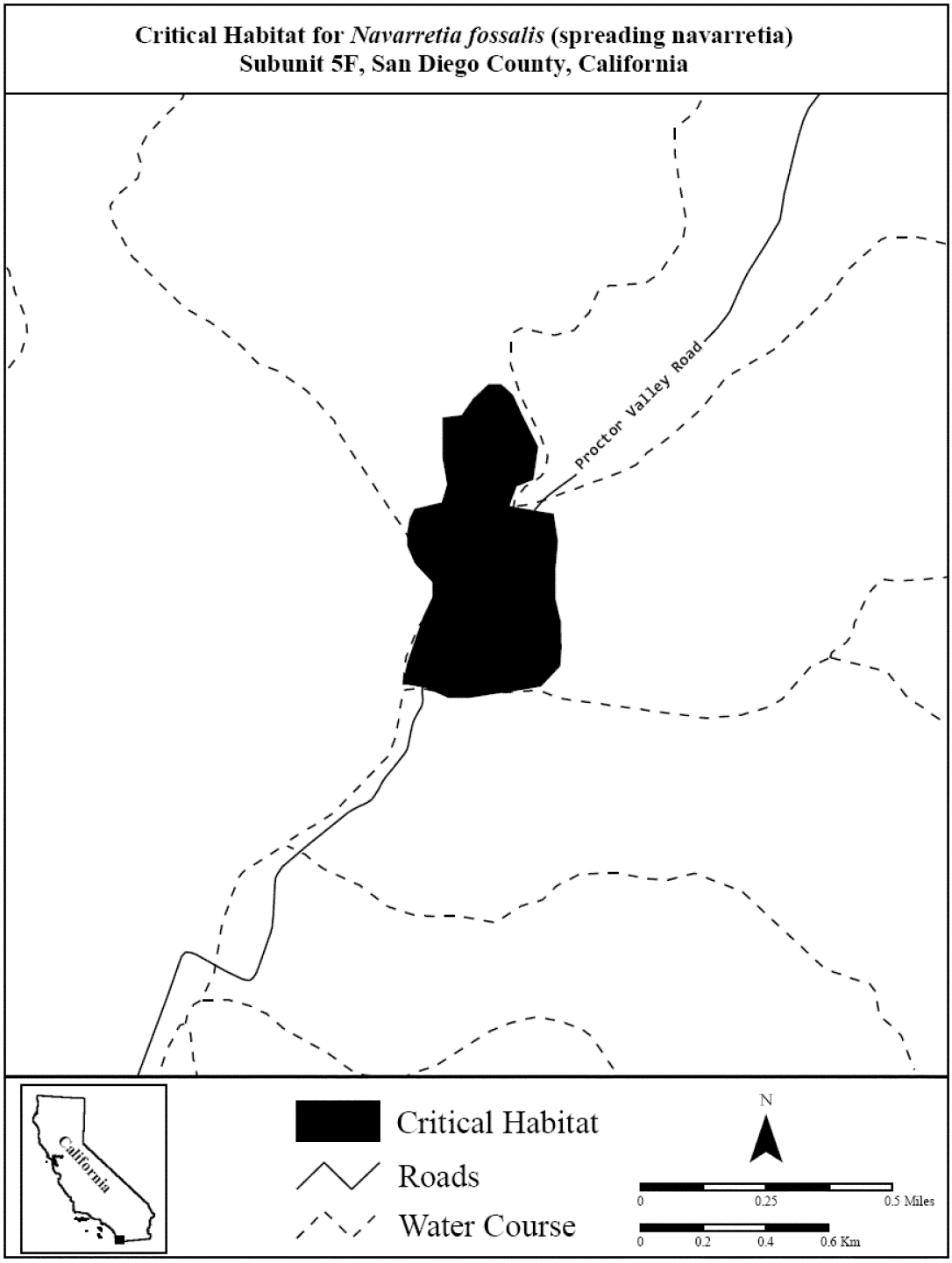
(ii) *Note*: Map of Unit 5, Subunit 5C (Otay Mesa) follows:



(19) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5F: Proctor Valley.

(i) From USGS 1:24,000 quadrangle Jamul Mountains. Land bounded by the following UTM NAD83 coordinates (E, N): 507676, 3615007; 507616, 3614943; 507548, 3614930; 507458, 3614918; 507386, 3614907; 507320, 3614907; 507247, 3614939; 507190, 3614947; 507173, 3614947; 507188, 3615018; 507239, 3615163; 507269, 3615226; 507269, 3615275; 507213, 3615335; 507188, 3615393; 507188, 3615433; 507194, 3615465; 507194, 3615465; 507194, 3615465; 507196, 3615476; 507211, 3615508; 507298, 3615529; 507316, 3615587; 507301, 3615676; 507301, 3615723; 507301, 3615800; 507362, 3615808; 507402, 3615865; 507403, 3615866; 507448, 3615906; 507488, 3615906; 507526, 3615872; 507556, 3615806; 507605, 3615706; 507590, 3615601; 507537, 3615580; 507514, 3615518; 507556, 3615510; 507654, 3615493; 507669, 3615405; 507661, 3615318; 507661, 3615220; 507674, 3615164; 507678, 3615148; 507680, 3615073; 507679, 3615062; 507679, 3615062; 507679, 3615062; 507676, 3615007; thence returning to 507676, 3615007.

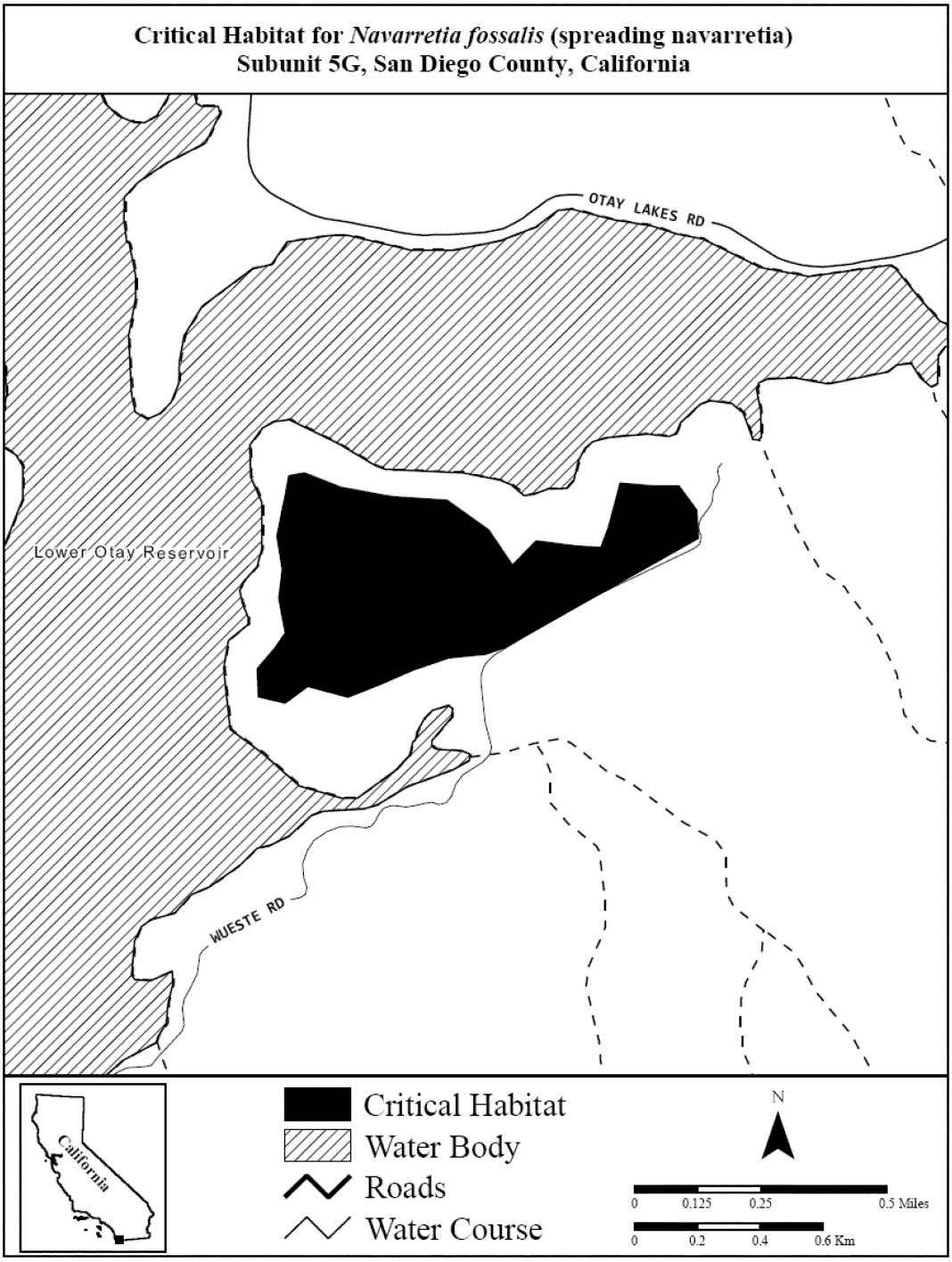
(ii) *Note*: Map of Unit 5, Subunit 5F (Proctor Valley) follows:



(20) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5G: Otay Lakes.

(i) From USGS 1:24,000 quadrangles Jamul Mountains and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 508045, 3609784; 508120, 3609675; 508188, 3609745; 508194, 3609751; 508316, 3609736; 508337, 3609733; 508400, 3609730; 508423, 3609791; 508450, 3609898; 508460, 3609936; 508570, 3609926; 508651, 3609926; 508671, 3609898; 508672, 3609897; 508707, 3609847; 508714, 3609756; 508646, 3609718; 508323, 3609536; 508199, 3609465; 508094, 3609406; 508033, 3609385; 507917, 3609374; 507800, 3609334; 507695, 3609287; 507595, 3609248; 507467, 3609283; 507394, 3609229; 507308, 3609250; 507303, 3609341; 507359, 3609406; 507392, 3609455; 507371, 3609565; 507383, 3609658; 507366, 3609763; 507387, 3609868; 507392, 3609895; 507404, 3609959; 507455, 3609968; 507572, 3609922; 507715, 3609896; 507742, 3609891; 507912, 3609880; 508045, 3609784; thence returning to 508045, 3609784.

(ii) *Note*: Map of Unit 5, Subunit 5G (Otay Lakes) follows:



BILLING CODE 4310–55–C

(21) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5H: Western Otay Mesa Vernal Pool Complexes.

(i) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 498398, 3601961; 498398, 3601927; 498482, 3601937; 498514, 3601914; 498495, 3601822; 498463, 3601742; 498434, 3601651; 498324, 3601579; 498154, 3601581; 498025, 3601666; 498008, 3601765; 498093, 3601864; 498185, 3601904; 498223, 3601940; 498240, 3602001; 498268, 3602119; 498268, 3602251; 498375, 3602256; 498461, 3602258; 498495, 3602211; 498468, 3602159; 498468, 3602158; 498463, 3602148; 498450, 3602119; 498450, 3602119; 498436, 3602087; 498407, 3602039; 498398, 3601961; thence returning to 498398, 3601961.

(ii) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 497444, 3602605; 497382, 3602601; 497311, 3602614; 497263, 3602633; 497255, 3602688; 497270, 3602708; 497270, 3602708; 497287, 3602732; 497379, 3602732; 497424, 3602725; 497443, 3602708; 497443, 3602707; 497447, 3602704; 497529, 3602702; 497546, 3602702; 497545, 3602698; 497545, 3602698; 497529, 3602651; 497518, 3602636; 497515, 3602631; 497455, 3602606; 497444, 3602605; 497444, 3602605; thence returning to 497444, 3602605.

(iii) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 498002, 3602859; 497981, 3602853; 497930, 3602857; 497929, 3602859; 497911, 3602885; 497934, 3602916; 497946, 3602955; 497985, 3602951; 497981, 3602939; 497985, 3602920; 498000, 3602888; 498012, 3602861; 498002, 3602859; thence returning to 498002, 3602859.

(iv) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499680, 3603156; 499688, 3603148; 499683, 3603090; 499717, 3603078; 499739, 3603039; 499829, 3603005; 499812, 3602945; 499754, 3602867; 499676, 3602836; 499584, 3602794; 499553, 3602833; 499536, 3602889; 499519, 3602920; 499485, 3602983; 499483, 3603035; 499478, 3603172; 499490, 3603173; 499497, 3603173; 499577, 3603174; 499584, 3603178; 499607, 3603175; 499624, 3603162; 499680, 3603156; thence returning to 499680, 3603156.

(v) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499158, 3603493; 499170, 3603456; 499130, 3603457; 499083, 3603458; 499083, 3603495; 499075, 3603541; 499070, 3603572; 499121, 3603582; 499130, 3603565; 499141, 3603546; 499158, 3603493; thence returning to 499158, 3603493.

(vi) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499007, 3603851; 499012, 3603773; 499051, 3603691; 499044, 3603640; 498993, 3603609; 498983, 3603633; 498993, 3603652; 498993, 3603655; 498986, 3603722; 498984, 3603778; 498983, 3603805; 498979, 3603807; 498953, 3603817; 498947, 3603819; 498903, 3603790; 498852, 3603749; 498857, 3603715; 498823, 3603688; 498741, 3603676; 498702, 3603688; 498719, 3603715; 498763, 3603742; 498826, 3603776; 498874, 3603817; 498930, 3603831; 498957, 3603847; 499000, 3603873; 499007, 3603851; thence returning to 499007, 3603851.

(vii) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499259, 3603894; 499303, 3603885; 499344, 3603890; 499383, 3603892; 499384, 3603882; 499390, 3603749; 499393, 3603531; 499431, 3603514; 499458, 3603487; 499461, 3603449; 499189, 3603449; 499221, 3603587; 499233, 3603618; 499247, 3603633; 499267, 3603642; 499269, 3603664; 499267, 3603679; 499209, 3603701; 499182, 3603768; 499184, 3603807; 499177, 3603877; 499186, 3603886; 499206, 3603907; 499259, 3603894; thence returning to 499259, 3603894.

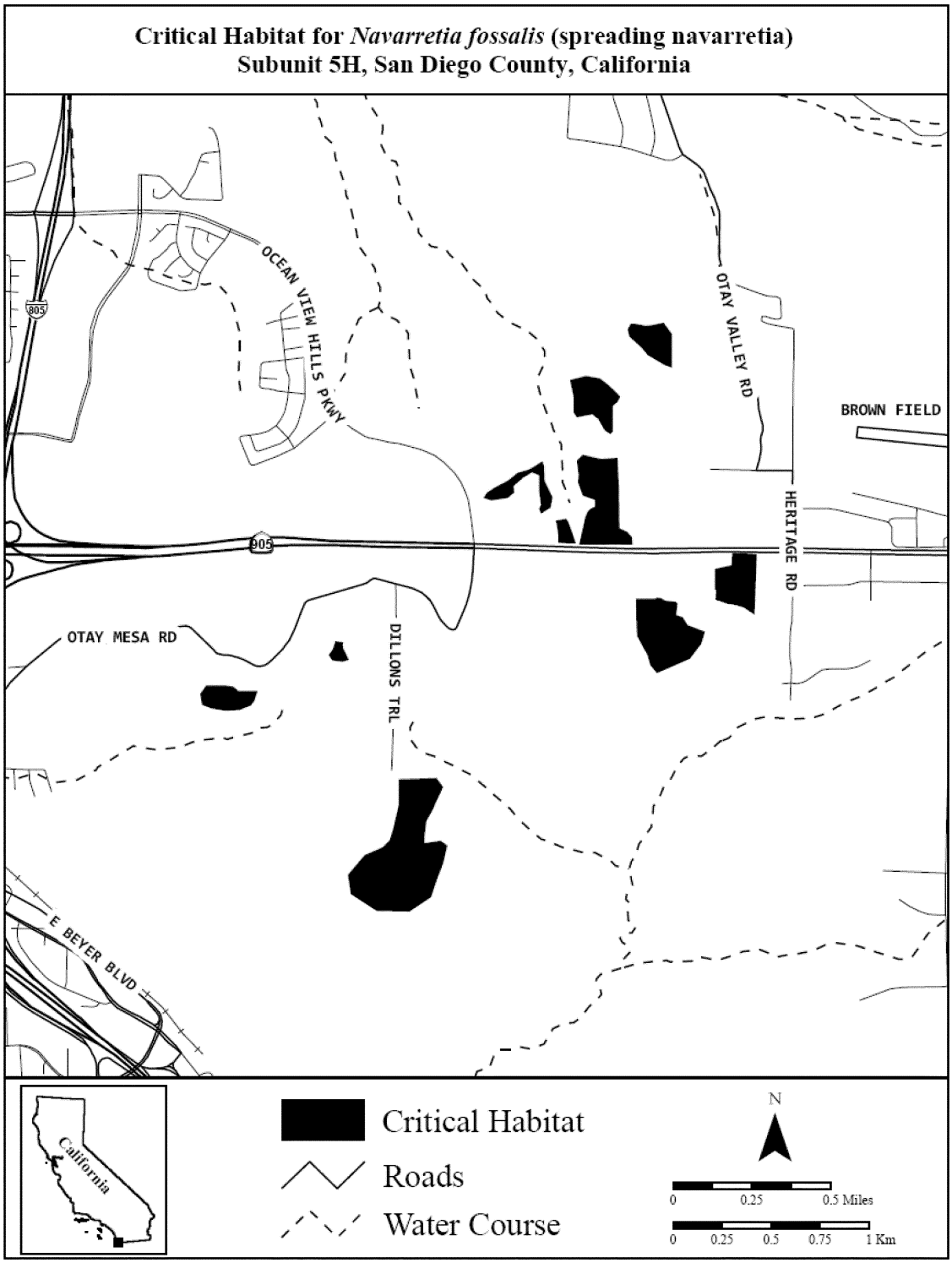
(viii) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499359, 3604115; 499359, 3604025; 499350, 3604018; 499347, 3604016; 499320, 3604033; 499314, 3604043; 499286, 3604091; 499257, 3604115; 499221, 3604110; 499177, 3604098; 499160, 3604125; 499160, 3604197; 499148, 3604270; 499143, 3604287; 499153, 3604292; 499223, 3604309; 499293, 3604299; 499330, 3604270; 499361, 3604239; 499387, 3604214; 499398, 3604205; 499383, 3604178; 499359, 3604159; 499359, 3604122; 499359, 3604115; thence returning to 499359, 3604115.

(ix) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 499618, 3604583; 499662, 3604524; 499662, 3604352; 499620, 3604367; 499541, 3604418; 499504, 3604459; 499475, 3604484; 499446, 3604510; 499436, 3604546; 499451, 3604575; 499475, 3604575; 499475, 3604575; 499528, 3604566; 499562, 3604568; 499618, 3604583; thence returning to 499618, 3604583.

(x) From USGS 1:24,000 quadrangles Imperial Beach and Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 500083, 3603092; 500026, 3603130; 499985, 3603143; 499944, 3603149; 499903, 3603164; 499898, 3603164; 499885, 3603170; 499886, 3603218; 499880, 3603221; 499880, 3603325; 499949, 3603340; 499967, 3603344; 499969, 3603407; 500093, 3603400; 500083, 3603092; 500083, 3603092; thence returning to 500083, 3603092.

(xi) *Note*: Map of Unit 5, Subunit 5H (Western Otay Mesa Vernal Pool Complexes) follows:

BILLING CODE 4310–55–S



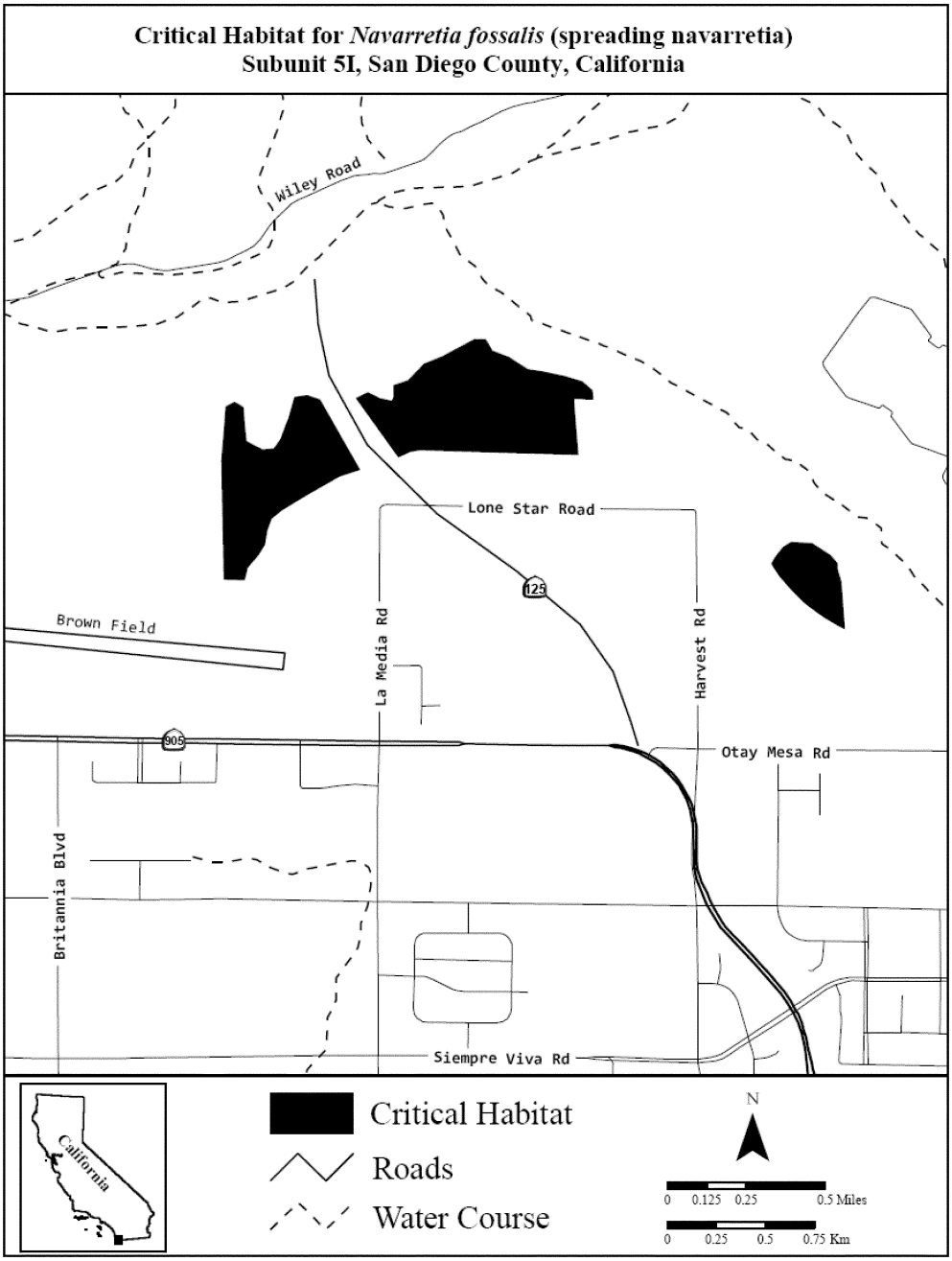
(22) Unit 5: San Diego: Southern Coastal Mesa Management Area, San Diego County, CA. Subunit 5I: Eastern Otay Mesa Vernal Pool Complexes.

(i) From USGS 1:24,000 quadrangle Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 505882, 3604195; 505900, 3603953; 505859, 3603974; 505832, 3603989; 505798, 3604009; 505753, 3604040; 505721, 3604065; 505690, 3604091; 505662, 3604118; 505633, 3604147; 505608, 3604176; 505569, 3604222; 505539, 3604260; 505527, 3604287; 505547, 3604326; 505587, 3604372; 505626, 3604399; 505733, 3604393; 505828, 3604330; 505863, 3604289; 505865, 3604259; 505882, 3604195; thence returning to 505882, 3604195.

(ii) From USGS 1:24,000 quadrangle Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N): 503223, 3605127; 503429, 3604767; 503325, 3604734; 503153, 3604635; 503028, 3604559; 502978, 3604516; 502955, 3604458; 502942, 3604387; 502909, 3604331; 502856, 3604268; 502838, 3604202; 502733, 3604206; 502719, 3604815; 502735, 3605001; 502742, 3605091; 502788, 3605114; 502833, 3605086; 502840, 3605001; 502847, 3604914; 502930, 3604871; 502988, 3604876; 503021, 3604924; 503050, 3605001; 503061, 3605030; 503092, 3605139; 503130, 3605145; 503160, 3605149; 503223, 3605127; thence returning to 503223, 3605127.

(iii) From USGS 1:24,000 quadrangle Otay Mesa. Land bounded by the following UTM NAD83 coordinates (E, N):504614, 3605172; 504617, 3605127; 504583, 3605128; 504550, 3605129; 504519, 3605130; 504519, 3605122; 504540, 3604842; 503733, 3604867; 503681, 3604857; 503658, 3604846; 503624, 3604830; 503406, 3605134; 503467, 3605162; 503530, 3605134; 503588, 3605119; 503598, 3605139; 503598, 3605200; 503672, 3605223; 503753, 3605309; 503847, 3605347; 503912, 3605382; 503925, 3605389; 504011, 3605433; 504067, 3605433; 504096, 3605387; 504102, 3605377; 504186, 3605344; 504240, 3605309; 504283, 3605282; 504358, 3605268; 504475, 3605246; 504552, 3605221; 504561, 3605218; 504587, 3605196; 504614, 3605172; thence returning to 504614, 3605172.

(iv) *Note*: Map of Unit 5, Subunit 5I (Eastern Otay Mesa Vernal Pool Complexes) follows:



BILLING CODE 4310–55–C

(23) Unit 6: Riverside: Riverside Management Area, Riverside County, CA. Subunit 6A: San Jacinto River.

(i) From USGS 1:24,000 quadrangles Perris and Lakeview. Land bounded by the following UTM NAD83 coordinates (E, N): 480115, 3736015; 480123, 3736089; 480006, 3736246; 479961, 3736644; 479978, 3736737; 480068, 3736890; 481015, 3736904; 481258, 3737111; 481423, 3736990; 481474, 3736952; 481500, 3736933; 481500, 3736933; 481545, 3736899; 481546, 3736899; 481550, 3736896; 481717, 3736773; 481889, 3736646; 481884, 3736589; 481807, 3736439; 481388, 3735908; 481199, 3735637; 481101, 3735567; 480929, 3735516; 480866, 3735513; 480742, 3735505; 480700, 3735490; 480699, 3735490; 480658, 3735471; 480615, 3735434; 480604, 3735421; 480565, 3735397; 480520, 3735296; 480463, 3735138; 480410, 3735025; 480359, 3734946; 480274, 3734884; 480175, 3734856; 480102, 3734839; 480006, 3734830; 479843, 3734847; 479783, 3734918; 479733, 3735028; 479744, 3735177; 479783, 3735259; 479899, 3735327; 479936, 3735397; 479969, 3735510; 480020, 3735584; 480071, 3735637; 480106, 3735671; 480115, 3736015; thence returning to 480115, 3736015.

(ii) From USGS 1:24,000 quadrangles Perris and Lakeview. Land bounded by the following UTM NAD83 coordinates (E, N):482086, 3737103; 481896, 3737158; 481736, 3737152; 481607, 3737005; 481565, 3737040; 481565, 3737040; 481499, 3737095; 481495, 3737098; 481495, 3737098; 481460, 3737128; 481498, 3737171; 481607, 3737294; 481659, 3737308; 481659, 3737308; 481675, 3737312; 481806, 3737364; 481806, 3737365; 481828, 3737373; 481884, 3737410; 482049, 3737423; 482228, 3737521; 482293, 3737565; 482301, 3737570; 482305, 3737714; 482307, 3737840; 482332, 3738252; 482381, 3738399; 482400, 3738519; 482406, 3738559; 482498, 3738780; 482590, 3738989; 482670, 3739143; 482799, 3739259; 483002, 3739302; 483057, 3739329; 483058, 3739329; 483102, 3739351; 483154, 3739376; 483180, 3739388; 483352, 3739505; 483481, 3739579; 483555, 3739659; 483622, 3739714; 483733, 3739714; 483849, 3739726; 483914, 3739777; 483935, 3739794; 483942, 3739923; 483946, 3739994; 483948, 3740021; 483997, 3740083; 484071, 3740101; 484109, 3740101; 484175, 3740101; 484286, 3740101; 484409, 3740101; 484491, 3740101; 484556, 3740101; 484562, 3740101; 484660, 3740101; 484724, 3740101; 484808, 3740101; 484740, 3740015; 484724, 3740003; 484593, 3739911; 484558, 3739876; 484507, 3739825; 484310, 3739634; 484095, 3739438; 484078, 3739426; 483978, 3739358; 483961, 3739335; 483914, 3739275; 483904, 3739263; 483910, 3738133; 483780, 3737932; 483550, 3737726; 483330, 3737413; 483310, 3737372; 483104, 3737308; 483107, 3736913; 482312, 3736913; 482230, 3736937; 482203, 3736962; 482172, 3737005; 482086, 3737103; thence returning to 482086, 3737103.

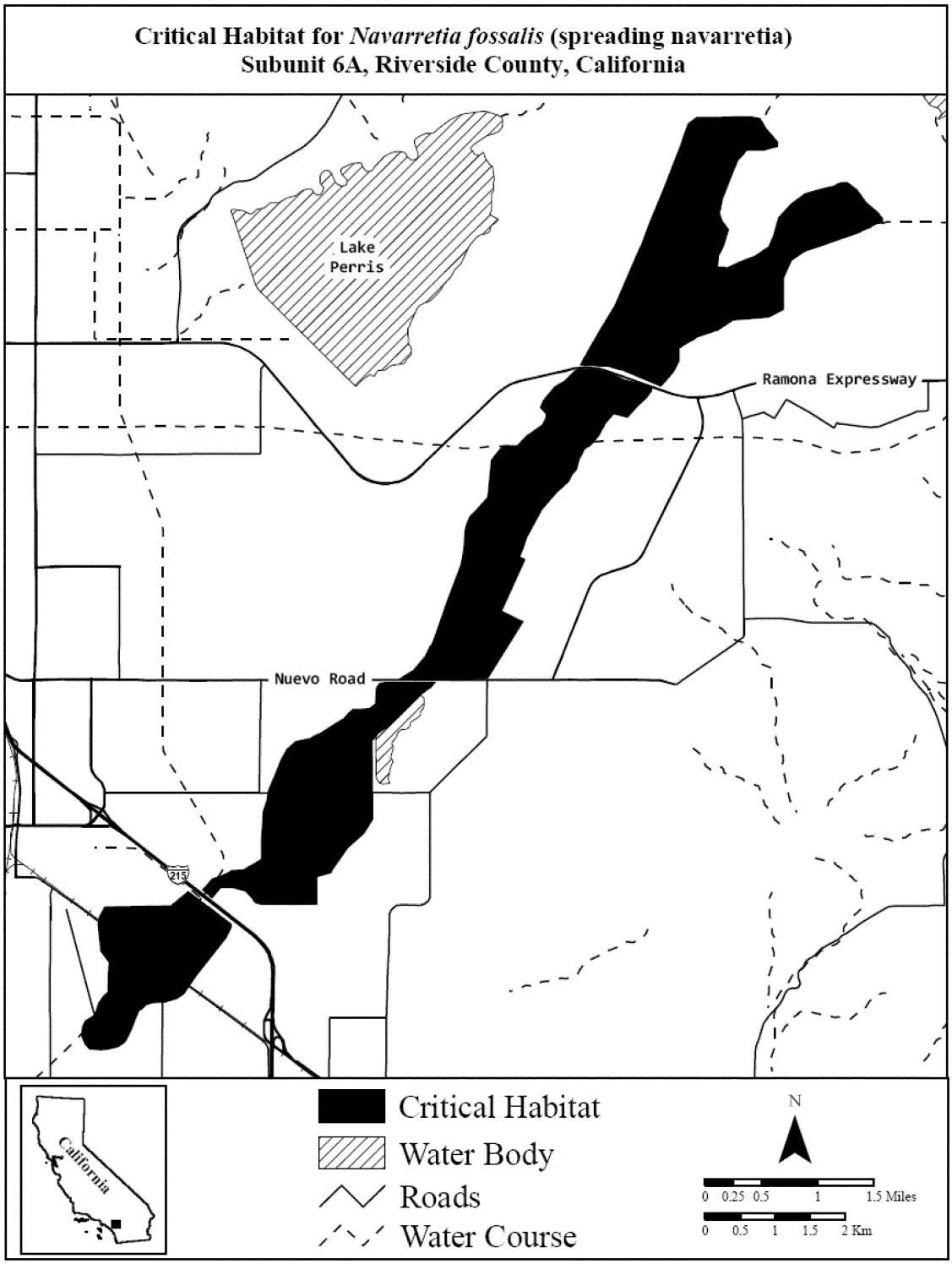
(iii) From USGS 1:24,000 quadrangles Perris and Lakeview. Land bounded by the following UTM NAD83 coordinates (E, N): 485275, 3740138; 484724, 3740131; 484574, 3740129; 484505, 3740129; 484256, 3740126; 484305, 3740158; 484305, 3740158; 484397, 3740217; 484483, 3740273; 484649, 3740476; 484723, 3740618; 484725, 3740623; 484725, 3740623; 484760, 3740691; 484853, 3740957; 484956, 3741250; 485150, 3741749; 485159, 3741772; 485184, 3741895; 485202, 3742006; 485218, 3742268; 485221, 3742307; 485244, 3742361; 485288, 3742466; 485368, 3742554; 485531, 3742733; 485534, 3742737; 485537, 3742748; 485537, 3742748; 485552, 3742804; 485575, 3743092; 485589, 3743271; 485662, 3743360; 485679, 3743380; 485711, 3743419; 485761, 3743480; 485917, 3743485; 485964, 3743486; 486099, 3743615; 486204, 3743695; 486326, 3743781; 486336, 3743800; 486369, 3743867; 486376, 3743928; 486369, 3743936; 486336, 3743974; 486296, 3744021; 486336, 3744125; 486339, 3744131; 486366, 3744163; 486366, 3744163; 486492, 3744315; 486519, 3744332; 486551, 3744352; 486640, 3744408; 486787, 3744549; 486855, 3744586; 487051, 3744586; 487135, 3744567; 487242, 3744543; 487425, 3744461; 487477, 3744437; 487488, 3744432; 487690, 3744377; 487905, 3744309; 487899, 3744260; 487824, 3744168; 487824, 3744168; 487795, 3744131; 487690, 3744039; 487631, 3743972; 487543, 3743873; 487346, 3743928; 487236, 3743799; 487150, 3743627; 487133, 3743609; 487027, 3743486; 486935, 3743418; 486907, 3743363; 486867, 3743283; 486818, 3743136; 486763, 3743062; 486707, 3742964; 486535, 3742804; 486366, 3742612; 486356, 3742601; 486351, 3742595; 486348, 3742590; 486334, 3742565; 486330, 3742557; 486111, 3742165; 486057, 3742013; 486019, 3741907; 486012, 3741890; 486090, 3741855; 485750, 3741117; 486062, 3740960; 485546, 3740143; 485276, 3740138; 485275, 3740138; thence returning to 485275, 3740138.

(iv) From USGS 1:24,000 quadrangles Perris and Lakeview. Land bounded by the following UTM NAD83 coordinates (E, N): 488922, 3746032; 488976, 3746028; 489134, 3746103; 489376, 3746196; 489562, 3746326; 489603, 3746429; 489618, 3746466; 489662, 3746610; 489663, 3746613; 489672, 3746642; 489684, 3746680; 489690, 3746700; 489701, 3746735; 489768, 3746809; 489887, 3746940; 490083, 3747089; 490231, 3747126; 490425, 3747178; 490511, 3747200; 490519, 3747205; 490546, 3747218; 490585, 3747238; 490687, 3747247; 490836, 3747135; 490966, 3746959; 491124, 3746819; 491199, 3746726; 491199, 3746680; 491199, 3746678; 491199, 3746661; 491152, 3746652; 491125, 3746646; 491106, 3746642; 491056, 3746617; 491047, 3746613; 491045, 3746612; 490864, 3746522; 490864, 3746522; 490827, 3746503; 490652, 3746443; 490404, 3746359; 490390, 3746354; 490083, 3746252; 489983, 3746182; 489983, 3746182; 489979, 3746179; 489897, 3746121; 489785, 3745870; 489785, 3745793; 489785, 3745582; 489785, 3745424; 489601, 3745328; 489571, 3745312; 489292, 3745284; 489059, 3745266; 488827, 3745117; 488810, 3745111; 488810, 3745111; 488806, 3745110; 488787, 3745103; 488557, 3745024; 488514, 3745000; 488514, 3745000; 488493, 3744988; 488464, 3744972; 488408, 3744940; 488338, 3744897; 488306, 3744877; 488290, 3744867; 488287, 3744866; 488287, 3744689; 488272, 3744656; 488222, 3744549; 488212, 3744537; 488205, 3744528; 488205, 3744528; 488101, 3744401; 488027, 3744317; 487969, 3744341; 487537, 3744523; 487537, 3744523; 487500, 3744539; 487497, 3744540; 487476, 3744546; 487427, 3744559; 487255, 3744605; 487148, 3744610; 487135, 3744611; 487125, 3744611; 487059, 3744615; 487056, 3744615; 487023, 3744616; 486974, 3744619; 486934, 3744621; 486934, 3744621; 486864, 3744624; 486911, 3744726; 486945, 3744784; 486975, 3744834; 487054, 3744967; 487060, 3744979; 487067, 3744989; 487148, 3745127; 487357, 3745480; 487712, 3746290; 487720, 3746307; 487739, 3746356; 487857, 3746655; 488073, 3747200; 488202, 3747526; 488288, 3747745; 488297, 3747768; 488361, 3747950; 488408, 3748084; 488539, 3748177; 488574, 3748178; 488582, 3748178; 488595, 3748178; 488800, 3748180; 488805, 3748180; 489137, 3748184; 489217, 3748185; 489329, 3748186; 489346, 3748182; 489436, 3748160; 489441, 3748159; 489498, 3748067; 489520, 3748032; 489520, 3748032; 489534, 3748010; 489605, 3747930; 489701, 3747824; 489701, 3747749; 489690,

3747746; 489608, 3747724; 489608, 3747724; 489605, 3747723; 489497, 3747693; 489391, 3747693; 489293, 3747693; 489279, 3747693; 489255, 3747693; 489240, 3747677; 489217, 3747653; 489134, 3747563; 489133, 3747561; 489067, 3747400; 489032, 3747312; 488911, 3747005; 488873, 3746800; 488881, 3746769; 488887, 3746746; 488901, 3746689; 488994, 3746568; 488966, 3746456; 488920, 3746317; 488855, 3746187; 488845, 3746066; 488845, 3746038; 488922, 3746032; thence returning to 488922, 3746032.

(v) *Note*: Map of Unit 6, Subunit 6A (San Jacinto River) follows:

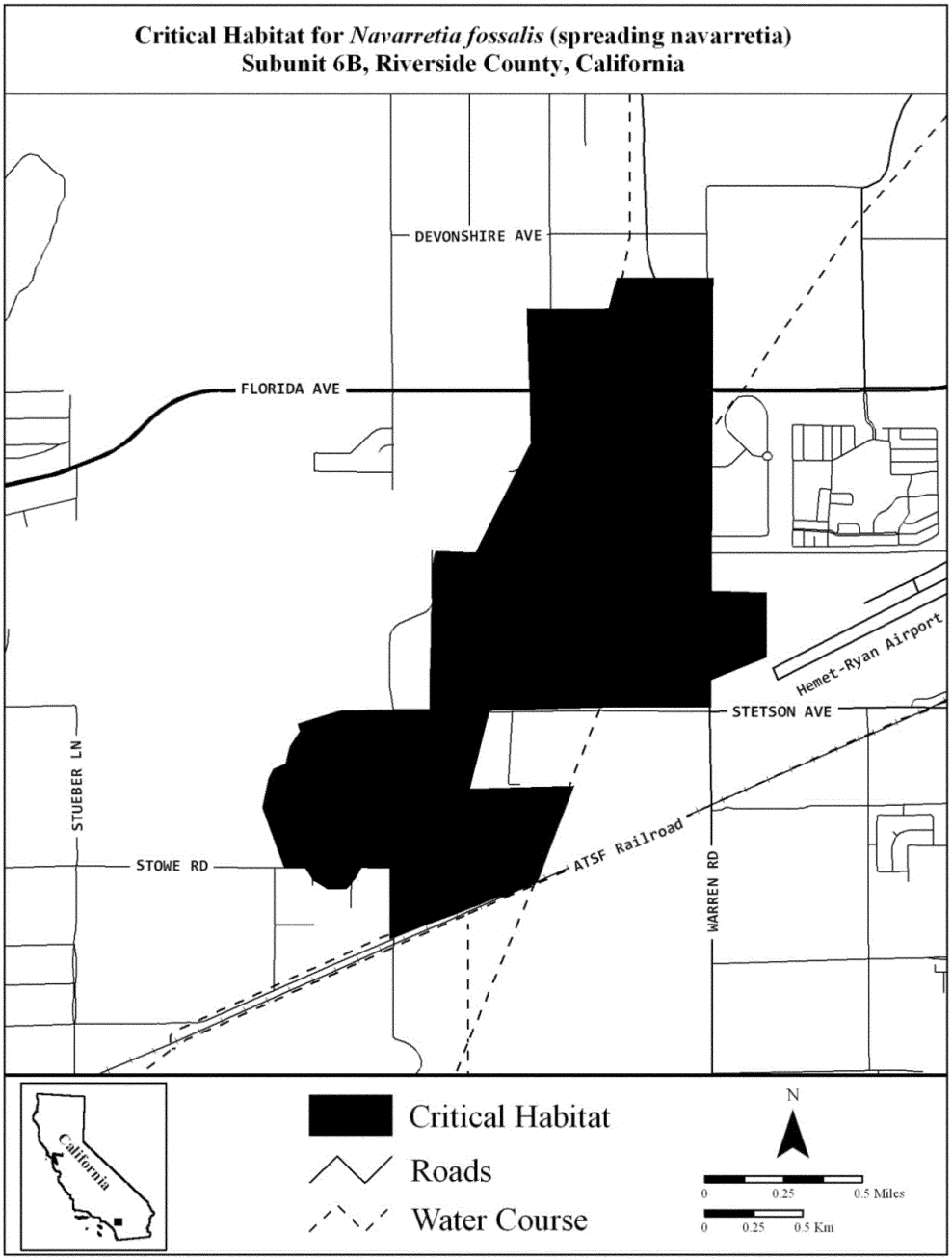
BILLING CODE 4310–55–S



(24) Unit 6: Riverside: Riverside Management Area, Riverside County, CA. Subunit 6B: Salt Creek Seasonally Flooded Alkali Plain.

(i) From USGS 1:24,000 quadrangles Lakeview and Winchester. Land bounded by the following UTM NAD83 coordinates (E, N): 496999, 3734333; 496995, 3733632; 496993, 3733374; 496993, 3733353; 496992, 3733079; 496991, 3733046; 496991, 3732939; 496990, 3732731; 497270, 3732723; 497270, 3732391; 496987, 3732276; 496986, 3732133; 496979, 3732133; 496441, 3732133; 495871, 3732118; 495855, 3732117; 495791, 3731864; 495754, 3731720; 496288, 3731734; 496176, 3731442; 496130, 3731321; 496119, 3731293; 496110, 3731269; 496105, 3731257; 496098, 3731238; 495840, 3731139; 495783, 3731117; 495764, 3731110; 495673, 3731075; 495539, 3731023; 495370, 3730958; 495370, 3730958; 495344, 3730948; 495344, 3731276; 495344, 3731308; 495344, 3731312; 495203, 3731319; 495197, 3731308; 495182, 3731281; 495169, 3731258; 495144, 3731229; 495122, 3731204; 495028, 3731204; 494990, 3731228; 494954, 3731251; 494929, 3731288; 494917, 3731307; 494913, 3731312; 494806, 3731312; 494766, 3731420; 494693, 3731621; 494724, 3731768; 494749, 3731819; 494811, 3731848; 494835, 3731935; 494886, 3732013; 494875, 3732052; 494962, 3732078; 495080, 3732115; 495080, 3732115; 495095, 3732120; 495368, 3732124; 495546, 3732126; 495551, 3732348; 495558, 3732640; 495560, 3732698; 495566, 3732880; 495578, 3732932; 495579, 3732936; 495783, 3732925; 496065, 3733488; 496058, 3733755; 496057, 3733807; 496043, 3734174; 496173, 3734170; 496461, 3734174; 496505, 3734333; thence returning to 496999, 3734333.

(ii) *Note*: Map of Unit 6, Subunit 6B (Salt Creek Seasonally Flooded Alkali Plain) follows:

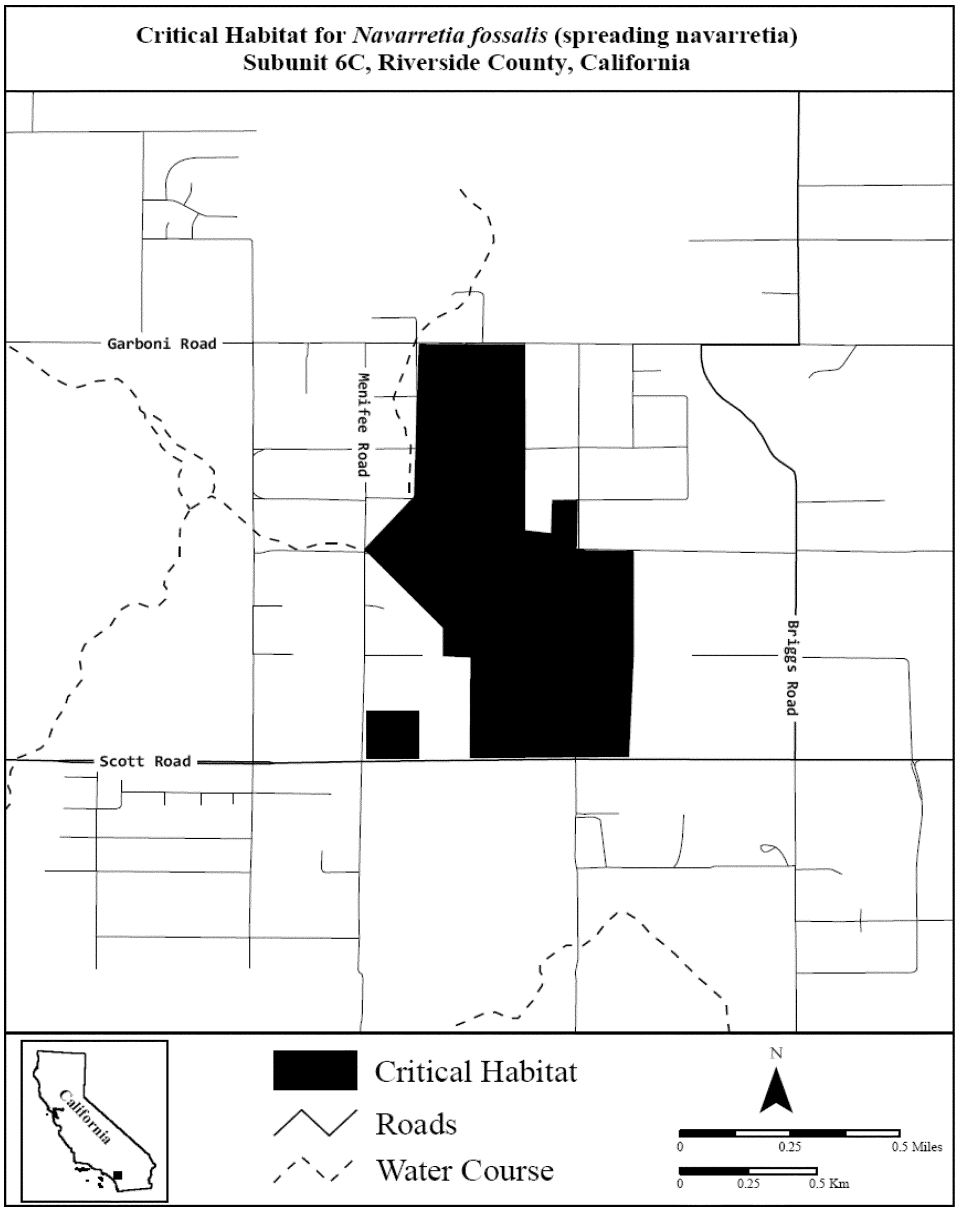


(25) Unit 6: Riverside: Riverside Management Area, Riverside County, CA. Subunit 6C: Wickerd and Scott Road Pools.

(i) From USGS 1:24,000 quadrangle Romoland. Land bounded by the following UTM NAD83 coordinates (E, N): 485930, 3722429; 485737, 3722429; 485737, 3722611; 485930, 3722611; 485930, 3722429; thence returning to 485930, 3722429.

(ii) From USGS 1:24,000 quadrangle Romoland. Land bounded by the following UTM NAD83 coordinates (E, N): 485922, 3723029; 485730, 3723232; 485911, 3723435; 485930, 3724021; 486317, 3724020; 486317, 3723305; 486412, 3723293; 486417, 3723421; 486512, 3723424; 486506, 3723229; 486714, 3723225; 486716, 3723220; 486716, 3723210; 486716, 3723200; 486716, 3723196; 486716, 3723094; 486716, 3723072; 486716, 3723031; 486716, 3722986; 486716, 3722964; 486716, 3722954; 486716, 3722915; 486716, 3722899; 486716, 3722885; 486716, 3722830; 486699, 3722435; 486116, 3722429; 486118, 3722817; 486016, 3722821; 486016, 3722931; 485922, 3723029; thence returning to 485922, 3723029.

(iii) *Note*: Map of Unit 6, Subunit 6C (Wickerd and Scott Road Pools) follows:



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Dated: September 23, 2010

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–24763 Filed 10–6–10; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
October 7, 2010

Part III

Small Business Administration

13 CFR Parts 121, 124, 125, et al.
Women-Owned Small Business Federal Contract Program; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, 127, and 134

RIN 3245–AG06

Women-Owned Small Business Federal Contract Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this Final Rule to amend its regulations governing small business contracting procedures. This Final Rule amends part 127, entitled "The Women-Owned Small Business Federal Contract Assistance Procedures," and implements procedures authorized by the Small Business Act (Pub. L. 85–536, as amended) to help ensure a level playing field on which Women-Owned Small Businesses can compete for Federal contracting opportunities.

DATES: This rule is effective February 4, 2011.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director, Office of Policy and Research, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, Congress enacted the Small Business Reauthorization Act of 2000, Public Law 106–554. Section 811 of that Act added a new section 8(m), 15 U.S.C. 637(m), authorizing Federal contracting officers to restrict competition to eligible Women-Owned Small Businesses (WOSBs) or Economically Disadvantaged Women-Owned Small Business (EDWOSBs) for Federal contracts in certain industries. The purpose of this authority, referred to as the WOSB Program, is to enable contracting officers to identify and establish a sheltered market for competition among WOSBs or EDWOSBs for the provision of goods and services to the Federal Government. H.R. Rep. No. 106–879, at 2 (2000) (publicly available at *http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr879&dbname=106&*).

Section 8(m) of the Small Business Act (Act) sets forth certain criteria for the WOSB Program. Specifically, the Act provides the following requirements in order for a contracting officer to restrict competition for EDWOSBs or WOSBS under this program:

- An eligible concern must be not less than 51 percent owned by one or more women who are "economically disadvantaged" (*i.e.* an EDWOSB). However, SBA may waive this requirement of economic disadvantage for procurements in industries in which WOSBs are "substantially underrepresented."
- A WOSB is a small business concern owned and controlled by women, as defined in section 3(n) of the Act. Section 3(n) of the Act defines a women owned business as one that is at least 51 percent owned by one or more women and the management and daily business operations of the concern is controlled by one or more women. 15 U.S.C. 632(n).
- The contracting officer must have a reasonable expectation that, in industries in which WOSBs are underrepresented, two or more EDWOSBs will submit offers for the contract or, in industries where WOSBs are substantially underrepresented, two or more WOSBs will submit offers for the contract.
- The anticipated award price of the contract must not exceed $5 million in the case of manufacturing contracts and $3 million in the case of all other contracts.
- In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.
- Each competing concern must be duly certified by a Federal agency, a State government, or a national certifying entity approved by SBA, as an EDWOSB or WOSB, or must certify to the contracting officer and provide adequate documentation that it is an EDWOSB or WOSB. The statute imposes penalties for a concern's misrepresentation of its status.
- The contract must be for the procurement of goods or services with respect to an industry identified by SBA pursuant to a statutorily mandated study as one in which EDWOSBs are underrepresented or substantially underrepresented or WOSBs are substantially underrepresented with respect to Federal procurement contracting.

The SBA has issued several rulemakings concerning this program. Most recently, SBA issued a proposed rule on March 4, 2010 (75 FR 10029) that proposed amending 13 CFR part 127, which had been promulgated in a Final Rule on October 1, 2008 (entitled "The Women-Owned Small Business Federal Contract Assistance Procedures," RIN 3245–AF40). In particular, the proposed rule: Identified 83 industries by four digit North American Industry Classification System (NAICS) codes in which WOSBs are underrepresented or substantially underrepresented; removed the requirement that each Federal agency must certify that it had engaged in discrimination against WOSBs in order for the program to apply to that agency; allowed WOSBs and EDWOSBs to self-certify their status as long as adequate documents were provided to support the certification; allowed WOSBs or EDWOSBs to be certified by approved third-party certifiers, including Federal agencies; and expanded the eligibility examination process to ensure the eligibility of WOSBs or EDWOSBs for the program. The proposed rule also set forth the eligibility criteria for the program, as well as the protest and appeal process for WOSB and EDWOSB status protests.

In the proposed rule, SBA stated several times that it was seeking comments on any and all aspects of the rule. In particular, though, SBA sought comments on the data used to identify the 83 industries, as well as the proposed new certification procedures. SBA stated that comments were due on May 3, 2010, which provided interested parties 60 days to submit these comments. SBA received a total of 998 comments on the rule. Many of these comments contained the same or similar remarks and virtually all of the comments supported the rule, commended SBA for its efforts, and urged the agency to expeditiously promulgate final regulations since WOSBs have been waiting eleven years for the program.

Many of the comments supported the proposed rule on the grounds that: Women are underrepresented in Federal contracting; the new program will level the playing field for WOSBs; the new program will help businesses to grow; and it will be beneficial to the economy. Few comments did not support the proposed rule on the grounds that the scope was too restrictive in its application to WOSBs, and that they opposed gender based set asides, believed that the program creates an artificial advantage for a certain group, or that the program was merely a token to WOSBs. All comments can be viewed on the Federal rulemaking portal at *http://www.regulations.gov.*

The comments relating to specific sections of the rule are discussed in further detail below.

In addition, the SBA notes that although this is a final rule, it is not effectively immediately. The SBA is in the process of working with the Federal Acquisition Regulatory Council to implement this program in the Federal Acquisition Regulations (FAR). In addition, the SBA is working with the Integrated Acquisition Environment to

make changes to the various Federal procurement data systems, which will be affected by this rule. As a result, the SBA believed it was necessary to publish the rule as final, but to also acknowledge that there are additional measures that need to be taken to fully implement the program.

II. Summary of Comments and Agency Response to Comments

A. Eligible industries

a. General Comments on the Eligible Industries

SBA's proposed rule identified 83 NAICS codes that would be eligible for Federal contract assistance under the WOSB Program. Most comments received on the proposed rule's identification of the 83 NAICS codes were overwhelmingly supportive. In fact, SBA received hundreds of comments which supported the identification of 83 NAICS categories. For example, many comments stated they are "extremely pleased" that all 83 NAICS categories have been selected. Other comments applauded SBA's "efforts to increase women-owned business participation in federal contracting." Additional comments stated that the "rule is a significant improvement over the rule proposed in 2007."

SBA also received dozens of comments that, while supporting the 83 eligible NAICS codes, sought the inclusion of additional NAICS categories. Some of the comments stated that all NAICS categories should be eligible, while other comments identified specific additional NAICS categories for eligibility.

The comments which requested eligibility of all NAICS codes asserted that SBA's other programs are not limited to certain NAICS codes. In addition, some of these comments stated that no court has required a study prior to establishing a program that provided contracting assistance on the basis of gender and SBA's requirement of such a study limits the eligibility of NAICS categories.

The comments which requested the addition of specific NAICS categories based their requests on various viewpoints, including the belief that WOSBs in a NAICS code received few contracts or a small dollar amount of contracts, or that only a few WOSBs participate in a NAICS code, or that WOSBs sought contracts in a NAICS code, but did not receive the contract.

While SBA acknowledges the concerns expressed in these comments relating to the need to increase WOSB participation in Federal contracting, section 8(m) of the Act sets forth certain statutory requirements for this program that specify the manner in which SBA is to identify included NAICS categories. In particular, section 8(m) instructs SBA to conduct a study to identify industries in which WOSBs are underrepresented with respect to Federal procurement contracting. *See* 15 U.S.C. 637(m)(4). Therefore, SBA must identify the program's eligible industries based on a study which analyzes WOSBs' underrepresentation in a specific industry.

Shortly after section 8(m) was enacted, and pursuant to the requirement of paragraph (4) of the law, SBA, using its own internal resources, conducted a study to identify the industries in which WOSBs are underrepresented with respect to Federal procurement contracting. SBA initially completed its study in September 2001, and contracted with the National Academy of Sciences (NAS) to review the study before publication. In March of 2005, the National Research Council, which functions under the auspices of the NAS and other National Academies, issued an independent evaluation concluding that SBA's study was flawed and offering various recommendations for a revised study.

In response to this evaluation, SBA issued a solicitation in October 2005 seeking a contractor to perform a revised study in accordance with the NAS recommendations. In February 2006, SBA awarded a contract to the Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND) to complete a revised study of the underrepresentation of WOSBs in Federal prime contracts by industry code. The resulting study—the RAND Report—was published in April 2007 and is available to the public at *http://www.RAND.org/pubs/technical_reports/TR442.*

As the RAND Report explains more fully, underrepresentation is typically referred to as a disparity ratio. A "disparity ratio" is a measure comparing the utilization of WOSBs in Federal contracting in a particular NAICS code to their availability for such contracts in a particular NAICS code. A disparity ratio of 1.0 suggests that firms of a particular type are awarded contracts in the same proportion as their representation in the industry—that is, there is no disparity. A disparity ratio of less than 1.0 suggests that the firms are underrepresented in Federal contracting, and a ratio greater than 1.0 suggests that they are overrepresented. This disparity ratio provides an estimate of the extent to which WOSBs that are available for Federal contracts in specific industries are actually being utilized to perform such contracts. One of the recommendations made by the NAS Review was to create four disparity ratios of underrepresentation using a combination of different databases and different measures. The four disparity ratios recommended by the NAS Review were the following: (1) Use contract dollars with the Survey of Business Owners (SBO) database; (2) use contract dollars with the Central Contractor Registry (CCR) database; (3) use number of contracts with the SBO database; and (4) use the number of contracts with the CCR database.

The RAND Report, in accordance with the NAS recommendations, created various disparity ratios to identify the NAICS codes which showed underrepresentation based on a disparity ratio. Using the RAND Report, SBA identified a viable and appropriate methodology of identifying industries in which WOSBs are underrepresented or substantially underrepresented. SBA did this in accordance with the statute.

Accordingly, in view of the statute's explicit requirements, SBA cannot simply deem a NAICS code eligible under the WOSB Program based solely on a request set forth in the public comments.

b. Methodology: Dollars and Numbers

In the proposed rule, SBA identified 83 NAICS categories as eligible under the WOSB Program. The RAND Report found these 83 NAICS categories to be underrepresented or substantially underrepresented using the numbers and dollars approaches. That is, the industry was identified as eligible if the industry was underrepresented or substantially underrepresented using either the numbers or the dollars approach. SBA explained in the proposed rule that, for purposes of section 8(m), both the dollars and numbers approaches are viable and appropriate means of identifying industries in which WOSBs are underrepresented or substantially underrepresented. A previous version of the proposed regulations identified only 4 NAICS as eligible because it used only the dollars approach and not the number approach to identify eligible industries.

SBA received hundreds of comments which expressed general support for the identification of 83 NAICS codes, which relied upon the use of both the numbers and dollars approaches. In addition, SBA received hundreds of comments which agreed specifically with the use of both the dollars and numbers approaches identifying the eligible

industries under the WOSB Program. For example, one comment stated that the use of both the numbers and dollars approaches is a better mechanism "to measure underrepresentation and performance of WOSBs."

As explained in the proposed rule, the dollars approach compares the proportion of the dollar value of contracts in a particular NAICS code awarded to WOSBs with the proportion of gross receipts (revenues) in that NAICS code earned by WOSBs. The numbers approach compares the proportion of contracts (calculated in terms of number of contracts) awarded to WOSBs in a particular NAICS code with the number of WOSBs in that particular NAICS code.

SBA determined that both approaches represent legitimate and complementary interpretations of the statutory term "underrepresentation." Specifically, underrepresentation can occur when WOSBs are not being awarded Federal contracting dollars in proportion to their economic representation (measured by their gross receipts) in an industry. But underrepresentation can also occur where there is disparity in the number of contracts being awarded to WOSBs, even if there is no measured disparity in contract dollars, due to a handful of WOSBs winning large-dollar contracts. SBA also stated in the proposed rule that applying the section 8(m) program in these industries would reduce the effects of the discrimination affecting women-owned small businesses, consistent with Congress's goals, and that both numbers and dollars approaches are substantially related to the purpose of the WOSB Program.

Based on the reasons set forth herein and in the proposed rule, as well as the support SBA received from the public comments on this issue, SBA has promulgated the proposed rule as final and will apply both the numbers and dollars approach to identify eligible industries.

c. Methodology: Central Contractor Registry (CCR) and Survey of Business Owners (SBO) Databases

For the availability component of the disparity ratio, RAND used two different databases: The 2002 Survey of Business Owners (SBO) from the five-year Economic Census, and the FY 2006 Central Contractor Registration (CCR) registration database. The proposed rule used the CCR database rather than the SBO database to identify the 83 eligible industries under the WOSB Program. The proposed rule explained that SBA selected the CCR database for various reasons, including the fact that the CCR database, as compared with the SBO database as currently constituted, is more likely to capture those firms ready, willing and able to compete for Federal contracts.

SBA received hundreds of comments which addressed the CCR and SBO databases used in the RAND Report. The overwhelming majority of these comments supported the proposed methodology used to identify eligible industries under the WOSB Program. Specifically, SBA received dozens of comments which supported the use of the CCR database to identify the eligible industries. Several of these comments supported the use of CCR because it is a more comprehensive and complete database.

SBA also received several comments that not only supported the use of the CCR database, but urged SBA to use the SBO database from the RAND Report in addition to the CCR database to identify eligible industries. Specifically, these comments stated that SBA should deem as underrepresented those industries that appear underrepresented in two or more of the four approaches identified in the report issued by the National Academy of Sciences (NAS) recommendations.

Additional comments received by SBA supported the use of only the SBO database (and not the CCR) from the RAND Report to identify the eligible industries. Some of these comments stated that the use of CCR undercuts utilization and perpetuates discrimination because not all WOSBs register in CCR due to their belief that there is no meaningful competition in Federal procurement for women-owned businesses.

As explained in the proposed rule, SBA decided not to use the SBO database used in the RAND Report and concluded that the CCR database used in the RAND report is currently the best available database to use to determine the availability component of the disparity ratios because of certain limitations in the existing SBO dataset. SBA proposed not to use the 2002 SBO database used in the RAND Report for the following reasons:

- The SBO data in the RAND Report do not disaggregate industry groupings beyond the two-digit NAICS level. In the NAS 2005 report examining SBA's 2002 internal study, NAS criticized SBA's use of the two-digit Major Group Standard Industrial Classification (SIC) industry codes as inadequate. The two-digit Major Group SIC designation corresponds to the current three-digit Subsector NAICS designation. Thus, while NAS criticized SBA's use of two-digit SIC information, the SBO two-digit NAICS data are even less precise than the two-digit SIC data. Both the CCR and the FPDS/NG, in contrast, provide the capability to use four-digit NAICS classifications.
- The SBO database in the RAND Report generally considers all firms in the economy, and not simply the number of firms that have explicitly indicated that they are ready, willing, and able to perform Federal contracts. In contrast, because firms are generally required to register on the CCR database prior to bidding on a Federal contract, a firm's presence in the CCR specifically reflects its willingness to bid on a Federal contract. SBA recognized, however, that its reliance on the CCR database could understate the availability of women-owned firms, since a firm's inability to bid on Federal contracts, and therefore its reluctance to register on the CCR could itself result from gender discrimination.
- The SBO database in the RAND Report does not distinguish between WOSBs and women-owned businesses in general, large and small. The CCR, in contrast, contains self-reported information on whether a business is small. And the procedures authorized by section 8(m) are specifically targeted towards only small businesses owned by women.
- The SBO database in the RAND Report is generally not available for two years after the survey is completed. CCR data, in contrast, are updated continuously and made available immediately. Thus, in this instance, the SBO data available to RAND at the time of the study was less recent than the CCR data. SBA recognized, however, that the degree to which data regarding business ownership and economic size change from year to year is unclear, and therefore that it was not clear how much weight this distinction should carry.

As detailed in the proposed rule, SBA notes that the Census Bureau provided SBA with a data set for the availability component of the disparity ratio which came from the 2002 Survey of Business Owners (SBO) collected through the 5-year Economic Census for firms with employees (hereinafter referred to as "Census SBO data"). SBA elected not to use this dataset because that data addresses all firms across the economy as a whole, and does not select for firms which are ready, willing and able to engage in federal procurement contracting. For this reason, SBA is of the view that it is not a viable alternative data set for accurately measuring disparity.

After a review of the comments, for these reasons, SBA continues to support the use of the CCR for the availability component of the disparity ratio to

identify the eligible industries. In so doing, however, SBA does not suggest that use of SBO data would never be appropriate to calculate availability.

While the comments correctly stated that the NAS recommended in their report the designation of an industry as eligible under the WOSB Program if the industry appears underrepresented in two or more of the four approaches, the NAS also recommended estimating disparity ratios at a disaggregated level. In other words, the SBO database used in the RAND Report provides data only at the *two-digit* level. In contrast, both the CCR and the FPDS/NG provide the capability to use *four-digit* NAICS classifications. Thus, SBA had to reconcile these recommendations and, based on the above limitations of the SBO data set from the RAND Report, SBA elected to use the four-digit CCR dataset for the availability component.

In response to the comments which stated that not all WOSBs register in CCR thus resulting in an undercounting of underutilization, SBA notes that courts have looked at the appropriateness of the "availability" component, also known as the "ready, willing, and able" component, in evaluating the accuracy of disparity studies. *See e.g., Eng'g Contractors Ass'n of S. Fla., Inc.* v. *Metro. Dade County,* 122 F.3d 895, 907 (11th Cir. 1997); *Concrete Works of Colorado, Inc.* v. *City and County of Denver,* 321 F.3d 950, 980 (10th Cir. 2003). The CCR and SBO databases are different means of measuring the "availability" component.

Although not all firms or WOSBs have registered in CCR, the firms in the CCR database have at least indicated by registering to submit an offer on Federal prime contracts that they are "willing" to perform work on such contracts and have self-identified as firms that are ready and able to perform such work. Further, the SBO database used in the RAND Report generally considers all firms in the economy so it is possible that it may actually overestimate the number of firms that are ready, willing and able to perform Federal contracts, thus potentially overestimating underrepresentation. SBA recognizes that this is a conservative approach to calculating availability, but believes its use is appropriate in this instance, particularly in light of the other advantages of the CCR database.

Other comments which SBA received supported the SBO database and addressed the fact that the CCR does not allow the disparity ratio to include specific amounts earned by that business in that NAICS code and thus may lead to over counting of earnings.

As stated in the proposed rule, this concern does not render unreliable the disparity ratios calculated using the dollars component of the CCR database. The dollars-based disparity ratios are themselves based on a comparison between two different ratios: The value of the government contracts awarded to WOSBs in a particular industry compared to the value of all government contracts awarded in that industry, on the one hand; and the gross receipts (in the economy at large) of WOSBs registered in the CCR database for that industry compared to the gross receipts for all businesses registered for that industry, on the other hand. The numerator of this ratio-the value of government contracts awarded to WOSBs and to industries in general within a given industry code-is not calculated using the CCR database.

In addition, with respect to the denominator, SBA believes that it is reasonable to assume that WOSBs and non-WOSBs register in the CCR database and identify industries for which they are available in a similar manner. Thus, if a WOSB in a particular kind of business registers in (and effectively restates its total revenues in) three distinct NAICS codes, a non-WOSB in the same kind of business is likely to register in (and restate its total revenues in) each of the same three NAICS codes. And because the denominator of the dollars-based disparity ratio is calculated based on a comparison between gross receipts earned by WOSBs and non-WOSBs, rather than the absolute values of those receipts, the potential duplicative re-reporting of revenue in each NAICS code does not raise serious concerns in SBA's view, about the reliability of the dollars analysis of the RAND study. For these reasons, SBA disagrees with the comments that are concerned with the viability of the CCR data because the CCR does not allow the disparity ratio to include specific amounts earned by a business in a particular NAICS code.

Lastly, SBA received comments which argued that since only 1.8 percent of women-owned businesses have receipts larger than $1 million the fact that SBO doesn't distinguish between large and small WOSBs should not be a determining factor. SBA notes that SBO's failure to distinguish between large and small businesses is only one factor SBA considered in deciding to use the CCR data. In addition, the existence of a few large WOSBs or other businesses would potentially skew the SBO data, resulting in an unreliable disparity ratio using the SBO data. The effect is unknown but outliers on both the large and small ends of the spectrum may affect the reliability of the SBO data used in the RAND Report.

Accordingly, for the reasons stated in the proposed rule, SBA will use the CCR database to identify eligible industries.

d. Methodology: FPDS Database

In the proposed rule, SBA explained that the RAND Report used the Fiscal Year (FY) 2005 Federal Procurement Data System/Next Generation (FPDS/NG) for the utilization component of the disparity ratio that resulted in the identification of 83 eligible NAICS categories.

SBA received hundreds of comments which supported the use of the FPDS database to identify the eligible industries; however, one comment expressed concern with this database, stating that contract revenues in the database (presumably FPDS) may not reflect actual money earned (*e.g.,* multi award contracts) and contract award values do not equate to company revenues.

SBA agrees with the comment that stated a company's revenues do not equal contract award values. In the RAND Report, company revenues are obtained from the CCR database, while contract award values are obtained from the FPDS.

In addition, while SBA understands the concern with the accuracy of the FPDS procurement database, SBA maintains that this database is a viable and appropriate means of identifying eligible industries. In addition, the FPDS is the best source of information on Federal contracts. *See* RAND Report at 7. Lastly, in some instances where relevant data was available, RAND made adjustments to deal with the limitations in the FPDS. *See id.* at 7–9.

For example, RAND considered the fact that, in some cases, individual actions refer to multi-year contracts or are revisions to earlier contracts. RAND stated in the Report that this could lead to errors in summing to the contract level, such as negative dollar amounts or very large contract values. In order to examine the sensitivity of the disparity ratios to these outliers, RAND calculated "trimmed" results. The trimmed results reflect calculations where RAND trimmed the top and bottom 0.5 percent of contract awards after rolling up the data to the contract level. However, RAND found that their "comparisons from FY02 through FY05 also indicate that very large contracts and larger negative values are awarded each year, suggesting that they are not outliers" and "without a compelling reason to delete these contracts, we are inclined to put more weight on the full-sample

results" as opposed to the trimmed results *See id.* at 8.

For the reasons stated above, SBA's Final Rule will use the FPDS database as proposed.

e. The Eligible Industry Codes

For the reasons stated here and in the proposed rule, this Final Rule designates 83 NAICS codes as eligible for Federal contracting under the WOSB Program. There are forty-five NAICS codes in which WOSBs are underrepresented and thirty-eight NAICS codes in which WOSBs are substantially underrepresented.

The forty-five NAICS codes in which WOSBs are underrepresented are:

1. 2213—Water, Sewage and Other systems;
2. 2361—Residential Building Construction;
3. 2371—Utility System Construction;
4. 2381—Foundation, Structure, and Building Exterior Contractors;
5. 2382—Building Equipment Contractors;
6. 2383—Building Finishing Contractors;
7. 2389—Other Specialty Trade Contractors;
8. 3149—Other Textile Product Mills;
9. 3159—Apparel Accessories and Other Apparel Manufacturing;
10. 3219—Other Wood Product Manufacturing;
11. 3222—Converted Paper Product Manufacturing;
12. 3321;—Forging and Stamping;
13. 3323—Architectural and Structural Metals Manufacturing;
14. 3324—Boiler, Tank, and Shipping Container Manufacturing;
15. 3333—Commercial and Service Industry Machinery Manufacturing;
16. 3342—Communications Equipment Manufacturing;
17. 3345—Navigational, Measuring, Electromedical, and Control Instruments Manufacturing;
18. 3346—Manufacturing and Reproducing Magnetic and Optical Media;
19. 3353—Electrical Equipment Manufacturing;
20. 3359—Other Electrical Equipment and Component Manufacturing;
21. 3369—Other Transportation Equipment Manufacturing;
22. 4842—Specialized Freight Trucking;
23. 4881—Support Activities for Air Transportation;
24. 4884—Support Activities for Road Transportation;
25. 4885—Freight Transportation Arrangement;
26. 5121—Motion Picture and Video Industries;
27. 5311—Lessors of Real Estate;
28. 5413—Architectural, Engineering, and Related Services;
29. 5414—Specialized Design Services;
30. 5415—Computer Systems Design and Related Services;
31. 5416—Management, Scientific, and Technical Consulting Services;
32. 5419—Other Professional, Scientific, and Technical Services;
33. 5611—Office Administrative Services;
34. 5612—Facilities Support Services;
35. 5614—Business Support Services;
36. 5616—Investigation and Security Services;
37. 5617—Services to Buildings and Dwellings;
38. 6116—Other Schools and Instruction;
39. 6214—Outpatient Care Centers;
40. 6219—Other Ambulatory Health Care Services;
41. 7115—Independent Artists, Writers, and Performers;
42. 7223—Special Food Services;
43. 8111—Automotive Repair and Maintenance;
44. 8113—Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance; and
45. 8114—Personal and Household Goods Repair and Maintenance.

The thirty-eight NAICS codes in which WOSBs are substantially underrepresented are:

1. 2372—Land Subdivision;
2. 3152—Cut and Sew Apparel Manufacturing;
3. 3231—Printing and Related Support Activities;
4. 3259—Other Chemical Product and Preparation Manufacturing;
5. 3328—Coating, Engraving, Heat Treating, and Allied Activities;
6. 3329—Other Fabricated Metal Product Manufacturing;
7. 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing;
8. 3372—Office Furniture (including Fixtures) Manufacturing;
9. 3391—Medical Equipment and Supplies Manufacturing;
10. 4841—General Freight Trucking;
11. 4889—Other Support Activities for Transportation;
12. 4931—Warehousing and Storage;
13. 5111—Newspaper, Periodical, Book, and Directory Publishers;
14. 5112—Software Publishers;
15. 5171—Wired Telecommunications Carriers;
16. 5172—Wireless Telecommunications Carriers (except Satellite);
17. 5179—Other Telecommunications;
18. 5182—Data Processing, Hosting, and Related Services;
19. 5191—Other Information Services;
20. 5312—Offices of Real Estate Agents and Brokers;
21. 5324—Commercial and Industrial Machinery and Equipment Rental and Leasing;
22. 5411—Legal Services;
23. 5412—Accounting, Tax Preparation, Bookkeeping, and Payroll Services;
24. 5417—Scientific Research and Development Services;
25. 5418—Advertising, Public Relations, and Related Services;
26. 5615—Travel Arrangement and Reservation Services;
27. 5619—Other Support Services;
28. 5621—Waste Collection;
29. 5622—Waste Treatment and Disposal;
30. 6114—Business Schools and Computer and Management Training;
31. 6115—Technical and Trade Schools;
32. 6117—Educational Support Services;
33. 6242—Community Food and Housing, and Emergency and Other Relief Services;
34. 6243—Vocational Rehabilitation Services;
35. 7211—Traveler Accommodation;
36. 8112—Electronic and Precision Equipment Repair and Maintenance;
37. 8129—Other Personal Services; and
38. 8139—Business, Professional, Labor, Political, and Similar Organizations.

f. Examples of When Contracting Officers Can Use WOSB Program

SBA received one comment which urged SBA to provide examples of when a contracting officer can apply the WOSB Program to a contract. In response to this request, SBA provides the following examples.

- If the requirement is assigned a six digit NAICS code under NAICS 5313—Activities Related to Real Estate, the contracting officer may not set aside the procurement under the WOSB Program because the contract is not for the procurement of goods or services with respect to an industry as one in which EDWOSBs are underrepresented or substantially underrepresented or WOSBs are substantially underrepresented with respect to Federal procurement contracting.
- If the requirement is assigned a six digit NAICS code under NAICS 8129—Other Personal Services, then, assuming all other requirements are met, the contracting officer may set aside the procurement under the WOSB Program

to all eligible WOSBs because the industry is one in which WOSBs are substantially underrepresented.

• If the requirement is assigned a six digit NAICS code under NAICS 5614—Business Support Services, then, assuming all other requirements are met, the contracting officer may set aside the procurement under the WOSB Program to all eligible EDWOSBs because the industry is one in which WOSBs are underrepresented.

Furthermore, as required by the Small Business Regulatory Enforcement Act (SBREFA) (Pub. L. 110–28, section 212), SBA will publish a small entity compliance guide to assist small businesses with the WOSB Contract Program. The guide will be posted, at the time the rule is published, on the SBA Web site (*http://www.sba.gov*) and distributed to known industry contacts. The guide will be in easily understood language as to what is required to participate in the new program.

g. Updates to the RAND Report

Hundreds of the comments SBA received that supported the identification of the 83 eligible NAICS categories also stated that the RAND Report data is outdated and should be updated. In particular, the comments suggested the creation of a regular timeline for updates to the RAND Report, with some comments specifically recommending updating the RAND Report every five years.

Most of these comments also suggested that SBA find additional data sources for the disparity ratios calculated in the RAND Report and perform additional data analysis to the data. In particular, one comment stated that it "generally supports the methodology but SBA has not sufficiently examined the market where several large companies are dominant and controlling over 95 percent of the market share in NAICS codes 3119, 3121 and 325412." The comments also suggested that SBA gather bid data, all data on WOSBs in Federal contracting, data from state governments and third-party certifiers, as well as any other data sources that allow for a more complete picture of availability.

Another comment suggested that SBA include in its calculation the potential availability of WOSBs had there been no discrimination. The comments also stated that additional data will provide a "'gold standard' by which to judge whether our companies or programs are successful." Another comment suggested that a "special committee" should be appointed to review government purchases on an objective basis, without having knowledge of the demographics of the bidding companies' ownership.

The CCR data used in the RAND Report are from October 2006. One of the cited benefits of the CCR database is that it is updated continuously and made available promptly. Therefore, it provides SBA the flexibility needed to access this data and readily update the eligible industries. The SBO data from the five-year Economic Census is from 2002. The next SBO was taken in 2007, and the results are not yet available.

SBA understands the concerns presented in these comments. The data relied upon in the RAND Report is determinative of the resulting disparity ratios. Obtaining the most accurate and timely data possible is of paramount importance to SBA. SBA is committed to making an on-going effort to obtain accurate and timely data to use in the anticipated updates to the list of eligible industries. In addition, SBA is considering available options in obtaining new and better data sources that are viable and appropriate means of measuring disparity of WOSBs in Federal contracting. Rather than limiting itself to a particular timetable for updating the eligible industries, SBA believes it is more prudent to update the study and list of eligible industries as accurate and timely data become available to SBA for analysis and the analysis is completed.

SBA also received comments which stated that, in examining data about underrepresentation, "fronts" may be skewing calculations, and therefore, SBA should dedicate resources to site visits to ensure accurate calculations.

The SBA believes that its regulations, which permit protests and robust eligibility examinations, will not only aid in preventing fraud, waste and abuse in the WOSB program, but as "fronts" are weeded out of the WOSB Program and denied contract opportunities under the program through the protests and eligibility examinations, the accuracy of the WOSB data in CCR and FPDS will improve. In addition, under SBA's eligibility examinations, SBA reserves the right to conduct a site visit without prior notification to the concern. SBA will conduct such examinations of WOSBs as a way to combat fraud and abuse of the WOSB Program.

h. Appeal Right

SBA received several comments which suggested that businesses should have the right to appeal if their NAICS code was not identified as an eligible industry for Federal contracting under the WOSB Program.

Section 8(m) of the Act sets forth certain criteria for the WOSB Program. Specifically, the Act provides that the contract being set aside must be for the procurement of goods or services with respect to an industry identified by SBA pursuant to a study. Therefore, Congress expressly limited application of the WOSB Program to the industries identified by SBA pursuant to a study.

SBA contracted with RAND to complete a study in order to fulfill this statutory obligation. As explained in the proposed rule, the RAND Report, using various combinations of data sources and methods, identified twenty-eight possible approaches to measuring the underrepresentation and substantial underrepresentation of WOSBs in Federal procurement contracting. SBA had to identify a reasonable means for evaluating, reconciling and applying these methodologies. As detailed in the proposed rule, SBA determined that the methodology using the CCR and FPDS databases, along with both the dollars and numbers approaches, is a viable and appropriate means of identifying industries in which WOSBs are underrepresented or substantially underrepresented.

Because SBA is required to identify the industries pursuant to a study, SBA disagrees with the comments received on this issue and will not implement an appeal process for the NAICS categories found ineligible for Federal contracting under the WOSB Program. However, SBA is committed to reevaluating the list of eligible industries as viable and appropriate data become available to analyze and SBA will provide for the eligibility of additional or fewer industries in accordance with the requirements of the congressional mandate and where indicated by analysis of the viable and appropriate data.

i. Agency-by-Agency Requirement

In the proposed rule, SBA explained it was eliminating the requirement for an agency-by-agency determination of discrimination. SBA received dozens of comments which supported this proposal. SBA did receive a few comments that disagreed with the removal of this requirement because the commentators believed the RAND Report is flawed and therefore the agency-by-agency requirement is necessary.

As stated in the proposed rule, SBA believes the methodology used to identify the 83 eligible industries is a viable and appropriate means of identifying industries in which WOSBs are underrepresented or substantially underrepresented. Based on this assessment, SBA believes that the RAND Report is sufficient to satisfy the

intermediate scrutiny standard that applies to the WOSB Program.

The equal protection requirements of the Fifth Amendment to the United States Constitution establish that programs that use gender as a factor in distributing benefits to individuals must meet the intermediate scrutiny standard. This standard requires the program to further important governmental objectives and employ means that are substantially related to the achievement of those objectives. *See United States* v. *Virginia,* 518 U.S. 515, 533 (1996). In applying this standard to the WOSB Program, the government has a sufficiently important objective: To redress the effects of past discrimination against women in contracting and to ensure that the effects of that discrimination do not serve to limit WOSBs' opportunities to participate in Federal contracting opportunities. *See City of Richmond* v. *Croson Co., 488 U.S. at 492; Califano* v. *Webster,* 430 U.S. 313, 318 (1977). More specifically, the Court has repeatedly upheld as an important government objective the reduction of disparities in condition or treatment between men and women caused by the long history of discrimination against women. *See Califano,* 430 U.S. at 317; *Miss. Univ. for Women* v. *Hogan,* 458 U.S. 718, 728 (1982); *Schlesinger* v. *Ballard,* 419 U.S. 498 (1975); *Kahn* v. *Shevin,* 416 U.S. 351 (1974).

Moreover, the means chosen by Congress to implement the WOSB Program ensure that the Program is substantially related to its goals. Congress expressly limited application of the WOSB Program only to industries in which women are substantially underrepresented or underrepresented in contracting. The RAND Report is a detailed analysis of WOSBs which identifies the disparity ratio of WOSBs in Federal prime contracting by 4-digit NAICS code and is a sufficient basis for implementing the rule. The Supreme Court has rejected the contention that government may adopt a race-conscious contracting program only "to eradicate the effects of its own prior discrimination," and this conclusion also applies to gender-conscious contracting programs. *Croson,* 488 U.S. at 486.

Accordingly, based on the comments that supported the proposed rule and for the reasons set forth in the proposed rule, SBA will not require the procuring agency to make a finding of discrimination prior to setting aside a contract in one of the eligible NAICS categories as currently required in 13 CFR 127.501(b).

B. Ownership and Control

The SBA received several comments which were concerned with the ownership and control of an EDWOSB or WOSB. In the proposed rule, § 127.201 addressed ownership and states that the EDWOSB/WOSB must be unconditionally and directly owned at least 51 percent by women. The ownership could not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. Several comments supported the regulation, and one comment specifically agreed that a WOSB should not be 51 percent owned and controlled by another business entity even if that business entity is owned and controlled by women. However, one comment recommended that SBA increase ownership by women to 67 percent, or at least something higher than 51 percent, because this commenter has witnessed husbands running companies that are 51 percent owned by the wife. SBA notes that the 51 percent ownership and control requirement is statutory and cannot be changed in the regulations. In addition, SBA believes that the regulations set forth sufficient requirements that the woman control the business, and also sufficient checks to ensure that only truly eligible businesses receive the benefits of the WOSB Program.

Another comment agreed that there should be unconditional and direct ownership that is unencumbered by conditions or agreements and believed that if there are instances of a pledge or encumbrance of stock, SBA should ensure such pledges or encumbrances follow normal commercial practices. The final regulation specifically explains that the ownership must be direct (13 CFR 127.201). Further, the final regulation explains that the pledge or encumbrance of stock or other ownership interest as collateral does not affect the unconditional nature of the ownership if the terms of the agreement follow normal commercial practices and the owner retains control absent violations of the terms. SBA believes this Final Rule provides flexibility to the WOSB while at the same time ensuring that the business is owned and controlled by women.

The proposed regulation also addressed unexercised stock options with respect to ownership of a corporation. One comment agreed with the proposed regulation that any unexercised stock options held by a woman will be disregarded while the unexercised stock options held by any other individual or entity will be treated as having been exercised. SBA notes that this final regulation is consistent with SBA's other contracting program regulations addressing the treatment of unexercised stock options.

One comment recommended that SBA establish a minimum amount of time that the business has to be owned by women in order to be eligible for the WOSB Program and another comment questioned why SBA does not require the WOSB to have a minimum amount of experience. SBA does not believe these requirements are necessary in light of the fact they are not required by statute and could be detrimental to start-up companies. In addition, imposing these requirements may only perpetuate discriminatory barriers. Further, there are many industries and contracts in which age and size are irrelevant to ability to perform.

The SBA also received several comments which supported the portion of the proposed rule which addressed control of the EDWOSB/WOSB. Specifically, § 127.202 of the Final Rule explains that the management and daily business operations of the concern must be controlled by one or more women. At least two comments supported the requirement that one or more women must make the long term decisions and have the day-to-day management of the company to ensure that the spouse or another person is not really running the company.

One comment also supported the proposed rule that the women owners cannot have outside employment if it prevents them from devoting sufficient time and attention to the daily operations and management of the company. However, one comment believed that the rule was too stringent concerning the limitation on outside employment. According to this comment, many small business owners have two jobs in the first few years of starting a company and it may take years for the business to grow. The comment stated that this requirement is not consistent with the Service-Disabled Veteran-Owned Small Business, HUBZone or 8(a) Business Development (BD) Programs.

The final regulation states that the woman who holds the highest officer position of the concern must manage it on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. The final regulation also states that the woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the

concern to control its management and daily business operations. Therefore, the final regulation does not necessarily limit outside employment. It permits outside employment as long as it does not prevent the business owner from managing the EDWOSB or WOSB. Although such limitations may not be expressly set forth in the SDVO or 8(a) BD regulations, the same policy is applied to those programs because essentially, if an individual upon whom eligibility is based is devoting full-time to one business, it is difficult to prove that same individual is devoting full-time to the SDVO or 8(a) business and meeting the eligibility criteria for those programs.

One comment noted that it supported the rule that the women business owners do not necessarily have to have the technical expertise or possess the required license while another comment requested that SBA reconsider this regulation and preclude "nonprofessionals" or unlicensed individuals from owning professional businesses. Another comment believed that SBA should have more stringent rules to ensure WOSBs are actually 51 percent owned by women that are active in the daily management of the business.

The Final Rule provides that although the women manager need not have the technical expertise or license required, she must nonetheless demonstrate that she has the ultimate managerial and supervisory control over those possessing the required licenses or technical expertise. This is consistent with the 8(a) BD regulations concerning control and SBA believes it provides flexibility to the company while still ensuring that the woman controls the company. In addition, SBA will be monitoring EDWOSBs and WOSBs via eligibility examinations and protests and appeals to ensure that the women owners are actively engaged in the daily management of the business.

C. Economic Disadvantage

As discussed above, the statute states that a contracting officer may set aside a requirement for EDWOSBs in industries that are underrepresented or substantially underrepresented. SBA may waive the requirement that the WOSB be economically disadvantaged and permit a contracting officer to set aside a requirement for WOSBs in industries that are substantially underrepresented. The Final Rule implements these statutory provisions and sets forth the criteria for determining economic disadvantage.

One comment specifically supported the waiver of the economic disadvantage requirement if the industry is substantially underrepresented. However, SBA received several comments which opposed any economic disadvantage component to the WOSB Program and one comment specifically opposed any preference provided to EDWOSBs. Some comments noted that there were no similar economic disadvantage requirements for the HUBZone or SDVO Programs and one comment stated that if there are economic disadvantage requirements, then those meeting the requirements should receive the same benefits afforded to 8(a) BD Program Participants. SBA also received some comments which requested the removal of the distinction between substantially underrepresented and underrepresented industries.

Although SBA understands the concerns expressed by these comments, the agency is bound by the requirements set forth in the statute for the WOSB Program. As such, SBA cannot eliminate the economic disadvantage component of the WOSB Program or afford WOSBs or EDWOSBs the same benefits afforded 8(a) BD Program Participants since the statute provides different benefits for each program. For the same reason, it cannot eliminate the distinction between substantially underrepresented and underrepresented industries.

However, upon further review, SBA agrees that there should not be a priority for EDWOSBs for contracts assigned a NAICS code in an industry that has SBA determined is substantially underrepresented. The Small Business Act provides the Administrator authority to waive the economic disadvantage requirement in industries where women are substantially underrepresented. 15 U.S.C. 637(m)(3). With these regulations, the Administrator is waiving this requirement in those industries. Therefore, in industries where WOSBs are substantially underrepresented, as identified in this rule, the contracting officer may set aside the requirement for WOSBs without first determining whether the rule of two for EDWOSBs can be met. The regulation has been amended accordingly. We note that because an EDWOSB is by definition a WOSB, EDWOSBs can obviously submit offers for a procurement set-aside for WOSBs.

The SBA also received over 160 comments addressing the specific economic disadvantage criteria set forth in the proposed rule in § 127.203. One comment believed that the proposed rule was inconsistent with the regulations concerning economic disadvantage in the 8(a) BD Program while another comment expressed concern with using the 8(a) BD criteria because they are two different programs and it is not clear there are sufficient WOSBs in the 8(a) BD Program to support use of the same economic disadvantage criteria.

Along those same lines, one comment supported SBA's efforts to simplify the economic disadvantage analysis while another comment recommended that SBA simplify the economic disadvantage criteria further by simply stating that a woman is economically disadvantaged if the fair market value of all her assets is less than $6 million, excluding her retirement, any loans to her company and any inheritance. Some comments opposed any requirements concerning total assets when determining economic disadvantage.

In the proposed rule, SBA explained that when drafting the WOSB Program rule, it relied on certain interpretations and policies that have been followed by SBA with respect to the 8(a) BD Program that SBA believes should be applied to the WOSB Program as well. This included certain interpretations and policies SBA had set forth in a rule proposing to amend the 8(a) BD regulations, 74 FR 55694 (Oct. 28, 2009), that SBA withdrew on March 4, 2010. SBA believes that the 8(a) BD Program has decades of experience in reviewing cases based on economic disadvantage and has created a body of law and policy that encompasses this experience. SBA believes it would be fair and prudent to use this experience and body of law when determining economic disadvantage for the WOSB Program.

The SBA's experience with the 8(a) BD Program is that it must review income, personal net worth and the fair market value of the total assets of the woman because any other test would not demonstrate economic disadvantage. For example, it could be that a woman with low net worth has a large income or large assets, which should be pertinent to a claim of economic disadvantage. Therefore, SBA has not changed the proposed rule in this respect and continues to follow the policy and regulations for economic disadvantage for the 8(a) BD Program.

One comment stated that failure to get a line of credit should be an indicator of economic disadvantage. SBA agrees and believes that the objective criteria set forth in the rule are indicators of economic disadvantage and demonstrate that a woman's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of

business. This means that failure to get a line of credit because the business is owned by a woman, while male owned businesses can readily obtain such credit, is encompassed in the objective criteria set forth in the rule.

Numerous comments stated that the overall economic disadvantage figures are too low and should be updated for inflation, adjusted per the Consumer Price Index, or adjusted for geographical reasons. Other comments noted that business owners must have a certain amount of assets to obtain bonding and show stability of the company. For these reasons, the comments stated that it would be difficult to meet the personal net worth or income requirements set forth in the proposed rule.

SBA also received a few comments which stated that it should use specific guidelines based on median regional incomes like Internal Revenue Service Publication 1542 (publicly available at *http://www.irs.gov/formspubs*), which details per diem rates based on local expense averages, peg location and inflation. SBA received numerous comments which argued that it should not use a two year adjusted gross income when determining economic disadvantage because it is unfair to S corporations, sole proprietorships, and partnerships which are corporate structures used by a vast majority of small businesses and it would be more reliable to use the personal net worth guidelines set by the U.S. Department of Transportation, (publicly available at *http://osdbuweb.dot.gov/DBEProgram*), as long as the threshold was increased, and personal residences, retained earnings, and retirement assets are excluded.

Similarly, several comments opposed the $200,000 income cap because it limits a woman's ability to secure financing (line of credit) and bonding. Several comments believed that the salary should vary depending on the type of business and location of the firm. One comment noted that SBA should consider specifically what $200,000 means to other industries and consider other factors. Another comment recommended the income be raised to $400,000.

SBA notes that when determining what dollar thresholds to propose, it sought to create an objective standard by which a woman may or may not qualify as economically disadvantaged and reviewed information available as it relates to the 8(a) BD Program. The SBA believed that a straight line numerical figure would be more understandable, easier to implement, and avoid any appearance of unfair treatment.

When determining the threshold for fair market value of total assets, SBA reviewed SBA Office of Hearings and Appeals (OHA) decisions on the matter. For example, OHA upheld as reasonable a determination that an individual was not economically disadvantaged with total asset levels of $4.1 million and $4.6 million. *See Matter of Pride Technologies,* SBA No. 557 (1996), and *SRS Technologies* v. *U.S.,* 843 F. Supp. 740 (D.D.C. 1994). Alternatively, and again with respect to the 8(a) BD Program, SBA's finding that an individual was not economically disadvantaged with total assets of $1.26 million was overturned. *See Matter of Tower Communications,* SBA No. 587 (1997).

Upon further review, however, SBA agrees that the thresholds for fair market value of the total assets are too low and therefore in the Final Rule, states that an individual will not be considered economically disadvantaged if the fair market value of all her assets (with no reduction for the dollar amount of any liens or mortgages that may exist against such assets) exceeds $6 million. Unlike the net worth analysis, SBA does not exclude the value of the business concern in determining economic disadvantage in the total asset analysis, nor does SBA exclude the fair market value of the primary residence. Therefore, SBA believes it would be reasonable to increase that threshold.

In addition, SBA agrees with the comments and believes that the threshold set forth in the proposed rule for income should be increased. SBA had proposed to provide that it would presume that a woman is not economically disadvantaged if her yearly income averaged over the past three years exceeds $200,000. SBA proposed an income level of $200,000 because that figure closely approximates the income level corresponding to the top two percent of all wage earners, which has been upheld as a reasonable indicator of a lack of economic disadvantage. SBA believed that to some, the $200,000 income would seem unduly high as a benchmark, but noted that exceeding this amount is being used only to presume, without more information, that the woman is not economically disadvantaged.

In all cases, SBA's determination of economic disadvantage is based on the totality of the circumstances, not merely income. Nonetheless, income is a relevant factor, and those whose income is above a certain threshold should not, in most circumstances, be considered to be economically disadvantaged.

Since the time SBA issued the proposed rule, the IRS has issued statistical data on U.S. wage earners that show that the vast majority of individuals have an adjusted gross income of less than $350,000 and that the top 2% of wage earners had an adjusted gross income of $261,000 or more. SBA believes it would be reasonable to raise the threshold to this $350,000 amount to align it with the new IRS statistical data. Further, increasing the personal income threshold to $350,000 will accomplish two important goals. First, it will allow the EDWOSB to attract and retain higher skilled employees, since the woman owners/manager must be the highest compensated individual in the business concern. Second, many EDWOSBs will be actual or potential participants in the SBA's 8(a) Business Development Program as well as Department of Transportation's Disadvantaged Business Entity Program; and SBA will accept the certification of economic disadvantage applicable to all 8(a) program participants as conclusive evidence of economic disadvantage for the WOSB program.

Under this approach, income in excess of $350,000 would generally be used to presume that the individual is not economically disadvantaged. It would not, however, be presumed that those with income below $350,000 are economically disadvantaged. SBA will consider income in connection with other factors (such as overall assets, net worth, changes in income, and other indicia of access to credit and capital) when determining economic disadvantage.

In addition, the Final Rule permits applicants to rebut the presumption of lack of economic disadvantage upon a showing that the income attributed to the individual that is in excess of the threshold amount is not indicative of lack of economic disadvantage. For example, the presumption could be rebutted by a showing that the income was unusual (inheritance) and is unlikely to occur again. At least one comment supported the ability of a business to be able to rebut the presumption of lack of economic disadvantage if the income was unusual or unlikely to occur again. Another comment thought it was confusing as to when inheritance is counted as income and when it is not. Yet another comment believed that if someone inherits over $5 million, that person should not be considered economically disadvantaged even if it is a one-time only event.

The proposed and Final Rule explain that when considering a woman's personal income, a presumption of a lack of economic disadvantage can be

rebutted by a showing that a certain income level was unusual and unlikely to occur again. However, that same money could be counted as part of an individual's total assets. Thus, an inheritance of $6 million, for example, may be atypical income and excluded from SBA's determination of economic disadvantage based on income, but it would not be excluded from SBA's determination of economic disadvantage based on total assets. In such a case, a $6 million inheritance would render the woman not economically disadvantaged based on total assets.

We note that although SBA has raised the thresholds for fair market value of total assets and income, it does not agree that the thresholds for personal net worth should be raised. The Final Rule specifically excludes the following from the personal net worth calculation: (1) The woman's ownership interest in the business concern; (2) equity interest in her primary residence; (3) income received from an S corporation, limited liability company or partnership where the income was reinvested in the business or used to pay taxes arising in the normal course of operations of the business concern; and (4) funds invested in IRAs and retirement accounts that are unavailable until retirement age without a significant penalty for early withdrawal. As a result of these exclusions, SBA believes the personal net worth threshold of $750,000 should remain as proposed.

SBA received numerous comments that supported the proposed regulation to exclude community property interests of the spouse when looking at personal net worth. In the preamble to the proposed rule, SBA explained that it proposed not taking community property laws into account when determining economic disadvantage if the woman has no ownership interest. This means that property that is legally in the name of the one spouse would be considered wholly that spouse's, whether or not the couple lived in a community property state. Since community property laws are usually applied when a couple separates, and since spouses in community property states generally have the freedom to keep their property separate while they are married, SBA proposed to treat property owned solely by one spouse as that spouse's property for economic disadvantage determinations. However, if both spouses own the property, SBA would attribute a half interest in such property to the woman claiming economic disadvantage, unless there is evidence to show that the interest in such property is greater or lesser. SBA believes that this policy results in equal treatment for applicants in community and non-community property states and therefore has not changed the rule as proposed. By statute, community property laws will also not be applied for purposes of determining ownership of an EDWOSB or WOSB.

In addition, and along the same lines, SBA proposed to provide that it may consider a spouse's financial situation in determining an individual's access to capital and credit. One comment stated that it was unclear as to how a spouse's salary and portfolio value would be treated with respect to economic disadvantage. Two comments argued that the spouse's income and access to capital should not be counted if the spouse is not involved in the business.

After careful review, SBA agrees and has determined that a spouse's financial condition should not be attributed to the individual claiming disadvantaged status in every case. Instead, SBA will consider a spouse's financial condition only when the spouse has a role in the business (*e.g.,* an officer, employee or director) or has lent money to, provided credit support to, or guaranteed a loan of the business. In those cases, SBA must consider a spouse's financial situation when determining a woman's access to capital and credit because it is unfair to consider a woman economically disadvantaged when she can rely on her spouse to obtain capital and credit which other women business owners cannot obtain. In addition, the Final Rule explains that SBA may also consider the spouse's financial condition if the spouse's business is in the same or similar line of business as the EDWOSB or WOSB. SBA has seen instances in the past where the spouse and WOSB share similar names, Web sites, or employees. In those instances, it would be reasonable for SBA to look at the spouse's financial condition since it is apparent that the spouse is providing support to the EDWOSB/WOSB.

The proposed rule also explained that SBA would exempt from the calculation of personal net worth and fair market value of total assets funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable until retirement age without a significant penalty. The basis for this proposal stems from SBA's experience with the 8(a) BD Program, where it has found that including IRAs and other retirement accounts in the calculation of an individual's net worth does not serve to disqualify wealthy individuals. Instead, such an exclusion has worked to make individuals ineligible to the extent they have invested prudently in accounts to ensure income at a time in their lives when they are no longer working.

Several comments supported these exemptions; however, two comments opposed the provision that the retirement accounts be included once the woman can withdraw at retirement age because this prevents mature women who still want to work from being eligible for the WOSB Program. These two comments recommended that SBA merely count the withdrawals as income. SBA believes that retirement accounts are held for purposes of ensuring future income when an individual is no longer working and should not count the funds as current assets if they are not currently being enjoyed. However, if the individual has reached retirement age and has access to the retirement account, or has incurred a significant penalty and acquired access to the account, the funds are current assets and must be included as part of the individual's personal net worth, total assets, and income. However, if the individual invests funds from the retirement account into the EDWOSB or WOSB, those funds would be excluded from the net worth analysis as part of the exclusion of business equity. The EDWOSB or WOSB may be required to submit evidence that the funds were invested into the business. SBA has issued the Final Rule as it had proposed.

In addition, the proposed rule explained that in order for SBA to determine whether funds invested in a specific account labeled a "retirement account" may be excluded from a woman's net worth calculation, the woman must provide to SBA information about the terms and conditions of the account. SBA asked for comments on what specific information might be helpful. One comment stated that SBA should use Internal Revenue Service (IRS) Form 5498 to identify yearly contributions to such retirement accounts. SBA has determined that in order for it to determine whether funds invested in a specific account labeled a "retirement account" may be excluded from an individual's net worth calculation, the individual must provide to SBA information about the terms and conditions of the account and certify in writing that the "retirement account" is legitimate. SBA notes that as part of its document collection to verify eligibility, it will obtain income tax information that can also be used to verify whether an account is a retirement account.

SBA has also proposed exempting income from a corporation taxed under Subchapter S of Chapter 1 of the Internal Revenue Code (S corporation)

from the calculation of both income and net worth to the extent such income is reinvested in the firm or used to pay taxes arising from the normal course of operations of an S corporation. Although the income of an S corporation flows through and is taxed to individual shareholders in accordance with their interest in the S corporation for Federal tax purposes, SBA will take such income into account for economic disadvantage purposes only if it is not reinvested in the business or used to pay the taxes. This proposal would result in equal treatment of corporate income for corporations taxed under Subchapter C of Chapter 1 of the Internal Revenue Code (C corporations) and S corporations. In cases where that income is reinvested in the firm or used to pay taxes arising from the normal course of operations of the S corporation and not retained by the woman, SBA believes it should be treated the same as C corporation income for purposes of determining economic disadvantage. In order to be excluded, the owner of the S corporation would be required to clearly demonstrate that the S corporation distribution was used to pay taxes or was reinvested back into the S corporation within 12 months of the distribution of income.

Three comments supported SBA's proposal to exempt income received from an S corporation from the calculation of personal net worth and income and strongly agree that S corporations and C corporations should be treated similarly in this respect. One comment, however, stated that the requirement that the owner demonstrate that money was received and reinvested in the business is burdensome. SBA notes that the small business bears the burden to prove its eligibility for the WOSB Program and therefore, must be able to demonstrate in these cases that the S corporation distribution was used to pay taxes or was reinvested back into the S corporation within 12 months of the distribution of income.

One comment agreed with this provision but recommended that SBA treat limited liability companies the same. SBA agrees and believes limited liability companies and partnerships are taxed similar to S corporations. With all of these entities, the income flows through and is taxed to individual partners, members, or shareholders in accordance with their interest in the company for Federal tax purposes. Therefore, SBA has amended the Final Rule from what it initially proposed.

In addition, SBA has decided it would be best to set forth the clarification contained in the supplementary information—that corporation/partnership/limited liability losses are losses only to the company, and not losses to the individual—specifically in the regulatory text to clear up any confusion on this issue. In addition, the Final Rule has clarified that the treatment of corporation/partnership/limited liability income applies to both determinations of an individual's net worth and personal income.

One comment recommended that SBA eliminate any regulation permitting the transfer of assets to an immediate family member while another comment supported the careful examination of asset transfer to immediate family members within 2 years of the transfer because the women may be transferring the assets to family members for their support. SBA agrees that there are valid reasons for transferring assets to an immediate family member as identified in the rule (*e.g.* medical expenses, education and birthdays) and a woman should not be penalized for this when determining economic disadvantage. As such, SBA has adopted the proposed provision in the Final Rule.

One comment expressed confusion as to when a personal residence would be excluded and questioned if the residence could be excluded if it were used to guarantee a company line of credit. The Final Rule explain that when determining personal net worth, SBA will exclude the woman's equity interest in the primary personal residence. In addition, when determining the fair market value of the assets, SBA will include the value of the primary residence in the calculation (without deduction for any liens on the assets). SBA is not excluding the residence as an asset even if it is used to guarantee the company line of credit because the residence is still an asset to that individual, as evidenced by the fact it can be used to secure a line of credit.

In sum, based upon the comments received, SBA has amended some of the proposed regulations in this Final Rule. Specifically, SBA has increased the dollar thresholds for income and fair market value of assets for purposes of determining economic disadvantage, and has clarified certain issues as they relate to S corporations, limited liability companies and partnerships.

D. Certification

In the proposed rule, SBA proposed permitting EDWOSBs and WOSBs to either self-certify their status or provide evidence of certification from an approved third-party certifier. Of the almost 1,000 comments received overall on the rule, most of them commented on the certification procedures for a total of almost 1,900 specific comments concerning the certification requirements.

We note that many of the comments confused the CCR and Online Representations and Certifications Application (ORCA) databases and believed that ORCA or CCR would serve as the document repository for the WOSB Program or supported the use of the CCR "questionnaire". Some comments stated that WOSBs should be required to register in CCR. A few comments acknowledged some confusion and suggested clarification or a guide on how this process would work. There seems to be some public confusion concerning the different Federal databases and SBA would like to provide some clarification on that as well as the WOSB Program certification process.

CCR is an online government-maintained database of companies wanting to do business with the Federal government available at ccr.gov. The Federal Acquisition Regulation (FAR) at 48 CFR 4.1102(a) requires that most prospective contractors be registered in the CCR database prior to award of a contract or agreement, with certain exceptions. Agencies search the database for prospective vendors. After registering, you may enter your small business profile information on the Dynamic Small Business Search page. Creating a profile in CCR and the Dynamic Small Business Search, and keeping it current, helps provide access to Federal contracting opportunities.

Thus, the EDWOSB or WOSB must register in CCR first. Next, it must provide documents supporting its EDWOSB or WOSB status to an online document repository, called that the WOSB Program Repository, that SBA is planning to establish. The documents submitted would include those verifying that the concern has received a third-party certification. The business concern will be placing these documents in a secure, Web-based environment that would be accessible to the individual WOSBs and EDWOSBs, the contracting officer community and SBA. The contracting officer would be able to access the documents prior to contract award to review the submitted documents. SBA proposed this approach so that the WOSBs and EDWOSBs would not have to submit documents each time they receive a WOSB or EDWOSB contract.

In addition, the WOSB or EDWOSB will have to provide a certification to the repository that will serve as a verification that the concern meets the eligibility requirements and is signed by an authorized officer of the WOSB. In

the proposed rule, SBA had proposed that this certification be part of ORCA. However, upon further reflection, the SBA believes that it would be best if this document were signed and submitted directly to the repository. A copy of the certification is set forth in Tables 1 and 2.

Until the repository is completed, or if the system is otherwise unavailable, then SBA explained that the WOSB or EDWOSBs must submit the documents directly to the contracting officer prior to each WOSB or EDWOSB award. Although one comment thought this was burdensome, SBA notes that the statute requires the submission of supporting documents to the contracting officer and until or unless the repository is established, this appears to be the sole alternative that meets this statutory requirement. The contracting officer must retain these documents in the contract file so that SBA may later review the file for purposes of a status protest or eligibility examination. However, the WOSB or EDWOSB will also be required to post the documents to the WOSB Program Repository within thirty (30) days of the repository becoming available.

Finally, after registering in CCR and submitting the required document to the repository, the EDWOSB or WOSB must represent its status in the ORCA at *https://orca.bpn.gov*. The FAR at 48 CFR 2.101 explains that ORCA is the primary Government repository for contractor-submitted representations and certifications required for the conduct of business with the Government. This database does not collect documents, but collects the representations and certifications required for Federal contracts. As stated above, the SBA had proposed a specific and detailed ORCA representation. That detailed representation will now be a certification, signed by an officer of the company, which will be submitted to the WOSB Program Repository. The representation contained in ORCA, as drafted by the FAR Councils, will be set forth in the FAR.

Of the hundreds of comments received concerning this certification process, several stated that SBA should not accept self-certifications for the WOSB Program. The comments stated that this would increase the risk of fraud. However, other comments stated that self-certification would be reasonable as long as documents were provided to verify eligibility and there were no protests or credible information calling into question the eligibility of a business. At least one comment stated that it was good that SBA recognized the cost of certification and provided alternative compliance requirements, such as the self-certification. Another comment stated that it supported the stringent certification requirements to ensure the credibility of the WOSB Program and its ultimate success. Some comments expressed concern with the burden of the process and additional paperwork and forms required, believing it will discourage WOSBs from using the WOSB Program and required additional costs that are not minimal, while numerous comments supported the innovative approach and believed the repository would minimize paperwork burden and increase oversight and program monitoring capabilities. One comment believed that self-certification would not be fair to those that paid already for a third-party certification.

Many comments also stated that SBA should not have a certification program, similar to 8(a) or HUBZone, but should use its resources instead for enforcement and monitoring. Two comments recommended that SBA create a stringent certification process or program similar to the one it has for 8(a).

The SBA explained in the proposed rule that the Small Business Act sets forth the certification criteria for the WOSB Program. Specifically, the Act states that a WOSB or EDWOSB must: (1) Be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or, (2) certify to the contracting officer that it is a small business concern owned and controlled by women and provide adequate documentation, in accordance with standards established by SBA, to support such certification. The supporting legislative history stated that there was no intent that SBA create a certification program similar to the one it has for the 8(a) BD Program. As a result of the statutory provision, and the supporting legislative history, the Final Rule permits both self-certification and third-party certification and requires supporting documents to verify eligibility. The supporting documents will be provided to a repository (which is not necessarily part of ORCA) or, if the repository is unavailable, to the contracting officer. In addition, SBA believes that although the certification document and document requirement may seem burdensome to some small businesses, this is required to meet the statutory provisions, reduce fraud in the WOSB Program, and ensure that only eligible concerns receive the benefits of the WOSB Program.

In addition to the comments on self-certification, SBA received over 600 comments which supported the use of third-party certifications, although many of these comments supported the use of both third-party certifications and self-certification. In general, the comments stated the following: SBA should accept all third-party certifiers to ensure a wide range of options for WOSBs; SBA should document the process for approving third-party certifiers; the guidelines for third-party certifiers must comply with the regulations; and the third-party certifications should require yearly recertifications and site visits. In addition, a large number of comments stated that there should be an abridged process or no requirement for the representations for those with a third-party certification because it is counterproductive and redundant and WOSBs that have a third-party certification should not have to submit any additional documents.

The SBA agrees that it should approve all qualified third-party certifiers to ensure a wide range of options for EDWOSBs and WOSBs. However, that does not necessarily mean that every entity interested in being a third-party certifier will meet SBA's requirements. SBA also agrees that it must document the process for approving third-party certifiers. SBA plans to post online to the public the documented process at *http://www.sba.gov/*. In addition, SBA agrees that the guidelines for third-party certifiers must comply with the regulations. The final regulations set forth the eligibility requirements for this Federal program. There cannot be exceptions regarding the eligibility for the WOSB Program to these regulations, and there is no reason to create exceptions for third-party certifications as compared to self-certifications. Because the final regulations do not require site visits in every instance and yearly recertifications, it is not clear at this time that SBA can make those requirements for third-party certifiers, although we agree it would reduce fraud in the WOSB Program.

We understand the concern expressed by the comments that support an abridged process or no requirement for the representations for those with a third-party certification. Many of these individuals believe that because they have undergone a rigorous third-party certification, it would be redundant and burdensome for the EDWOSB or WOSB to submit additional documents or further represent its status.

However, the SBA believes that such a certification is necessary to ensure the integrity of the WOSB Program and that

only those eligible small businesses receive the WOSB Program's benefits. Therefore, all EDWOSBs and WOSBs will be required to complete the certification and submit it to the WOSB Program Repository. In addition, each EDWOSB and WOSB will be required to provide a representation in ORCA. As noted above, ORCA is the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. Therefore, it will be necessary for the EDWOSB or WOSB, even if they have a third-party certification, to make ORCA representations to the Federal Government.

We also disagree that EDWOSBs or WOSBs that have received a third-party certification should not be required to submit documents to SBA or the contracting to verify eligibility. The Final Rule requires that those businesses with a third-party certification submit only a limited number of documents—specifically, a copy of the third-party certification, the certification, the joint venture agreement if applicable, and in some cases, other documents to verify they meet the requirements of the WOSB Program. If there is a status protest or eligibility examination, then SBA will have to collect all documents necessary to verify eligibility since it is SBA, and not a third-party certifier, which would make this decision concerning eligibility.

The SBA also received several comments which were concerned with identifying specific third-party certifiers. For example, we received comments which stated that all certifications issued by the 50 States should be accepted by SBA, as well as all current other third-party certifications. As discussed above, SBA cannot accept all current third-party certifications, including a certification issued by a State, without first determining whether the third-party certifier's eligibility criteria are the same as those of SBA's for the WOSB program.

The SBA received one comment which recommended that we provide a list of agencies whose certifications will be accepted and two comments stating that we should immediately accept U.S. Department of Transportation (DOT) certifications and not require that agency to enter into a third-party agreement.

Under DOT's Disadvantage Business Enterprise (DBE) Program, recipients, which are state or local entities as defined by DOT regulations at 49 CFR 26.5, perform the certifications for DOT's DBE Program. Recipients are the DOT's DBE Program certifiers. Pursuant to DOT regulations, these certifiers must submit to DOT for approval an agreement establishing a Unified Certification Program (UCP), which identifies a plan for certification as a certifier for the DOT DBE Program. Once the UCP is approved by DOT, the certifier can certify participants for the DBE Program. In other words, the certification for the DOT DBE Program is not done by a central office, but rather various state and local certifiers perform the certifications.

DOT requires every UCP to meet all of the requirements of the DOT DBE Program, but every UCP for the DOT DBE Program is not required to have all of the same requirements. Therefore, without examining the state or local entity's UCP, it is unknown if it will satisfy all the requirements of the WOSB Program regulations. For example, SBA's WOSB Program regulation at 13 CFR 127.201(f) states that in determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. The regulations also states that any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised. DOT DBE regulations do not discuss how unexercised stock options or similar agreements will be treated under the DBE Program. As a result, state and local entities that have an approved UCP for DOT DBE Program certification may or may not be consistent with this requirement. There are additional areas in which it is uncertain whether SBA requirements would be met with a DOT DBE Program certification.

The Final Rule sets forth the eligibility requirements for this Federal program. SBA has determined that there cannot be exceptions regarding the eligibility for the WOSB Program to these regulations, and there is no reason to create exceptions for DOT DBE certifications as compared to self-certifications. Every WOSB or EDWOSB must satisfy the regulatory requirements in 13 CFR part 127, whether through private third party certification, 8(a) certification, DOT DBE certification, or any other certification. As a result and as SBA does with all other third party certifiers, SBA has determined that it will evaluate a DOT DBE certifier on an individual basis. SBA will review the state and local entity's UCP to determine if the WOSB Program requirements can be met with the UCP.

Therefore, the Final Rule will not accept all DOT DBE certifications for the WOSB Program at this time. Once SBA approves a DOT DBE Program certifier, SBA will maintain a list of approved state and local entities from which it will accept DOT DBE certifications on SBA's Internet Web site at *http://www.sba.gov.* Any interested person may also obtain a copy of the list from the local SBA district office or SBA Area Office for Government Contracting.

Several comments recommended that SBA and DOT work together to create a list of businesses indicating the woman owned status of all certified businesses or requiring DOT to provide certifications showing that the business is owned and controlled by women. We agree that the two agencies can continue to work together in furtherance of this program. However, as explained above, SBA must examine a specific UCP prior to accepting the certification from that certifier as a certification of WOSB or EDWOSB status.

One comment stated that third-party certifications sometimes list NAICS codes on the certifications. The comment believed that SBA must therefore make it clear that such a listing does not limit the business' ability to submit an offer for a contract outside that NAICS code. The comment suggested that SBA clarify the regulations or ORCA. SBA does not believe it must clarify the regulations on this point. The Final Rule is clear that a contracting officer must assign a NAICS code to a contract and that a business concern must be small for the size standard corresponding to that NAICS code. In addition, the contracting officer can only reserve the contract opportunity for EDWOSBs if the NAICS code is in an underrepresented industry and for WOSBs if the NAICS code is in a substantially underrepresented industry.

The SBA received a few comments which addressed the specific representations we had set forth in the preamble to the proposed rule, and which will now be a separate certification that must be submitted to the WOSB Program Repository, and the responsibilities of contracting officers. One comment stated that it believed the representations are clearly worded but that the contracting officer needs to know what should be checked for award. Two comments stated that contracting officers need more guidance on what specific documents must be provided. Similarly, SBA received one comment which suggested the agency establish a defined method of signoff by a contracting officer that they have

certified the EDWOSB or WOSB meets the eligibility criteria and provide a contracting guide that would include a checklist for the contracting officer that includes all items to be completed or verified. SBA agrees that this would be helpful to contracting officers and plans to work on a guide for contracting officers that contains a checklist.

In addition, two comments believed that contracting officers may not be in the best position to review the submitted documents and make an accurate determination. In addition, one comment stated that self-certification places an undue burden on contracting officers and opens the door for different levels of application of the rules. We note that the rule does not require the contracting officer to necessarily determine eligibility of the EDWOSB or WOSB. Rather, the contracting officer is to check to ensure that the requisite documents, as set forth in the regulations, are provided and that the ORCA representations have been made. If any of the documents are missing from the repository (including the certification), or if the contracting officer believes the concern is not eligible, he/she must file a status protest with SBA. SBA, not the contracting officer, will make the final determination regarding eligibility.

One comment recommended that SBA eliminate the representation concerning the ability of an EDWOSB to obtain capital and credit because it only complicates the process. The same comment questioned why there should be a representation that "no males or other entity exercise actual control or have the power to control the concern" when there appear to be other questions in the representation that already address this.

The SBA agrees that the representation concerning the ability to obtain capital and credit is not necessary because that issue is addressed with the other questions, especially those concerning the specific objective criteria for economic disadvantage. SBA has deleted this representation from the Final Rule.

However, SBA disagrees with the comment concerning whether males exercise control over the business concern. There is a specific requirement for an EDWOSB or WOSB in the regulations that no male or other entity exercises control or the power to control the concern. Therefore, this representation is required.

The SBA received one comment that recommended having a place in CCR to acknowledge current certifications and transferring this information to ORCA. SBA agrees that CCR should be amended and will work with the appropriate agency to implement these changes to the extent practicable.

One comment recommended that SBA share information common to other certification processes when a person is a member of more than one group. In other words, if a WOSB is also a SDVO SBC, the comment recommended that the processes be streamlined. Unfortunately, this is not possible. The SDVO SBC Program is a self-certification program with different statutory and regulatory requirements than the WOSB Program. When creating the WOSB Program, SBA sought to align this program with others as much as possible. For example, SBA has stated that it will accept 8(a) BD certifications, if the business was certified into the 8(a) BD Program as a women owned business, as evidence that the business is a WOSB.

Some comments recommended that SBA conduct site visits and check financial information on all WOSBs. Two comments supported the use of an outside company to manage the certification and perform site visits. SBA explained in the proposed rule that it does intend to conduct site visits on those certifying as EDWOSBs or WOSBs and believes that its regulations, which permit protests and robust eligibility examinations, will aid in preventing fraud, waste and abuse in the WOSB program.

The SBA has reviewed all of these comments thoroughly and believes that it is not necessary to change the proposed regulations concerning certifications except to amend the ORCA representations to address changes made to the criteria for economic disadvantage. SBA therefore has implemented the proposed rule as final, with respect to the certification requirements. SBA is setting forth a final copy of the certification that each WOSB or EDWOSB must submit to verify status (Table 1, Women-Owned Small Business Program Certification—WOSB; Table 2, Women-Owned Small Business Program Certification—EDWOSB).

Table 1—Women-Owned Small Business Program Certification—WOSB.

(i) It is certified as a WOSB by a certifying entity approved by SBA, the certifying entity has not issued a decision currently in effect finding that the concern does not qualify as a WOSB, and there have been no changes in its circumstances affecting its eligibility since its certification.

☐ Yes ☐ No ☐ N/A

(ii) It is certified by the U.S. Small Business Administration as an 8(a) BD Program Participant and the 51% owner is a woman (or women).

☐ Yes ☐ No ☐ N/A

(iii) If a corporation, the stock ledger and stock certificates evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is unconditionally and directly owned by one or more women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

☐ Yes ☐ No ☐ N/A

(v) If a partnership, the partnership agreement evidences that at least 51% of each class of partnership interest is unconditionally and directly owned by one or more women.

☐ Yes ☐ No ☐ N/A

(iv) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that at least 51% of each class of member interest is unconditionally and directly owned by one or more women.

☐ Yes ☐ No ☐ N/A

(v) The birth certificates, naturalization papers, or passports for owners who are women show that the business concern is at least 51% owned and controlled by women who are U.S. citizens.

☐ Yes ☐ No

(vi) The ownership by women is not subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another.

☐ Yes ☐ No

(vii) The 51% ownership by women is not through another business entity (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women.

☐ Yes ☐ No

(viii) The 51% ownership by women is held through a trust, the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

☐ Yes ☐ No ☐ N/A

(ix) The management and daily business operations of the concern are

controlled by one or more women. Control means that both the long-term decision making and the day-to-day management and administration of the business operations are conducted by one or more women.

☐ Yes ☐ No

(x) A woman holds the highest officer position in the concern and her resume evidences that she has the managerial experience of the extent and complexity needed to run the concern.

☐ Yes ☐ No

(xi) The woman manager does not have the technical expertise or possess the required license for the business but has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

☐ Yes ☐ No ☐ N/A

(xii) The woman who holds the highest officer position of the concern manages it on a full-time basis and devotes full-time to the business concern during the normal working hours of business concerns in the same or similar line of business.

☐ Yes ☐ No

(xiii) The woman who holds the highest officer position does not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

☐ Yes ☐ No

(xiv) If a corporation, the articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more women control the Board of Directors of the concern. Women are considered to control the Board of Directors when either: (1) One or more women own at least 51% of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or (2) women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

☐ Yes ☐ No ☐ N/A

(xv) If a partnership, the partnership agreement evidences that one or more women serve as general partners, with control over all partnership decisions.

☐ Yes ☐ No ☐ N/A

(xvii) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments evidence that one or more women serve as management members, with control over all decisions of the limited liability company.

☐ Yes ☐ No ☐ N/A

(xviii) No males or other entity exercise actual control or have the power to control the concern.

☐ Yes ☐ No

(xix) SBA, in connection with an examination or protest, has not issued a decision currently in effect finding that this business concern does not qualify as a WOSB.

☐ Yes ☐ No

(xx) All required documents verifying eligibility for a WOSB requirement have been submitted to the WOSB Program Repository, including any supplemental documents if there have been changes since the last representation, or will be submitted to the contracting officer if the repository is unavailable and then posted to the WOSB Program Repository within thirty (30) days of the repository becoming available.

☐ Yes ☐ No

☐ All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that these statements are made for the purpose of determining eligibility for a WOSB Program contract.

☐ I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes. The certifications in this document are continuing in nature. Each WOSB prime contract for which the WOSB submits an offer/quote or receives an award constitutes a restatement and reaffirmation of these certifications. I understand that the WOSB may not misrepresent its status as a WOSB to: (1) Obtain a contract under the Small Business Act; or (2) obtain any benefit under a provision of Federal law that references the WOSB Program for a definition of program eligibility.

☐ I am an *officer* of the WOSB authorized to represent it and sign this certification on its behalf.

Table 2—Women-Owned Small Business Program Certification—EDWOSB

(i) It is certified as an EDWOSB by a certifying entity approved by SBA, the certifying entity has not issued a decision currently in effect finding that the concern does not qualify as a EDWOSB, and there have been no changes in its circumstances affecting its eligibility since its certification.

☐ Yes ☐ No ☐ N/A

(ii) It is certified by the U.S. Small Business Administration as an 8(a) BD Program Participant and the 51% owner is an economically disadvantaged woman (or women).

☐ Yes ☐ No ☐ N/A

(iii) If a corporation, the stock ledger and stock certificates evidence that at least 51% of each class of voting stock outstanding and 51% of the aggregate of all stock outstanding is unconditionally and directly owned by one or more women who are economically disadvantaged. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by an economically disadvantaged woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

☐ Yes ☐ No ☐ N/A

(iv) If a partnership, the partnership agreement evidences that at least 51% of each class of partnership interest is unconditionally and directly owned by one or more economically disadvantaged women.

☐ Yes ☐ No ☐ N/A

(v) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments, evidence that at least 51% of each class of member interest is unconditionally and directly owned by one or more economically disadvantaged women.

☐ Yes ☐ No ☐ N/A

(vi) The birth certificates, naturalization papers, or passports show that the business concern is at least 51% owned and controlled by economically disadvantaged women who are U.S. citizens.

☐ Yes ☐ No

(vii) The ownership by economically disadvantaged women is not subject to any conditions, executory agreements, voting trusts, or other arrangements that

cause or potentially cause ownership benefits to go to another.

☐ Yes ☐ No

(viii) The 51% ownership by economically disadvantaged women is not through another business entity (including employee stock ownership plan) that is, in turn, owned and controlled by one or more economically disadvantaged women.

☐ Yes ☐ No

(ix) The 51% ownership by economically disadvantaged women is held through a trust, the trust is revocable, and the economically disadvantaged woman is the grantor, a trustee, and the sole current beneficiary of the trust.

☐ Yes ☐ No ☐ N/A

(x) The management and daily business operations of the concern are controlled by one or more economically disadvantaged women. Control means that both the long-term decision making and the day-to-day management and administration of the business operations are conducted by one or more economically disadvantaged women.

☐ Yes ☐ No

(xi) An economically disadvantaged woman holds the highest officer position in the concern and her resume evidences that she has the managerial experience of the extent and complexity needed to run the concern.

☐ Yes ☐ No

(xi) The economically disadvantaged woman manager does not have the technical expertise or possess the required license for the business but has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.

☐ Yes ☐ No ☐ N/A

(xiii) The economically disadvantaged woman who holds the highest officer position of the concern manages it on a full-time basis and devotes full-time to the business concern during the normal working hours of business concerns in the same or similar line of business.

☐ Yes ☐ No

(xiv) The economically disadvantaged woman who holds the highest officer position does not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

☐ Yes ☐ No

(xv) If a corporation, the articles of incorporation and any amendments, articles of conversion, by-laws and amendments, shareholder meeting minutes showing director elections, shareholder meeting minutes showing officer elections, organizational meeting minutes, all issued stock certificates, stock ledger, buy-sell agreements, stock transfer agreements, voting agreements, and documents relating to stock options, including the right to convert non-voting stock or debentures into voting stock evidence that one or more economically disadvantaged women control the Board of Directors of the concern. Economically disadvantaged women are considered to control the Board of Directors when either: (1) One or more economically disadvantaged women own at least 51% of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or (2) economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

☐ Yes ☐ No ☐ N/A

(xvi) If a partnership, the partnership agreement evidences that one or more economically disadvantaged women serve as general partners, with control over all partnership decisions.

☐ Yes ☐ No ☐ N/A

(xvii) If a limited liability company, the articles of organization and any amendments, and operating agreement and amendments evidence that one or more economically disadvantaged women serve as management members, with control over all decisions of the limited liability company.

☐ Yes ☐ No ☐ N/A

(xviii) No males or other entity exercise actual control or have the power to control the concern.

☐ Yes ☐ No

(xix) The economically disadvantaged woman upon whom eligibility is based has read the SBA's regulations defining economic disadvantage and can demonstrate that her personal net worth is less than $750,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.

☐ Yes ☐ No

(xx) The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past three years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, evidences that she is economically disadvantaged.

☐ Yes ☐ No

(xxi) The adjusted gross income of the woman claiming economic disadvantage averaged over the three years preceding the certification does not exceed $350,000.

☐ Yes ☐ No

(xxii) The adjusted gross income of the woman claiming economic disadvantage averaged over the three years preceding the certification exceeds $350,000; however, the woman can show that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or that the income is not indicative of lack of economic disadvantage.

☐ Yes ☐ No

(xxiii) The fair market value of all the assets (including her primary residence and the value of the business concern but excluding funds invested in an Individual Retirement Account or other official retirement account that are unavailable until retirement age without a significant penalty) of the woman claiming economic disadvantage does not exceed $6 million.

☐ Yes ☐ No

(xxiv) The woman claiming economic disadvantage has not transferred any assets within two years of the date of the certification.

☐ Yes ☐ No

(xxv) The woman claiming economic disadvantage has transferred assets within two years of the date of the certification. However, the transferred assets were: (1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or (2) to an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

☐ Yes ☐ No ☐ N/A

(xxvi) SBA, in connection with an examination or protest, has not issued a decision currently in effect finding that this business concern does not qualify as a EDWOSB.

☐ Yes ☐ No

(xxvii) All required documents verifying eligibility for the EDWOSB requirement have been submitted to the WOSB Program Repository, including any supplemental documents if there have been changes since the last representation, or will be submitted to the contracting officer if the repository is unavailable and then posted to the WOSB Program Repository within thirty (30) days of the repository becoming available.

☐ Yes ☐ No

☐ All the statements and information provided in this form and any documents submitted are true, accurate and complete. If assistance was obtained in completing this form and the supporting documentation, I have personally reviewed the information and it is true and accurate. I understand that these statements are made for the purpose of determining eligibility for a WOSB Program contract.

☐ I understand that the information submitted may be given to Federal, State and local agencies for determining violations of law and other purposes. The certifications in this document are continuing in nature. Each EDWOSB or WOSB prime contract for which the EDWOSB submits an offer/quote or receives an award constitutes a restatement and reaffirmation of these certifications. I understand that the EDWOSB may not misrepresent its status as a EDWOSB or WOSB to: (1) Obtain a contract under the Small Business Act; or (2) obtain any benefit under a provision of Federal law that references the WOSB Program for a definition of program eligibility.

☐ I am an *officer* of the EDWOSB authorized to represent it and sign this certification on its behalf.

E. Contract File

The SBA received one comment which recommended that the contracting officer document the file to include "underrepresented industries." We note that the proposed rule did require the contracting officer to document the contract file with the results of the market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as either underrepresented or substantially underrepresented industry with respect to WOSBs.

In addition, in the proposed rule, we sought comments on whether SBA should add the following additional language to proposed § 127.503(e):

> In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

The SBA received two comments which supported this requirement for contracting officers to document the contract file. SBA has amended the proposed rule to add this requirement.

F. Federal Contract Assistance

Subpart E of the Final Rule addresses the contracting assistance provided to EDWOSBs and WOSBs. For example, this part of the Final Rule states that a contracting officer may restrict competition to EDWOSBs if the contract is an industry that SBA has designated as underrepresented and the contracting officer has a reasonable expectation based on market research that two or more EDWOSBs will submit offers, the anticipated award price (including options) does not exceed $5 million for a contract assigned a NAICS code for manufacturing or $3 million for a contract assigned any other NAICS code, and the contract may be awarded at a fair and reasonable price. The contracting officer may restrict competition for WOSBs in an industry that SBA has designated as substantially underrepresented if the contracting officer has a reasonable expectation based on market research that two or more WOSBs will submit offers, the anticipated award price (including options) does not exceed $5 million for a contract assigned a NAICS code for manufacturing or $3 million for a contract assigned any other NAICS code, and the contract may be awarded at a fair and reasonable price.

The SBA received over 700 comments which stated that the dollar value of the contracts available to this program was too low and a few comments that recommended SBA apply the $5 million contract threshold to contracts with a NAICS code for construction. SBA notes that the contract dollar value threshold is specifically set forth in statute, and therefore, the regulations cannot be changed to reflect different thresholds.

Other comments that addressed the dollar value of the contract available to this program recommended that SBA exclude the cost of construction materials from the contract value since the cost of such materials generally has nothing to do with the work being performed by the WOSB. In addition, two comments recommended that SBA not include option years when determining the cost of the contract. We note that the Small Business Act specifically states the WOSB Program is limited to certain contracts with an "anticipated award price of the contract (including options)" of $5 million in the case of a contract assigned a NAICS code for manufacturing or $3 million for all other contracts. We do not believe, at this time, that the cost of materials from the anticipated award price and SBA does not make this exclusion for any of the contract dollar value limitations for its other procurement programs. In addition, the statute clearly includes options, and therefore, SBA cannot exclude options from the anticipated award price of the contract.

The SBA also received some comments that recommended that the WOSB Program permit sole source awards similar to those available in the 8(a) BD, HUBZone and SDVO SBC Programs. Likewise, SBA received a few comments which questioned why the "rule of two" as explained in the FAR at 48 CFR 19.502–2(b) was set forth in the regulations. In response to these comments, SBA notes that the statutory provision creating the WOSB Program does not authorize sole source awards while the statutory provisions creating the other programs do. In addition, the statutory provisions creating the WOSB Program specifically state that a contracting officer may use this program only if the "rule of two" is met. Therefore, SBA is not amending the regulations as proposed.

The SBA received one comment which recommended that we cap or limit how many awards a particular WOSB can receive in order to ensure that the contracts are going to more than a handful of WOSBs. SBA does not agree with this recommendation primarily because the statute does not provide for such a cap or limitation. In addition, it would not serve the purpose of the WOSB Program to prevent qualified EDWOSBs or WOSBs from receiving further Federal contracts.

The SBA also received several comments which supported the parity of the WOSB Program with the other small business programs. Specifically, in proposed § 127.503 SBA addressed contracting among the various SBA small business programs for acquisitions valued above and below the simplified acquisition threshold. The regulation proposed to provide contracting officers with the discretion to utilize either the 8(a) BD, SDVO SBC, HUBZone, small business or WOSB Programs, depending on the acquisition history, dollar value of the contract, results of the market research, programmatic needs specific to the procuring agency, and the need to meet the agency's goals.

SBA understands that GAO has issued several decisions over the last two years stating that agencies must set aside any acquisition for HUBZone SBCs if the contracting officer has a reasonable expectation that at least two qualified HUBZone SBCs will submit offers and that the award can be made at a fair market price (the "rule of two" for HUBZone small businesses). Thus, under GAO rulings, the contracting officer has no discretion to utilize either the 8(a) BD, SDVO SBC, small business or the WOSB Program if the HUBZone rule of two is met.

However, on July 10, 2009, the Director of the Office of Management and Budget (OMB) issued a memorandum stating that GAO's

decisions are not binding on Federal agencies and are contrary to regulations promulgated by SBA that provide for "parity" among the three small business programs (8(a) BD, HUBZone and SDVO SBC Programs). *See* OMB Memorandum M–09–23, publicly available at *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-23.pdf.* In addition, on August 21, 2009, the U.S. Department of Justice's Office of Legal Counsel (OLC) concluded its review of the legal basis underlying GAO's decisions. OLC issued an opinion stating that SBA's regulations governing the interplay among the HUBZone, 8(a) BD and SDVO SBC Programs are a permissible construction of the Act and are binding on all Executive Branch agencies. *See* "Permissibility of Small Business Administration Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs," April 21, 2009, publicly available at *http://www.usdoj.gov/olc/2009/sba-hubzone-opinion082109.pdf.*

In addition, the Court of Federal Claims issued decisions in *Mission Critical* v. *U.S.,* 91 Fed.Cl. 386 (2010), and *DGR Associates, Inc.* v. *U.S.,* No. 10–396C (Fed. Cl.), stating that HUBZone small business set asides have priority over 8(a) sole source and set aside awards. The U.S. Department of Justice has appealed the *Mission Critical* decision to the Court of Appeals for the Federal Circuit.

Recently, however, the President enacted Public Law 111–240, known as the Small Business Jobs and Credit Act of 2010. In this law, the Small Business Act was amended to delete language stating that a contracting opportunity "shall" be awarded as a HUBZone set-aside if the HUBZone "rule of two" is met. The new statutory language explains that a contracting opportunity "may" be awarded as a HUBZone set-aside if the HUBZone "rule of two" is met. Consequently, the HUBZone provisions do not unambiguously direct contracting officers to reserve every available contract opportunity for HUBZone small businesses whenever the rule of two is met. This statutory change further supports the SBA's position on parity.

As a result of the foregoing, the final regulation explains that there is parity among the 8(a) BD, SDVO, HUBZone, small business and WOSB programs and has implemented the proposed rule as final.

G. Joint Venture Requirements

In the proposed rule, SBA had proposed amending the current joint venture regulation, permitting EDWOSB or WOSB joint ventures for EDWOSB or WOSB contracts. The current rule had provided that the EDWOSB or WOSB must perform a significant portion of the contract and SBA proposed clarifying this requirement.

SBA received one comment which supported the joint venture provisions and five comments suggesting that the language for joint ventures should be strengthened to ensure that women are the primary beneficiaries of the contract. SBA also received one comment which stated that SBA should review all joint ventures to ensure that the percentage of work and the distribution of profits are fair because it is not possible to assign a fixed percentage of profits to the one WOSB joint venturer, such as the stated minimum of 51 percent.

First, SBA believes that the regulation has been strengthened because it requires that not less than 51 percent of the net profits earned by the joint venture must be distributed to the EDWOSB or WOSB while the former regulation only required that the WOSB joint venturer perform a significant portion of the contract, without setting forth a specific and objective percentage of work to be performed. Second, SBA also clarified that the joint venture agreement must be in writing and must set forth the following provisions: The purpose of the joint venture, that an EDWOSB or WOSB must be the managing venturer, that an employee of the managing venturer must be the project manager responsible for the performance of the contract, and the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB or WOSB contract.

In light of these guidelines, SBA does not believe it is necessary to review each joint venture agreement, which can slow down the contracting process. In addition, these same guidelines are in place for the SDVO SBC Program and there have not been any issues concerning the ability of the SDVO SBC joint venture partner to meet the 51 percent net profit requirement.

Therefore, SBA does not believe any changes to the proposed rule or other clarification is necessary and adopts the provision in the Final Rule as proposed.

H. Protests

In the proposed rule, SBA set forth the procedures by which an interested party may protest the status of an EDWOSB or WOSB apparent successful offeror. SBA received a few comments which suggested that the regulations should state that the contracting officer must file a status protest if all the required documents are not received. SBA also received one comment which stated that interested parties should only be permitted to file a protest if it has credible information calling into question the apparent successful offeror's eligibility and one comment recommending that SBA ensure that the protest process is not abused.

The SBA notes that the requirement that a contracting officer file a status protest if all documents are not received, or if the contracting officer has information that calls into question the eligibility of the business, is set forth in § 127.301, titled "When may a contracting officer accept a concern's self-certification?". In addition, this protest process is the same or similar to those for SBA's other contracting programs, such as the HUBZone and SDVO SBC Programs. The process provides that interested parties must file a protest specifying all grounds for the protest and cannot merely assert that the protested concern is ineligible without setting forth specific facts. This protects the protest process from abuse.

The SBA received another comment which stated that anyone should be allowed to file a status protest and not just those businesses competing in the procurement. SBA disagrees with this comment. First, generally only those businesses competing in the acquisition would know who the apparent successful offeror is because they have been notified of this fact by the contracting officer. Second, although a business that is not competing in the requirement cannot file a status protest, the business concern should notify SBA, who can then conduct an eligibility examination. Specifically, § 127.400 explains that SBA may consider information provided to it by a third party that questions the eligibility of an EDWOSB or WOSB that has certified its status in ORCA or CCR in determining whether to conduct an eligibility examination.

The SBA received one comment which stated that it disagrees with the ability of the contracting officer to continue a contract with a business if that business has been found ineligible. The comment suggested that the contract should be terminated as soon as possible. According to § 127.604(f)(2)(i), if a contracting officer receives a protest determination stating that a concern is ineligible after contract award, and there has been no appeal filed with OHA, the contracting officer shall terminate the contract. If an appeal has been filed,

since the appeal process can be lengthy, the rule explains that the contracting officer must consider whether performance can be suspended until an appellate decision has been rendered. If OHA affirms that the concern is not eligible, then the contracting officer must either terminate the contract or not exercise the next option. Therefore, we believe this rule sufficiently limits a contracting officer's ability to continue a contract with a business found ineligible. SBA has implemented the rule as it proposed.

I. Other Comments

Several comments stated that the overall size standards for WOSB/EDWOSBs are too low. SBA notes that this proposed rule did not address the size standards for EDWOSBs or WOSBs and therefore, those comments are beyond the scope of the rulemaking.

The SBA also received several comments which suggested that only those WOSBs certified by third-party certifiers or with completed ORCA certifications should be counted for goaling purposes. SBA also received one comment which suggested that the 5 percent goal should be increased year by year until the percentage of women owned businesses funded are in proportion to the number of women in the population. One comment stated that agencies should not be allowed to multiple count small business programs in meeting their goals because it limits the effectiveness of the small business programs. SBA notes that the proposed rule did not specifically address SBA's goaling program and therefore these comments are outside the scope of the rulemaking, as well.

In addition, at least one comment suggested that the WOSB Program have a Mentor Protégé Program similar to the one in the 8(a) BD Program. As discussed above, the President recently enacted Public Law 111–240, which authorizes a Mentor-Protégé Program for SBA's small business programs. Because the SBA did not propose guidance for such a program in the WOSB proposed rule, and is in the process of reviewing the statutory language and determining guidance on this for its programs, this final rule does not establish a Mentor-Protégé Program for the WOSB Program.

The SBA received one comment which stated that there should be a similar program for non-profits. Because SBA's government contracting programs require that the small business concern be for profit, and SBA did not propose changing this requirement for the WOSB Program, we believe this comment is outside the scope of the rulemaking.

The SBA also received one comment which recommended that SBA audit prime contractors to ensure that they utilize WOSBs for subcontracts. This Final Rule addresses prime contracts only because the WOSB Program is a prime contracting program. However, we note that SBA employs commercial market representatives to assist small businesses in obtaining subcontracts and to help other than small businesses meet their subcontracting goals. In addition, these SBA employees perform compliance reviews on other than small businesses to determine whether such contractors are identifying opportunities for small business as subcontractors and to ensure that the subcontracting plan requirements are met.

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

Executive Order 12866

OMB has determined that this rule is a "significant" regulatory action under Executive Order 12866. In the proposed rule, SBA set forth its initial regulatory impact analysis, which addressed the following: Necessity of the regulation; alternative approaches to the proposed rule; and the potential benefits and costs of the regulation. SBA did not receive any comment which specifically addressed its regulatory impact analysis. However, numerous comments agreed that the rule was necessary to assist WOSB in obtaining Federal contracts. In addition, SBA received numerous comments which supported its proposed approaches, especially concerning the use of self-certification, third-party certifiers, and the document repository. The specific comments on these approaches are discussed above.

At least one comment noted that SBA's proposed certification approach was innovative. Another comment stated that by 2018, small businesses will create 9.7 million new jobs with 5 million being created by WOSBs. This comment stated that substantial new contract opportunities must be found to support this growth in employment and the Federal Government must be one of the accessible markets. Therefore, it appears this comment believed that the rule will potentially benefit not just WOSBs and the Federal Government, but will have a beneficial impact on employment.

For these reasons, and those set forth in the preamble, SBA adopts as final its initial regulatory impact analysis.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Paperwork Reduction Act (PRA)

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that the rule imposes new reporting and recordkeeping requirements. The certification process described in Subpart C, §§ 127.300 to 127.302, is an information collection. The certification process requires a concern seeking to benefit from Federal contracting opportunities designated for WOSBs or EDWOSBs to verify its status by submitting a certification to the WOSB Program Repository, submitting other supporting documents to the WOSB Program Repository, and by representing its status in an existing electronic contracting system (*i.e.,* ORCA).

Specifically, the WOSB or EDWOSB will be required to submit certain documents verifying eligibility at the time of certification in ORCA (and every year after). These documents will be submitted to a document repository, or until the repository is established, the contracting office upon notice of a proposed award. Further, the protest and eligibility examination procedures will require the submission of documents from those parties subject to a protest and eligibility examination. To reduce the burden on the WOSBs or EDWOSBs, the same documents submitted at the time of certification will be used for the protests and eligibility examinations, except that for protests and eligibility examinations, SBA will also request copies of proposals submitted in response to a WOSB or EDWOSB solicitation and certain other documents and information to verify the status of an EDWOSB.

Finally, the Final Rule also requires the WOSBs or EDWOSBs to retain copies of the documents submitted for

a period of six (6) years. SBA stated in the proposed rule that it believes that any additional burden imposed by this recordkeeping requirement would be minimal since the firms would maintain the information in their general course of business.

SBA submitted this information collection to OMB for review and it was approved.

Title and Description of Information Collection: Women-Owned Small Business Federal Contract Assistance Program Purpose: The information collected is modeled on two currently approved information collections: SBA Form 1010, OMB Control 3245–0331, SBA's Application for 8(a) Business Development, and SBA Form 413, OMB Control 3245–0188, SBA's Application for Personal Financial Statement, which are used to collect personal and business information on the businesses and owners applying to this program. The information requested for this program includes information verifying the WOSB/EDWOSB status of the business concern, including tax returns, personal statements, and business documents.

OMB Control Number:

Description of and Estimated Number of Respondents: Information will be collected from the small business concerns that are not already certified by an approved third-party certifier and therefore must self-certify and verify their status by submitting certain required documents to a document repository at the time of ORCA certification. This same information must also be collected by the third-party certifier when making its certification determination. In addition, those with third-party certifications will also be required to submit certain documents to the document repository verifying eligibility, such as a copy of the third-party certification and the SBA certification form.

Utilizing the RAND FPDS data set for the total number of WOSBs (identified by Dun and Bradstreet DUNS number) that received obligated funds from awards, contracts, orders and modifications to existing contracts for FY 2005, SBA identified approximately 12,000 WOSBs as recipients of Federal contracts in the 83 NAICS codes that would be eligible under the WOSB Program. SBA did not receive specific comments on the estimated number of responses or response times.

Estimated Number of Responses: In FY 2005, there were 12,000 WOSBs that were identified as recipients of Federal contracts in the 83 NAICS codes that would be eligible under the WOSB Program. Thus, SBA still believes there could be an estimated 12,000 responses. In addition, SBA will conduct eligibility examinations and protests and appeals. SBA still believes that the total estimated number of responses is 12,200.

Estimated Response Time: 2 hours. Total Estimated Annual Hour Burden: 24,400 hours.

Regulatory Flexibility Act

SBA has determined that this rule establishing a set-aside mechanism for WOSBs may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* Accordingly, SBA set forth an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of the proposed rule in accordance with section 603, title 5, of the United States Code. The IRFA examined the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there were any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there were any significant alternatives to the proposed rule. The Agency's final regulatory flexibility analysis (FRFA) is set forth below.

1. What are the reasons for, and objectives of, this final rule?

The Small Business Administration (SBA) is establishing procedures pursuant to the SBA Reauthorization Act, Public Law 106–554, enacted December 21, 2000, codified at Section 8(m) of the Small Business Act, which authorizes the creation and implementation of a new mechanism for Federal contracting with WOSBs. The purpose of the Final Rule is to create a framework and infrastructure for implementing these Procedures, thereby providing a tool for Federal agencies to ensure equal opportunity, and thereby increased Federal procurement opportunities to WOSBs. SBA is finalizing the Final Rule pursuant to section 8(m) of the Small Business Act, 15 U.S.C. 637(m). These Procedures will assist Federal agencies in eliminating barriers to the participation by WOSBs in Federal contracting, thereby achieving the Federal Government's goal of awarding five percent of Federal contract dollars to WOSBs, as provided in the Federal Acquisition Streamlining Act of 1994.

2. Summary of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made as a Result of Such Comments

The SBA received a few comments that addressed the IRFA or the subjects discussed in the IRFA. Several comments stated that SBA should consider the costs and burdens of the reporting and recordkeeping requirements for WOSBs because they could inadvertently discourage WOSBs from taking advantage of the program. These reporting and recordkeeping requirements include the representations and the submission of documents relating to WOSB status to the contracting officer if a repository for documents is unavailable.

The SBA notes that WOSBs have the burden of proving eligibility for the program. Although the reporting and recordkeeping requirements may seem onerous, they are necessary to reduce fraud in the program and to ensure that the benefit of the program—an opportunity to obtain a contract through restricted competition—is available to only eligible WOSBs. The SBA's rule adopts methods and processes aimed at meeting these objectives, while also minimizing, as much as possible, the burden on small businesses. Therefore, SBA continues to believe that the initial analysis was accurate.

3. What is SBA's description and estimate of the number of small entities to which the rule will apply?

The RFA directs agencies to provide a description, and where feasible, an estimate of the number of small business concerns that may be affected by the rule. This Final Rule will ultimately establish in the Federal Acquisition Regulation (FAR) a new procurement mechanism to benefit WOSBs. Therefore, WOSBs that compete for eligible Federal contracts are the specific group of small business concerns most directly affected by this rule. More specifically, this rule may affect EDWOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are underrepresented and may affect WOSBs that participate in Federal procurement in industries where SBA determines that WOSBs are substantially underrepresented. In addition, the rule may affect other small businesses, as described below, to the extent that small businesses not owned and controlled by women or non-eligible WOSBs may be excluded from

competing for certain Federal contracting opportunities.

The 2002 Survey of Business Owners published by the U.S. Bureau of the Census reported 6,489,493 women-owned businesses in the United States. More than 900,000 of these businesses have one or more paid employees. Most women-owned businesses, however, do not participate in the Federal contracting market. In addition, the SBO database used in the RAND Report represents all women-owned business (large and small) and only WOSBs are eligible under the regulations. As of January 21, 2007, approximately 93,000 businesses represented themselves as WOSBs in the Federal Government's Central Contractor Registration (CCR) as actual or potential Federal contractors. The study conducted by the RAND Corporation for SBA narrowed the pool of WOSBs in the CCR to approximately 56,000 to more closely approximate the universe of firms who are ready, willing, and able to do business with the Government.[1] However, far fewer than 56,000 WOSBs are likely to be affected by this Final Rule because only those eligible WOSBs competing for contracts in the eligible industries could possibly receive contracts under the program. Utilizing the RAND FPDS data set for the total number of WOSBs (identified by Dun and Bradstreet DUNS number) that received obligated funds from awards, contracts, orders and modifications to existing contracts for FY 2005, SBA identified approximately 12,000 WOSBs as recipients of Federal contracts in the 83 NAICS codes that would be eligible under the WOSB Program. Thus, this rule may affect approximately 12,000 WOSBs.

In addition, WOSBs who are not economically disadvantaged could be affected only to the extent that they compete for Federal contracts in industries in which WOSBs are determined to be substantially underrepresented. For industries in which WOSBs are determined to be substantially underrepresented, the potential number of WOSBs that could be direct beneficiaries of these Procedures restricting certain Federal contracts to WOSBs is also likely to be much fewer than the number of WOSBs registered in CCR, since not all WOSBs will satisfy the eligibility requirements for EDWOSB status. The CCR currently lists only approximately 3,800 SDBs owned and controlled by one or more women. This is a useful statistic because the $750,000 net worth requirement is the same for SDBs and for WOSBs. While SBA acknowledges that there may be other WOSBs in existence besides those listed in the CCR as being certified by SBA as SDBs, it is difficult to envision more than 6,000 WOSBs that could meet SBA's eligibility criteria and that are also ready, willing, and able to bid on Government contracts.

Moreover, the anticipated benefits of these Procedures may be less attractive to many WOSBs than a number of other preferences designed to assist small businesses, such as HUBZone, 8(a) BD, and others. Not all areas of Federal procurement are likely to be designated as underrepresented or substantially underrepresented, and opportunities in some of the qualified industries may be limited. Consequently, many otherwise-qualified EDWOSBs and WOSBs may not find it advantageous to pursue contract opportunities under these Procedures.

This Final Rule will also affect non-WOSBs (small businesses not 51 percent owned and controlled by women) seeking Federal contracts for which competition has been restricted to participants in these Procedures. This could affect the number of future contracts for those businesses that derive a significant portion of their business from Federal contracting. As of January 2007, the CCR lists approximately 376,000 small businesses that are not WOSBs. To the extent that contracting officers use these Procedures, non-WOSBs may be excluded from competing for certain Federal contracting opportunities. However, this would occur only in industries in which WOSBs have been found to be underrepresented or substantially underrepresented, thus receiving fewer contracts than would be expected absent discrimination in the marketplace, and where the anticipated dollar value of the procurement does not exceed $3 million or $5 million, in the case of manufacturing contracts. In addition, we note that industries in which WOSBS are underrepresented are ones in which they have gotten less than their fair share of contracts and this suggests, at least implicitly, that non-WOSBs have therefore been getting more than the share they would receive in the absence of discrimination. The number of small businesses that would be excluded from eligibility for competing for contracts designated for the program under these procurements or from future such determinations is not known at this time.

Additional contracting opportunities identified by Federal agencies as candidates to be set aside for WOSBs will come from new contracting requirements and contracts currently performed by small and large businesses. At this time, SBA cannot accurately predict how the existing distribution of contracts by business type may change with this rule. However, SBA does not expect a great many of the contracts awarded through the 8(a), HUBZone, or SDVOSB Programs ($22.6 billion in FY 2006) to be re-competed as WOSB or EDWOSB set-aside contracts because those programs also support other statutory goals that agencies strive to achieve through their contracting activities. It is acknowledged, however, that some redistribution of contracts among the various programs may occur as a result of these Procedures.

4. What are the projected reporting, recordkeeping, Paperwork Reduction Act and other compliance Requirements?

For purposes of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, SBA has determined that the rule imposes new reporting and recordkeeping requirements. The certification process described in Subpart C, §§ 127.300 to 127.302, is an information collection. The certification process requires a concern seeking to benefit from Federal contracting opportunities designated for WOSBs or EDWOSBs to verify its status by providing documents to the WOSB Program Repository, submitting a certification to the WOSB Program Repository, and representing its status in an existing electronic contracting system (*i.e.,* ORCA). The WOSB or EDWOSB will have to represent in ORCA that it meets each eligibility requirement of the program.

Specifically, the WOSB or EDWOSB will be required to submit certain documents verifying eligibility at the time of certification in ORCA (and every year thereafter). These documents will be submitted to a document repository established by SBA, or until the repository is established, the contracting office upon notice of a proposed award. Further, the protest and eligibility examination procedures will require the submission of documents from those parties subject to a protest and eligibility examination. To reduce the burden on the WOSBs or EDWOSBs, the same documents submitted at the time of certification will be used for the protests and eligibility examinations, except that for protests and eligibility examinations, SBA will also request copies of proposals submitted in response to a WOSB or EDWOSB

[1] RAND eliminated firms with less than $1,000 in annual revenue; counted a firm only once if they were registered more than once for multiple locations; eliminated other apparent duplications; and eliminated vendors that were only interested in competing for grants (as opposed to contracts).

solicitation and certain other documents and information to verify the status of an EDWOSB.

Finally, the rule also requires the WOSBs or EDWOSBs to retain copies of the documents submitted for a period of six (6) years. The SBA stated in the proposed rule that it believes that any additional burden imposed by this recordkeeping requirement would be minimal since the firms would maintain the information in their general course of business.

As stated above, SBA submitted this information collection to OMB for review and it was approved.

There will also be some recordkeeping requirements for the Government; but since the Government already tracks procurement awards to WOSBs, the additional reporting requirements will require minimal changes to existing systems. The SBA is working with the Integrated Acquisition Environment, which is managed by GSA, to ensure that CCR, ORCA, and the Federal Procurement Data System–Next Generation (FPDS–NG) contain the fields needed to capture the new socio-economic data. EDWOSB will be a new classification that the Government has not previously used.

5. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The SBA has minimized the significant economic impact on small entities. Pursuant to section 8(m) of the Small Business Act, a WOSB may be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator; or a WOSB may self-certify to the contracting officer that it is a small business concern owned and controlled by women, along with adequate documentation in accordance with standards established by the Administration. As discussed earlier, SBA will allow EDWOSBs and WOSBs to self-certify their status in the existing CCR and ORCA databases or provide evidence of certification from an approved third-party certifier.

An alternative approach would have been to require EDWOSBs and WOSBs to apply to SBA for formal certification. The SBA has ruled out this approach as unnecessary, not required by statute, and too costly. The SBA believes that eligibility examinations and protest procedures incorporated into the Final Rule will minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status. The SBA has decided that allowing self-certification and the option for firms to apply for certification from SBA-approved certifiers, when combined with random eligibility examinations and a formal protest procedure, is a more viable approach than formal certification by SBA and greatly reduces the burden on small entities.

In addition, SBA estimates that implementation of this Final Rule will require no additional proposal costs for WOSBs, as compared to submitting proposals under any other small business set-aside preferences. Moreover, WOSBs currently represent their status for purposes of data collection that is needed to implement 15 U.S.C. 644(g); therefore, the self-certification process of this Final Rule imposes no additional requirement on WOSBs.

Pursuant to Executive Order 13272 dated August 16, 2002, agencies issuing final rules are required to discuss any comments received from SBA's Office of Advocacy in response to the proposed rule. In this case, SBA's Office of Advocacy submitted two formal comments on May 3, 2010. The first comment recommended that SBA address new market opportunities for women-owned small businesses that may not yet be incorporated in the NAICS System. While SBA understands and appreciates the concern expressed by the comment to consider emerging areas for WOSBs, SBA is limited by the data available, particularly the FPDS–NG and CCR databases, to construct the disparity ratios which determine underrepresentation. The FPDS–NG and CCR databases contain data which relate to well-defined NAICS codes in which WOSBs have participated in Federal procurement. To the extent that there are new areas in which WOSBs are participating, SBA is committed to making an on-going effort to obtain accurate and timely data to use in the anticipated updates to the list of eligible industries.

The second comment received from the SBA Office of Advocacy expressed concern with the submission of documents that WOSBs are required to make prior to award. Particularly, the comment was concerned that "until the repository is operational, the women-owned business that decides to self-certify must not only submit documents to the Online Representations and Certifications Application system (ORCA) but must provide each contracting officer with eligibility documents." The SBA Office of Advocacy was concerned with what it viewed as a duplicative submission and sought to have SBA seek a less burdensome alternative.

As stated in the portion of the preamble which discussed the public comments, many of the public comments confused the CCR and ORCA databases. However, neither CCR nor ORCA collects documents; rather CCR is an online government-maintained database on which companies who want to do business with the Federal Government can register and supply limited information relative to their size and type of business, and ORCA collects the representations and certifications required for Federal contracts.

As a requirement for participation in this Program, an EDWOSB or WOSB must register in CCR first. Next, it must provide documents supporting its EDWOSB or WOSB status to an online document repository, called that the WOSB Program Repository, that the SBA is planning to establish. The business concern will be placing these documents in a secure, Web-based environment that would only be accessible to the individual WOSBs and EDWOSBs, Federal contracting officers and SBA. The contracting officer would be required to access the documents prior to contract award to review the submitted documents. The SBA proposed this approach so that the WOSBs and EDWOSBs would not have to submit documents each time they are being considered for the award of a WOSB or EDWOSB contract.

Until the repository is completed, or if the system is otherwise unavailable, then SBA explained that the WOSB or EDWOSBs must submit the documents directly to the contracting officer prior to each WOSB or EDWOSB award. The contracting officer must retain these documents in the contract file so that SBA may later review the file for purposes of a status protest or eligibility examination. However, the WOSB or EDWOSB will also be required to post the documents to the WOSB Program Repository within thirty (30) days of the repository becoming available.

Finally, after registering in CCR and submitting the required document to the repository, the EDWOSB or WOSB must represent its status in ORCA at *https://orca.bpn.gov.*

Thus, the supporting documents will be provided to a repository (which is not necessarily part of ORCA) or, if the repository is unavailable, to the contracting officer. The SBA notes that

the statute requires the submission of supporting documents to the contracting officer and, until or unless the repository is established, this appears to be the sole alternative that meets this statutory requirement. In addition, SBA believes that although the representations and document requirement may seem burdensome to some small businesses, this is required to meet the statutory provisions, reduce fraud in the program, and ensure that only eligible concerns receive the benefits of the program.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions (Government agencies).

■ Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 121, 124, 125, 126, 127 and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, 662(5) and 694a; and Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

■ 2. Revise § 121.401 to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Women Owned Small Business (WOSB) Federal Contract Program, SBA's Service-Disabled Veteran-Owned Small Business program, the Small Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

■ 3. Amend § 121.1001 by revising paragraph (a)(9) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(9) For SBA's WOSB Federal Contracting Program, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB) pursuant to part 127 of this chapter;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director for Government Contracting, or designee.

* * * * *

■ 4. Amend § 121.1008(a) by adding a sentence after the third sentence to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) * * * If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 5. The authority citation for 13 CFR part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

■ 6. Amend § 124.503 by revising paragraph (j) to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(j) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above $100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 7. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634 (b)(6), 637, 644, and 657f.

■ 8. Add new paragraph (f) to § 125.2 to read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(f) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above $100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

■ 9. Amend § 125.19 by revising paragraph (b) to read as follows:

§ 125.19 When may a contracting officer set-aside a procurement for SDVO SBCs?

* * * * *

(b) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above $100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

* * * * *

PART 126—HUBZONE PROGRAM

■ 10. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 11. Amend § 126.607 by revising paragraph (b) to read as follows:

§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?

* * * * *

(b) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above $100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

* * * * *

§ 126.609 [Removed and Reserved]

■ 12. Remove and reserve § 126.609.

■ 13. Revise part 127 to read as follows:

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

Subpart A—General Provisions

Sec.
127.100 What is the purpose of this part?
127.101 What type of assistance is available under this part?
127.102 What are the definitions of the terms used in this part?

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?
127.201 What are the requirements for ownership of an EDWOSB and WOSB?
127.202 What are the requirements for control of an EDWOSB or WOSB?
127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

Subpart C—Certification of EDWOSB or WOSB Status

127.300 How is a concern certified as an EDWOSB or WOSB?
127.301 When may a contracting officer accept a concern's self-certification?
127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?
127.303 How will SBA select and identify approved certifiers?
127.304 How does a concern obtain certification from an approved certifier?
127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

Subpart D—Eligibility Examinations

127.400 What is an eligibility examination?
127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?
127.402 How will SBA conduct an examination?
127.403 What happens if SBA verifies the concern's eligibility?
127.404 What happens if SBA is unable to verify a concern's eligibility?
127.405 What is the process for requesting an eligibility examination?

Subpart E—Federal Contract Assistance

127.500 In what industries is a contracting officer authorized to restrict competition under this part?
127.501 How will SBA determine the industries that are eligible for EDWOSB or WOSB requirements?
127.502 How will SBA identify and provide notice of the designated industries?
127.503 When is a contracting officer authorized to restrict competition under this part?
127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?
127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?
127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?
127.507 Are there EDWOSB and WOSB contracting opportunities at or below the Simplified Acquisition Threshold?
127.508 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a WOSB Program Contract?
127.509 What is the process for such an appeal?

Subpart F—Protests

127.600 Who may protest the status of a concern as an EDWOSB or WOSB?
127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?
127.602 What are the grounds for filing an EDWOSB or WOSB status protest?
127.603 What are the requirements for filing an EDWOSB or WOSB protest?
127.604 How will SBA process an EDWOSB or WOSB status protest?
127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

Subpart G—Penalties

127.700 What penalties may be imposed under this part?

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

Subpart A—General Provisions

§ 127.100 What is the purpose of this part?

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to ensure that Women-Owned Small Businesses (WOSBs) have an equal opportunity to participate in Federal contracting. This part implements these mechanisms and ensures that the program created, referred to as the WOSB Program, is substantially related to this important Congressional goal in accordance with applicable law.

§ 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition to eligible Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) for certain Federal contracts in industries in which the Small Business Administration (SBA) determines that WOSBs are underrepresented or substantially underrepresented in Federal procurement. It also authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA determines that WOSBs are substantially underrepresented in Federal procurement and has waived the economically disadvantaged requirement.

§ 127.102 What are the definitions of the terms used in this part?

For purposes of this part:

8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant and whose term has not expired or otherwise left the 8(a) BD program early.

AA/GC&BD means SBA's Associate Administrator for Government Contracting and Business Development.

Central Contractor Registration (CCR) Database means the primary

Government repository for contractor information required for the conduct of business with the Government. It is also a means for conducting searches for small business contractors. In general, prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement. CCR is located at *https://www.bpn.gov/ccr/.*

Citizen means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in § 121.105 of this chapter.

Contracting officer has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

D/GC means SBA's Director for Government Contracting.

Economically Disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this chapter and that is at least 51 percent owned and controlled by one or more women who are citizens and who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to EDWOSBs.

Immediate family member means father, mother, husband, wife, son, daughter, stepchild, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement, the contracting activity's contracting officer, or SBA.

ORCA (the Online Representations and Certifications Application) means the primary Government repository for contractor submitted representations and certifications required for the conduct of business with the Government. ORCA is located at *https://orca.bpn.gov.*

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at *http://www.census.gov/NAICS.* In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in § 121.107 of this chapter.

Same or similar line of business means business activities within the same four-digit "Industry Group" of the NAICS Manual as the primary industry classification of the WOSB or EDWOSB.

Substantial underrepresentation means a disparity ratio which is less than 0.5.

Underrepresentation means a disparity ratio between 0.5 and 0.8.

WOSB means a concern that is small pursuant to part 121 of this chapter, and that is at least 51 percent owned and controlled by one or more women who are citizens in accordance with §§ 127.200, 127.201 and 127.202.

WOSB Program Repository means a secure, Web-based application that collects, stores and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under a WOSB or EDWOSB requirement.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter for its primary industry classification; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB one or more economically disadvantaged women must unconditionally and directly own at least 51 percent of the concern. To qualify as a WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership plan) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, the trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women or in the case of an EDWOSB, economically disadvantaged women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women, or in the case of an EDWOSB, economically disadvantaged women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting

stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as a WOSB, the management and daily business operations of the concern must be controlled by one or more women. To qualify as an EDWOSB, the management and daily business operations of the concern must be controlled by one or more women who are economically disadvantaged. Control by one or more women or economically disadvantaged women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women or economically disadvantaged women.

(b) *Managerial position and experience.* A woman, or in the case of an EDWOSB an economically disadvantaged woman, must hold the highest officer position in the concern and must have managerial experience of the extent and complexity needed to run the concern. The woman or economically disadvantaged woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman or economically disadvantaged woman who holds the highest officer position of the concern must manage it on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. The woman or economically disadvantaged woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women, or in the case of an EDWOSB, economically disadvantaged women, must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women, or in the case of an EDWOSB, economically disadvantaged women, must control the Board of Directors of the concern. Women or economically disadvantaged women are considered to control the Board of Directors when either:

(1) One or more women or economically disadvantaged women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women or economically disadvantaged women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51 percent owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. SBA does not take into consideration community property laws when determining economic disadvantage when the woman has no direct, individual or separate ownership interest in the property.

(b) *Limitation on personal net worth.*

(1) In order to be considered economically disadvantaged, the woman's personal net worth must be less than $750,000, excluding her ownership interest in the concern and her equity interest in her primary personal residence.

(2) Income received from an EDWOSB that is an S corporation, LLC or partnership will be excluded from net worth where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the business concern or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce an individual's net worth.

(3) Funds invested in an Individual Retirement Account (IRA) or other official retirement account that are unavailable until retirement age without a significant penalty will not be considered in determining a woman's net worth. In order to properly assess whether funds invested in a retirement account may be excluded from a woman's net worth, she must provide information about the terms and restrictions of the account to SBA and certify that the retirement account is legitimate.

(c) *Factors to be considered.*

(1) *General.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past three years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, will be considered in determining whether she is economically disadvantaged.

(2) *Spouse's financial situation.* SBA may consider a spouse's financial situation in determining a woman's access to credit and capital. When married, an individual claiming economic disadvantage must submit separate financial information for her spouse, unless the individual and the spouse are legally separated. SBA will consider a spouse's financial situation in determining an individual's access to credit and capital where the spouse has a role in the business (*e.g.,* an officer, employee or director) or has lent money to, provided credit or financial support to, or guaranteed a loan of the business. SBA may also consider the spouse's financial condition if the spouse's business is in the same or similar line of business as the EDWOSB or WOSB and the spouse's business and WOSB share similar names, Web sites, equipment or employees. In addition, all transfers to a spouse within two years of a certification will be attributed to a woman claiming economic disadvantage as set forth in paragraph (d) of this section.

(3) *Income.*

(i) When considering a woman's personal income, if the adjusted gross yearly income averaged over the three years preceding the certification exceeds $350,000, SBA will presume that she is not economically disadvantaged. The

presumption may be rebutted by a showing that this income level was unusual and not likely to occur in the future, that losses commensurate with and directly related to the earnings were suffered, or by evidence that the income is not indicative of lack of economic disadvantage.

(ii) Income received by an EDWOSB that is an S corporation, LLC, or partnership will be excluded from an individual's income where the EDWOSB provides documentary evidence demonstrating that the income was reinvested in the EDWOSB or the distribution was solely for the purposes of paying taxes arising in the normal course of operations of the business concern. Losses from the S corporation, LLC or partnership, however, are losses to the EDWOSB only, not losses to the individual, and cannot be used to reduce a woman's personal income.

(4) *Fair market value of all assets.* A woman will generally not be considered economically disadvantaged if the fair market value of all her assets (including her primary residence and the value of the business concern) exceeds $6 million. The only assets excluded from this determination are funds excluded under paragraph (b)(3) of this section as being invested in a qualified IRA account or other official retirement account.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

Subpart C—Certification of EDWOSB or WOSB Status

§ 127.300 How is a concern certified as an EDWOSB or WOSB?

(a) *General.* At the time a concern submits an offer on a specific contract reserved for competition under this part, it must be registered in the Central Contractor Registration (CCR), have a current representation posted on the Online Representations and Certifications Application (ORCA) that it qualifies as an EDWOSB or WOSB and have provided the required documents to the WOSB Program Repository, or if the repository is unavailable, be prepared to submit the documents to the contracting officer if selected as the apparent successful offeror.

(b) *Form of certification.* In conjunction with its required registration in the CCR database, the concern must submit a copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB) to the WOSB Program Repository and representations to the electronic annual representations and certifications at *http://orca.bpn.gov,* that it is a qualified EDWOSB or WOSB. The Women-Owned Small Business Program Certification (WOSB or EDWOSB) and representation must state, subject to penalties for misrepresentation, that:

(1) The concern is an EDWOSB or WOSB or is certified as an EDWOSB or WOSB by a certifying entity approved by SBA, and there have been no changes in its circumstances affecting its eligibility since certification;

(2) The concern meets *each* of the applicable individual eligibility requirements described in subpart B of this part, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as an EDWOSB or WOSB.

(c) *Documents provided to contracting officer.* All of the documents set forth in paragraphs (d) and (e) of this section must be provided to the contracting officer to verify eligibility at the time of initial offer. The documents will be provided via the WOSB Program Repository or, if the repository is unavailable, directly to the contracting officer. The documents must be retained for a minimum of six (6) years.

(d) *Third-Party Certification.*

(1) Prior to certification in ORCA, the WOSB or EDWOSB that has been certified as a WOSB or EDWOSB by a certifying entity approved by SBA, including those certifiers from which SBA will accept certifications from the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) Program, or by SBA as an 8(a) BD Participant, must provide a copy of the third-party Certification to the WOSB Program Repository. If the WOSB Program Repository is unavailable, then prior to the award of a WOSB or EDWOSB contract, the apparent successful offeror WOSB or EDWOSB that has been certified as a EDWOSB or WOSB by a certifying entity approved by SBA must provide a copy of the third-party Certification to the contracting officer verifying that it was a WOSB or EDWOSB at the time of initial offer.

(2) The EDWOSB or WOSB must also provide a copy of the joint venture agreement, if applicable.

(3) The EDWOSB or WOSB must also provide a signed copy of the Women-Owned Small Business Program Certification (WOSB or EDWOSB).

(4) The EDWOSB or WOSB must also provide any additional documents as requested by SBA in writing that are necessary to satisfy the WOSB Program requirements.

(5) Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the repository.

(e) *Non-Third Party Certification.* A concern that has not been certified as a WOSB or EDWOSB by a third-party certifier approved by SBA or as a DBE or by SBA as an 8(a) BD Participant must also provide documents to the WOSB Program Repository. If the WOSB Program Repository is unavailable, then prior to award of a WOSB or EDWOSB contract, the apparent successful offeror must provide a copy of the documents to the contracting officer verifying that it was a WOSB or EDWOSB at the time of initial offer. Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the WOSB Program Repository. These documents must be signed and include the following:

(1) Birth certificates, Naturalization papers, or unexpired passports for owners who are women;

(2) Copy of the joint venture agreement, if applicable;

(3) For limited liability companies:

(i) Articles of organization (also referred to as certificate of organization or articles of formation) and any amendments; and

(ii) Operating agreement, and any amendments;

(4) For corporations:

(i) Articles of incorporation and any amendments;

(ii) By-laws and any amendments;

(iii) All issued stock certificates, including the front and back copies, signed in accord with the by-laws;

(iv) Stock ledger; and

(v) Voting agreements, if any;

(5) For partnerships, the partnership agreement and any amendments;

(6) For sole proprietorships (and corporations, limited liability companies and partnerships if applicable), the assumed/fictitious name certificate(s);

(7) A signed copy of the Women-Owned Small Business Program Certification-WOSBs; and

(8) For EDWOSBs, in addition to the above:

(i) SBA Form 413, Personal Financial Statement, available to the public at *http://www.sba.gov/tools/Forms/index.html,* for each woman claiming economic disadvantage; and

(ii) A signed copy of the Women-Owned Small Business Program Certification–EDWOSBs.

(f) *Update of certification and documents.*

(1) The concern must update its Women-Owned Small Business Program Certification (WOSB or EDWOSB) and EDWOSB and WOSB representations and self-certification on ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The certification and representations are effective for a period of one year from the date of submission or update.

(2) The WOSB or EDWOSB must update the documents submitted to the contracting officer via the WOSB Program Repository as necessary to ensure they are kept current, accurate and complete. If the WOSB Program Repository is not available, the WOSB or EDWOSB must provide current, accurate and complete documents to the contracting officer for each contract award. Within thirty (30) days of the WOSB Program Repository becoming available, the WOSB or EDWOSB must provide the same documents to the WOSB Program Repository.

§ 127.301 When may a contracting officer accept a concern's self-certification?

(a) *General.*

(1) *Third-Party Certifications.* A contracting officer may accept a concern's self-certification on ORCA as accurate for a specific procurement reserved for award under this Part if the apparent successful offeror WOSB or EDWOSB provided the required documents, which are set forth in § 127.300(d), and there has been no protest or other credible information that calls into question the concern's eligibility as a EDWOSB or WOSB. An example of such credible evidence includes information that the concern was determined by SBA or an SBA-approved certifier not to qualify as an EDWOSB or WOSB.

(2) *Non-Third Party Certification.* A contracting officer may accept a concern's self-certification in ORCA if the apparent successful offeror WOSB or EDWOSB has provided the required documents, which are set forth in § 127.300(e).

(b) *Referral to SBA.* When the contracting officer has information that calls into question the eligibility of a concern as an EDWOSB or WOSB or the concern fails to provide all of the required documents to verify its eligibility, the contracting officer shall refer the concern to SBA for verification of the concern's eligibility by filing an EDWOSB or WOSB status protest pursuant to subpart F of this part. If the apparent successful offeror WOSB or EDWOSB fails to submit any of the required documents, the contracting officer cannot award a WOSB or EDWOSB contract to that business concern.

§ 127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

In order for a concern to use a certification by another entity as evidence of its status as a qualified EDWOSB or WOSB in support of its representations in ORCA pursuant to § 127.300(b), the concern must have a current, valid certification from:

(a) SBA as an 8(a) BD Program participant; or

(b) An entity designated as an SBA-approved certifier on SBA's Web site located at *http://www.sba.gov/GC.*

§ 127.303 How will SBA select and identify approved certifiers?

(a) *General.* SBA may enter into written agreements to accept the EDWOSB or WOSB certification of a Federal agency, State government, or national certifying entity if SBA determines that the entity's certification process complies with SBA-approved certification standards and tracks the EDWOSB or WOSB eligibility requirements set forth in subpart B of this part. The written agreement will include a provision authorizing SBA to terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same EDWOSB or WOSB eligibility requirements as set forth in subpart B of this part.

(b) *Required certification standards.* In order for SBA to enter into an agreement to accept the EDWOSB or WOSB certification of a Federal agency, State government, or national certifying entity, the entity must establish the following:

(1) It will render fair and impartial EDWOSB or WOSB eligibility determinations.

(2) It will retain the documents submitted by the approved WOSB or EDWOSB for a period of six (6) years from the date of certification (initial and any recertification) and provide any such documents to SBA in response to a status protest or eligibility examination or agency investigation or audit.

(3) Its certification process will require applicant concerns to pre-register on CCR and submit sufficient information as determined by SBA to enable it to determine whether the concern qualifies as an EDWOSB or WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under SBA's size standards for its primary industry classification;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(iii) In the case of a concern applying for EDWOSB certification, at least 51 percent owned and controlled by one or more women who are United States citizens and economically disadvantaged.

(4) It will not decline to accept a concern's application for EDWOSB or WOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, or marital or family status.

(c) *List of SBA-approved certifiers.* SBA will maintain a list of approved certifiers, including certifiers from which SBA will accept DOT DBE certifications, on SBA's Internet Web site at *http://www.sba.gov/GC.* Any interested person may also obtain a copy of the list from the local SBA district office or SBA Area Office for Government Contracting.

§ 127.304 How does a concern obtain certification from an approved certifier?

A concern that seeks EDWOSB or WOSB certification from an SBA-approved certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier. Any interested party may obtain such certification information and application by contacting the approved certifier at the address provided on SBA's list of approved certifiers.

§ 127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

A concern that SBA or an SBA-approved certifier determines does not qualify as an EDWOSB or WOSB may not represent itself to be an EDWOSB or WOSB, as applicable, unless SBA subsequently determines that it is an eligible EDWOSB or WOSB pursuant to the examination procedures under § 127.405, and there have been no material changes in its circumstances affecting its eligibility since SBA's eligibility determination. Any concern determined not to be a qualified EDWOSB or WOSB may request that SBA conduct an examination to determine its EDWOSB or WOSB eligibility at any time once it believes in good faith that it satisfies all of the eligibility requirements to qualify as an EDWOSB or WOSB.

Subpart D—Eligibility Examinations

§ 127.400 What is an eligibility examination?

(a) *Purpose of examination.* Eligibility examinations are investigations that verify the accuracy of any certification made or information provided as part of the certification process (including third-party certifications) or in connection with an EDWOSB or WOSB contract. In addition, eligibility examinations may verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA will, in its sole discretion, perform eligibility examinations at any time after a concern self-certifies in CCR or ORCA that it is an EDWOSB or WOSB. SBA may conduct the examination, or parts of the examination, at one or all of the concern's offices.

(b) *Determination on conduct of an examination.* SBA may consider protest allegations set forth in a protest in determining whether to conduct an examination of a concern pursuant to subpart D of this part, notwithstanding a dismissal or denial of a protest pursuant to § 127.604. SBA may also consider information provided to the D/GC by a third-party that questions the eligibility of a WOSB or EDWOSB that has certified its status in ORCA or CCR in determining whether to conduct an eligibility examination.

§ 127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Eligibility examination.* An eligibility examination is the formal process through which SBA verifies and monitors the accuracy of any certification made or information provided as part of the certification process or in connection with an EDWOSB or WOSB contract. If SBA is conducting an eligibility examination on a concern that has submitted an offer on a pending EDWOSB or WOSB procurement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, then SBA may initiate a protest pursuant to § 127.600 to suspend award of the contract for fifteen (15) business days pending SBA's determination of the concern's eligibility.

(b) *EDWOSB or WOSB protests.* An EDWOSB or WOSB status protest provides a mechanism for challenging or verifying the EDWOSB or WOSB eligibility of a concern in connection with a specific EDWOSB or WOSB requirement. SBA will process EDWOSB or WOSB protests in accordance with the procedures and timeframe set forth in subpart F, and will determine the EDWOSB or WOSB eligibility of the protested concern as of the date the concern represented its EDWOSB or WOSB status as part of its initial offer including price. SBA's protest determination will apply to the specific procurement to which the protest relates and to future procurements.

§ 127.402 How will SBA conduct an examination?

(a) *Notification.* No less than five (5) business days before commencing an examination, SBA will notify the concern in writing that it will conduct an examination to verify the status of the concern as an EDWOSB or WOSB. However, SBA reserves the right to conduct a site visit without prior notification to the concern.

(b) *Request for information.* SBA will request that the concern or contracting officer provide documentation and information related to the concern's EDWOSB or WOSB eligibility. These documents will include those submitted under § 127.300 and any other pertinent documents requested by SBA at the time of eligibility examination to verify eligibility, including but not limited to, documents submitted by a concern in connection with any WOSB or EDWOSB certification. SBA may also request copies of proposals or bids submitted in response to an EDWOSB or WOSB solicitation. In addition, EDWOSBs will be required to submit signed copies of SBA Form 413, Personal Financial Statement, the three most recent personal income tax returns (including all schedules and W–2 forms) for the women claiming economic disadvantage and their spouses, unless the individuals and their spouses are legally separated, and SBA Form 4506–T, Request for Tax Transcript Form, available to the public at *http://www.sba.gov/tools/Forms/index.html.* SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information. The WOSB or EDWOSB must retain documentation demonstrating satisfaction of the eligibility requirements for six (6) years from date of self-certification.

§ 127.403 What happens if SBA verifies the concern's eligibility?

If SBA verifies that the concern satisfies the applicable EDWOSB or WOSB eligibility requirements, then the D/GC will send the concern a written decision to that effect and will allow the concern's EDWOSB or WOSB designation in CCR and ORCA to stand and the concern may continue to self-certify its EDWOSB or WOSB status.

§ 127.404 What happens if SBA is unable to verify a concern's eligibility?

(a) *Notice of proposed determination of ineligibility.* If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written notice explaining the reasons SBA believes the concern did not qualify at the time of certification or does not qualify as an EDWOSB or WOSB. The notice will advise the concern that it has fifteen (15) calendar days from the date of the notice to respond.

(b) *SBA determination.* Following the fifteen (15) day response period, the D/GC or designee will consider the reasons of proposed ineligibility and any information the concern submitted in response, and will send the concern a written decision with its findings. The D/GC's decision is effective immediately and remains in full force and effect unless a new examination verifies the concern is an eligible EDWOSB or WOSB or the concern is certified by a third-party certifier.

(1) If SBA determines that the concern does not qualify as an EDWOSB or WOSB, then the D/GC will send the concern a written decision explaining the basis of ineligibility, and will require that the concern remove its EDWOSB or WOSB designation in the CCR and ORCA within five (5) calendar days after the date of the decision.

(2) If the concern has already certified itself as a WOSB or EDWOSB on a pending procurement the concern must immediately inform the officials responsible for the procurement of the adverse determination.

(3) If SBA determines that the concern did not qualify as an EDWOSB or WOSB at the time it submitted its initial offer for an EDWOSB or WOSB requirement, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(4) Whether or not a contracting officer decides to allow or not allow an ineligible concern to fully perform a contract under paragraph (b)(2) of this section, the contracting officer cannot count the award as one to an EDWOSB or WOSB and must update the Federal Procurement Data System–Next Generation (FPDS–NG) and other databases from the date of award accordingly.

(c) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB until it cures the reason for its ineligibility and SBA determines that the concern qualifies as a WOSB or EDWOSB. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in this section.

§ 127.405 What is the process for requesting an eligibility examination?

(a) *General.* A concern may request that SBA conduct an examination to verify its eligibility as an EDWOSB or WOSB at any time after it is determined by SBA not to qualify as an EDWOSB or WOSB, if the concern believes in good faith that it satisfies all of the EDWOSB or WOSB eligibility requirements under subpart B of this part.

(b) *Format.* The request for an examination must be in writing and must specify the particular reasons the concern was determined not to qualify as an EDWOSB or WOSB.

(c) *Submission of request.* The concern must submit its request directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, marked "*Attn:* Request for Women-Owned Small Business Eligibility Examination."

(d) *Notice of receipt of request.* SBA will immediately notify the concern in writing once SBA receives its request for an examination. SBA will request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility and may draw an adverse inference if the concern fails to cooperate in providing the requested information.

(e) *Determination of eligibility.* The D/GC will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If the D/GC determines that the concern does not qualify as an EDWOSB or WOSB, the decision will explain the specific reasons for the adverse determination and advise the concern that it is prohibited from self-certifying as an EDWOSB or WOSB. If the concern self-certifies as an EDWOSB or WOSB notwithstanding SBA's adverse determination, the concern will be subject to the penalties under subpart G of this part.

(2) If the D/GC determines that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written decision to that effect and will advise the concern that it may self-certify as an EDWOSB or WOSB, as applicable.

(f) *Effect of decision.* The D/GC's decision is effective immediately and remains in full force and effect unless a new examination verifies the concern is an eligible EDWOSB or WOSB or the concern is certified by a third-party certifier. If the concern has already certified itself as a WOSB or EDWOSB on a pending procurement the concern must immediately inform the officials responsible for the procurement of the adverse determination.

(g) *Determinations of Ineligibility.* A concern that has been found to be ineligible shall not represent itself as a WOSB or EDWOSB until it cures the reason for its ineligibility and SBA determines that the concern qualifies as a WOSB or EDWOSB. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in this section.

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition under this part?

A contracting officer may restrict competition under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement, as specified in § 127.501.

§ 127.501 How will SBA determine the industries that are eligible for EDWOSB or WOSB requirements?

(a) Based upon its analysis, SBA will designate by NAICS Industry Subsector Code those industries in which WOSBs are underrepresented and substantially underrepresented.

(b) In determining the extent of disparity of WOSBs, SBA may request that the head of any Federal department or agency provide SBA, data or information necessary to analyze the extent of disparity of WOSBs.

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site at *http://www.sba.gov* a list of NAICS Industry Subsector industries it designates under § 127.501. The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) *EDWOSB requirements.* For requirements in industries designated by SBA as underrepresented pursuant to § 127.501, a contracting officer may restrict competition to EDWOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more EDWOSBs will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or $3,000,000, in the case of all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(b) *WOSB requirements.* For requirements in industries designated by SBA as substantially underrepresented pursuant to § 127.501, a contracting officer may restrict competition to WOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more WOSBs will submit offers (this includes EDWOSBs, which are also WOSBs);

(2) The anticipated award price of the contract (including options) will not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing, or $3,000,000 in the case of all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(c) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(d) *Contracting Among Small Business Programs.*

(1) *Acquisitions Valued At or Below $100,000/Simplified Acquisition Threshold.* The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $3,000 ($15,000 for acquisitions as described in the Federal Acquisition Regulation (FAR) at 48 CFR 13.201(g)(1)) but valued below $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from setting aside a contract under the 8(a) BD, HUBZone, Service Disabled Veteran Owned (SDVO), or WOSB programs.

(2) *Acquisitions Valued Above $100,000/Simplified Acquisition Threshold.*

(i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. However, after conducting market research, the contracting officer shall first consider a set-aside or sole source award (if the sole source award is permitted by statute or regulation) under the 8(a) BD, HUBZone, SDVO SBC or WOSB programs before setting aside the requirement as a small business set-aside. There is no order of precedence among the 8(a) BD, HUBZone, SDVO SBC or WOSB programs. The contracting officer must document the contract file with the rationale used to support the specific set-aside, including the type and extent of market research conducted. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's ORCA certifications and associated representations were reviewed.

(ii) SBA believes that Progress in fulfilling the various small business goals, as well as other factors such as the results of market research, programmatic needs specific to the procuring agency, anticipated award price, and the acquisition history, will be considered in making a decision as to which program to use for the acquisition.

(e) *Contract file.* When restricting competition to WOSBs or EDWOSBs in accordance with § 127.503, the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as an underrepresented or, with respect to WOSBs, substantially underrepresented, industry. In addition, the contracting officer must document the contract file showing that the apparent successful offeror's documents and ORCA certifications and associated representations were reviewed.

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

(a) In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations and certifications on ORCA are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

(1) It is small under the size standard corresponding to the NAICS code assigned to the contract;

(2) It is listed on CCR and ORCA as an EDWOSB or WOSB; and

(3) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility.

(b) The concern must also meet the applicable percentages of work requirement as set forth in § 125.6 of this chapter (limitations on subcontracting rule).

§ 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

An EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in § 121.406(b) of this chapter.

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture may submit an offer on an EDWOSB or WOSB contract if the joint venture meets all of the following requirements:

(a) Except as provided in § 121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract;

(b) The EDWOSB or WOSB participant of the joint venture must be designated on the CCR and the ORCA as an EDWOSB or WOSB;

(c) The parties to the joint venture must enter into a written joint venture agreement. The joint venture agreement must contain a provision:

(1) Setting forth the purpose of the joint venture.

(2) Designating an EDWOSB or WOSB as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB or WOSB;

(4) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB or WOSB contract; and

(5) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB or WOSB contract performed by the joint venture.

(d) The joint venture must perform the applicable percentage of work required of the EDWOSB or WOSB offerors in accordance with § 125.6 of this chapter (limitations on subcontracting rule);

(e) The procuring activity will execute the contract in the name of the EDWOSB or WOSB or joint venture.

(f) The WOSB or EDWOSB must provide a copy of the joint venture agreement to the contracting officer.

§ 127.507 Are there EDWOSB and WOSB contracting opportunities at or below the simplified acquisition threshold?

If the requirement is at or below the simplified acquisition threshold, the contracting officer may set-aside the requirement as set forth in § 127.503.

§ 127.508 May SBA appeal a contracting officer's decision not to reserve a procurement for award as a WOSB Program contract?

The Administrator may appeal a contracting officer's decision not to make a particular requirement available for award under the WOSB Program.

§ 127.509 What is the process for such an appeal?

(a) *Notice of appeal.* When the contacting officer rejects a recommendation by SBA's Procurement Center Representative to make a requirement available for the WOSB Program, he or she must notify the Procurement Center Representative as soon as practicable. If the Administrator

intends to appeal the decision, SBA must notify the contracting officer no later than five (5) business days after receiving notice of the contracting officer's decision.

(b) *Suspension of action.* Upon receipt of notice of SBA's intent to appeal, the contracting officer must suspend further action regarding the procurement until the Secretary of the department or head of the agency issues a written decision on the appeal, unless the Secretary of the department or head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract.

(c) *Deadline for appeal.* Within fifteen (15) business days of SBA's notification to the CO, SBA must file its formal appeal with the Secretary of the department or head of the agency, or the appeal will be deemed withdrawn.

(d) *Decision.* The Secretary of the department or head of the agency must specify in writing the reasons for a denial of an appeal brought under this section.

Subpart F—Protests

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

An interested party may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. Any other party or individual may submit information to the contracting officer or SBA in an effort to persuade them to initiate a protest or to persuade SBA to conduct an examination pursuant to subpart D of this part.

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the contracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents sufficient credible evidence to show that the concern may not be owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51 percent owned and controlled by one or more women who are economically disadvantaged. In addition, SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the contracting officer has protested because the WOSB or EDWOSB apparent successful offeror has failed to provide all of the required documents, as set forth in § 127.300.

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, e-mail, or by U.S. mail (received by the applicable date) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA. IF SBA initiates a protest, the D/GC will notify the contracting officer of such protest.

(c) *Timeliness.*

(1) For negotiated acquisitions, a protest from an interested party must be received by the contracting officer prior to the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award.

(2) For sealed bid acquisitions, a protest from an interested party must be received by close of business on the fifth business day after bid opening.

(3) Any protest received after the time limit is untimely, unless it is from SBA or the contracting officer. A contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA.* The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter and documents, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: the solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. In addition, the contracting officer must send copies of any documents provided to the contracting officer pursuant to § 127.300 (if the repository is unavailable). The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to prevent significant harm to the public interest.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part or submit a protest itself.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and request information and documents responding to the protest within five (5) business days from the date of the notice. These documents will include those that verify the eligibility of the concern, respond to the protest allegations, and copies of proposals or bids submitted in response to an EDWOSB or WOSB requirement. In addition, EDWOSBs will be required to submit signed copies of SBA Form 413, Personal Financial Statement, the two most recent personal income tax returns (including all schedules and W–2 forms) for the women claiming economic disadvantage and their spouses, unless the individuals and their spouses are legally separated, and SBA Form 4506–T, Request for Tax Transcript Form. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information and documents; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within fifteen (15) business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the fifteen (15) day period, the contracting officer must contact SBA to ascertain when SBA estimates that it will issue its decision. After contacting SBA, the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes it determination will harm the public interest. The determination must be included in the contract file and a written copy sent to the D/GC.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation on the CCR and ORCA as an EDWOSB or WOSB, as appropriate. Regardless of a decision not to sustain the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by SBA's Office of Hearings and Appeals (OHA) on appeal pursuant to § 127.605.

(1) A contracting officer may award the contract to a protested concern after the D/GC either has determined that the protested concern is an eligible WOSB or EDWOSB or has dismissed all protests against it. If OHA subsequently overturns the D/GC's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) A contracting officer shall not award the contract to a protested concern that the D/GC has determined is not an EDWOSB or WOSB for the procurement in question.

(i) Where the contracting officer has made a written determination under paragraph (d) of this section that there is an immediate need to award the contract and waiting until SBA makes its determination will harm the public interest, the contracting officer receives the D/GC's determination after contract award finding the business concern does not qualify as EDWOSB or WOSB, and no OHA appeal has been filed, the contracting officer may terminate the award, and shall not exercise any options, or not award further task or delivery orders. If no such written determination by the contracting officer has been made, the contracting officer receives the D/GC's determination after contract award finding the business concern does not qualify as an EDWOSB or WOSB, and no OHA appeal has been filed, the contracting officer shall terminate the award.

(ii) If a timely OHA appeal has been filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(iii) If OHA affirms the D/GC's determination finding that the protested concern is ineligible, the contracting officer shall either terminate the contract, not exercise the next option or not award further task or delivery orders.

(3) The contracting officer must update the Federal Procurement Data System and other procurement reporting databases to reflect the final agency decision (the D/GC's decision if no appeal is filed or OHA's decision).

(4) A concern that has been found to be ineligible may not submit an offer as a WOSB or EDWOSB on another procurement until it cures the reason(s) for its ineligibility and SBA issues a decision to this effect. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in § 127.405.

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What penalties may be imposed under this part?

Persons or concerns that falsely self-certify, provide false information to the Government, or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, 48 CFR 9.4;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 14. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504, 15 U.S.C. 632, 634(b)(6), 637(a), 637(m), 648(l), 656(i) and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart A—General Rules

■ 15. In § 134.102, paragraph (s) is revised to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(s) Appeals from Women-Owned Small Business or Economically-Disadvantaged Women-Owned Small Business protest determinations under part 127 of this chapter;

* * * * *

Subpart E—Rules of Practice for Appeals from Service-Disabled Veteran Owned Small Business Concern Protests

■ 16. In § 134.515, paragraph (b) is revised to read as follows:

§ 134.515 What are the effects of the Judge's decision?

* * * * *

(b) The Judge may reconsider an appeal decision within twenty (20) calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

* * * * *

■ 17. Revise Subpart G to read as follows:

Subpart G—Rules of Practice for Appeals from Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

Sec.

134.701 What is the scope of the rules in this subpart G?
134.702 Who may appeal?
134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?
134.704 What are the effects of the appeal on the procurement at issue?
134.705 What are the requirements for an appeal petition?
134.706 What are the service and filing requirements?
134.707 When does the D/GC transmit the protest file and to whom?
134.708 What is the standard of review?
134.709 When will a Judge dismiss an appeal?
134.710 Who can file a response to an appeal petition and when must such a response be filed?
134.711 Will the Judge permit discovery and oral hearings?
134.712 What are the limitations on new evidence?
134.713 When is the record closed?
134.714 When must the Judge issue his or her decision?
134.715 Can a Judge reconsider his decision?

Subpart G—Rules of Practice for Appeals from Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

§ 134.701 What is the scope of the rules in this subpart G?

(a) The rules of practice in this subpart G apply to all appeals to OHA from formal protest determinations made by the Director for Government Contracting (D/GC) in connection with a Women-Owned Small Business Concern (WOSB) or Economically Disadvantaged WOSB Concern (EDWOSB) protest. Appeals under this subpart include issues related to whether the concern is owned and controlled by one or more women who are United States citizens and, if the appeal is in connection with an EDWOSB contract, that the concern is at least 51 percent owned and controlled by one or more women who are economically disadvantaged. This includes appeals from determinations by the D/GC that the protest was premature, untimely, nonspecific, or not based upon protestable allegations.

(b) Except where inconsistent with this subpart, the provisions of subparts A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

§ 134.702 Who may appeal?

Appeals from WOSB or EDWOSB protest determinations may be filed with OHA by the protested concern, the protestor, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?

Appeals from a WOSB or EDWOSB protest determination must be commenced by filing and serving an appeal petition within ten (10) business days after the appellant receives the WOSB or EDWOSB protest determination (see § 134.204 for filing and service requirements). An untimely appeal must be dismissed.

§ 134.704 What are the effects of the appeal on the procurement at issue?

Appellate decisions apply to the procurement in question. If a timely OHA appeal has been filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered. If OHA affirms the D/GC's determination finding that the protested concern is ineligible, the contracting officer shall either terminate the contract, not exercise the next option or not award further task or delivery orders. If OHA overturns the D/GC's dismissal or determination that the concern is an eligible EDWOSB or WOSB, the contracting officer may apply the OHA decision to the procurement in question.

§ 134.705 What are the requirements for an appeal petition?

(a) *Format.* There is no required format for an appeal petition. However, it must include the following information:

(1) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(2) A statement that the petitioner is appealing a WOSB or EDWOSB protest determination issued by the D/GC and the date that the petitioner received it;

(3) A full and specific statement as to why the WOSB or EDWOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation; and

(4) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve the appeal petition upon each of the following:

(1) The D/GC at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile (202) 205–6390;

(2) The contracting officer responsible for the procurement affected by a WOSB or EDWOSB determination;

(3) The protested concern (the business concern whose WOSB or EDWOSB status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile number (202) 205–6873.

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.706 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.707 When does the D/GC transmit the protest file and to whom?

Upon receipt of an appeal petition, the D/GC will send to OHA a copy of the protest file relating to that determination. The D/GC will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

§ 134.708 What is the standard of review?

The standard of review for an appeal of a WOSB or EDWOSB protest determination is whether the D/GC's determination was based on clear error of fact or law.

§ 134.709 When will a Judge dismiss an appeal?

(a) The presiding Judge must dismiss the appeal if the appeal is untimely filed under § 134.703.

(b) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters. However, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.710 Who can file a response to an appeal petition and when must such a response be filed?

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within seven (7) business days after service of the appeal petition. The response should present argument.

§ 134.711 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted, and oral hearings will not be held.

§ 134.712 What are the limitations on new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

§ 134.713 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to § 134.710.

§ 134.714 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within fifteen (15) business days after close of the record.

§ 134.715 Can a Judge reconsider his decision?

(a) The Judge may reconsider an appeal decision within twenty (20) calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new WOSB or EDWOSB determination.

Dated: October 1, 2010.

Karen Gordon Mills,

Administrator.

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H.R. 1517/P.L. 111–252

To allow certain U.S. Customs and Border Protection employees who serve under an overseas limited appointment for at least 2 years, and whose service is rated fully successful or higher throughout that time, to be converted to a permanent appointment in the competitive service. (Oct. 5, 2010; 124 Stat. 2632)

S. 846/P.L. 111–253

To award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty. (Oct. 5, 2010; 124 Stat. 2635)

S. 1055/P.L. 111–254

To grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II. (Oct. 5, 2010; 124 Stat. 2637)

S. 1674/P.L. 111–255

Improving Access to Clinical Trials Act of 2009 (Oct. 5, 2010; 124 Stat. 2640)

S. 2781/P.L. 111–256

Rosa's Law (Oct. 5, 2010; 124 Stat. 2643)

S. 3717/P.L. 111–257

To amend the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to provide for certain disclosures under section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), and for other purposes. (Oct. 5, 2010; 124 Stat. 2646)

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