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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–10–0052; FV10–946–1 FIR]

Irish Potatoes Grown in Washington; Temporary Change to the Handling Regulations and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with changes, the provisions of an interim rule that suspended, for the 2010–2011 season only, the minimum quality, maturity, pack, marking, and inspection requirements currently prescribed for russet potato varieties under the Washington potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Washington, and is administered locally by the State of Washington Potato Committee (Committee). This rule continues in effect the action that suspended regulation for russet potatoes for the 2010–2011 season and established temporary reporting requirements for russet potato handlers during the suspension. These changes are needed to reduce overall industry expenses and increase net returns to producers and handlers while allowing the industry to explore alternative marketing strategies. Changes to the interim rule clarify that assessment reports are required for russet potatoes handled beginning on July 24, 2010, and restore regulatory text that was inadvertently deleted from the regulation when the interim rule was published.

DATES: *Effective Date:* Effective January 13, 2011.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

In an interim rule published in the **Federal Register** on July 23, 2010 (75 FR 43042), the order's handling regulations for russet potato varieties were suspended for the 2010–2011 season. This rule continues in effect that action. This change allows the Washington potato industry to market russet potatoes for one year without regard to the minimum quality, maturity, pack, marking, and inspection requirements prescribed under the Washington potato marketing order. The suspension was effective July 24, 2010, and will continue through June 30, 2011. After June 30, 2011, regulation will again be in effect for the 2011–2012 season and will continue indefinitely unless modified, suspended, or terminated.

This rule also continues in effect the action that established reporting requirements for russet potato handlers during the same 12-month suspension period. The Committee will continue to collect assessments on all fresh russet potatoes handled during the suspension period. The reporting requirements allow the Committee to obtain information necessary to facilitate assessment collection.

Section 946.52 of the order authorizes the establishment of grade, size, quality, or maturity regulations for any variety or varieties of potatoes grown in the production area. Section 946.52 also authorizes regulation of the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both. Section 946.51 further authorizes the modification, suspension, or termination of regulations issued under § 946.52. Section 946.60 provides that whenever potatoes are regulated pursuant to § 946.52 such potatoes must be inspected by the Federal State Inspection Program (FSIP) and certified as meeting the applicable requirements of such regulations.

Section 946.70 authorizes the Committee, with the approval of USDA, to require information from handlers that will enable the Committee to fulfill its duties under the order.

Section 946.336 of the order's administrative rules and regulations prescribes the grade, size, quality, cleanness, maturity, pack, marking, and inspection requirements for fresh market Washington potatoes.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the regulatory

requirements for Washington potatoes, which have been issued on a continuing basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. USDA reviews Committee recommendations, information submitted by the Committee, and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its January 26, 2010, meeting, the Committee was asked to evaluate the benefits of handling regulations and mandatory inspection for Washington potatoes. As a consequence, the Committee formed a subcommittee that met on May 11, 2010, to consider the implications of regulatory and inspection requirement suspension. Subsequently, at its June 1, 2010, meeting, the Committee unanimously recommended suspending the handling regulation for russet potatoes for the 2010–2011 fiscal period, which ends on June 30, 2011. The Committee also recommended establishing a requirement that handlers report their russet potato shipments during this period to the Committee on a specially developed form.

Historically, an objective of the order's handling regulations has been to ensure that only quality Washington potatoes enter the fresh market, thereby ensuring consumer satisfaction, increased sales, and improved returns to producers. While the industry continues to support quality as an important factor in maintaining sales, the Committee believes the cost of inspection (mandated when the handling regulations are in effect) may exceed the benefits currently derived from the russet potato quality regulations.

With russet potato prices reportedly at low levels in recent years, the Committee, as noted earlier, has been studying the possibility of reducing costs through the elimination of mandatory inspection. In evaluating the relative benefits of quality control versus a regulation-free market, some concern was expressed at the meeting that elimination of the quality requirements could result in low quality potatoes being shipped to the fresh market, thereby negatively affecting consumer demand. Also, there was some concern that overall quality of the product may decline, and that the Washington potato industry could lose russet potato sales to production areas that are covered by quality and inspection requirements. Furthermore, because russet potatoes comprise about 76 percent of the fresh market Washington potato crop, the Committee is concerned about future availability of inspection services if the FSIP reduced staff as a result of the decrease in the demand for their services. With these concerns in mind, and having the desire to explore the benefits of non-regulation, the Committee recommended temporarily suspending the russet potato handling regulation for one season only. This would enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule continues in effect the action that permits handlers to ship russet potatoes without regard to minimum quality, maturity, pack, marking, and inspection requirements for 2010–2011 fiscal period, which ends June 30, 2011. Although russet potato handlers may temporarily decrease their total costs by choosing not to have their potatoes inspected during the suspension period, handlers may continue to seek inspection on a voluntary basis. The Committee will evaluate the effects of the temporary regulatory suspension at its next meeting.

Suspension of mandatory inspections resulted in the suspension of the monthly FSIP inspection report for russet potatoes. The Committee typically uses these monthly reports, which are compiled by the FSIP from inspection certificates, as a basis for assessment collection. During the suspension of the regulations for russet potatoes, the Committee will instead require handlers to file the newly established report specific to russet potato shipments so that the Committee may calculate assessments and compile statistics.

For that purpose, a new § 946.143—*Assessment reports,* was added to the administrative rules and regulations requiring each person handling russet type potatoes to submit a monthly report to the Committee containing the following information: (a) The name and address of the handler; (b) the date and quantity of russet potatoes shipped; (c) the assessment payment due; and (d) other information as may be requested by the Committee. Each handler's first assessment report shall include all the required information pertaining to shipments from the beginning of the regulatory suspension period through the end of December 2010.

Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. This reporting requirement enables the Committee to continue collecting the funds needed to cover necessary program costs.

The beginning date of the additional reporting requirements should have been the same date as the beginning date of the regulatory suspension, which is July 24, 2010. However, the interim rule erroneously provided that the new reporting requirements would cover handling starting on July 26, 2010. This rule makes a change to the interim rule by establishing July 24, 2010, as the beginning date for the new reporting requirements.

In addition to adding a new § 946.143 containing the additional reporting requirements, the interim rule revised § 946.336 by adding a provision that russet type potatoes are exempt from the handling requirements of that section during the 2010–2011 fiscal period. However, several paragraphs of § 946.336 were inadvertently deleted when the interim rule was published. Therefore, this rule makes a change to the interim rule by revising only the introductory paragraph of § 946.336 and by adding paragraphs (a) through (h), which were inadvertently deleted when the interim rule was published, back into the section.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 45 handlers of Washington potatoes subject to regulation under the order (inclusive of the 33 russet potato handlers) and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2008–2009 marketing year, the Committee reported that 10,279,734 hundredweight of Washington potatoes were shipped into the fresh market. Based on the USDA Economic Research

Service estimate that the 2008 average f.o.b. price for fresh domestic potatoes was $8.42 per hundredweight, the average gross returns for each of the 45 handlers was less than $2,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2009 was $7.10 per hundredweight. The average gross annual revenue for each of the 267 Washington potato producers is therefore calculated to be approximately $273,356. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

This rule continues in effect the action that suspended the handling regulation and established reporting requirements for handlers of russet type potatoes for the 2010–2011 fiscal period, which ends June 30, 2011. These changes are expected to reduce overall industry expenses while providing the industry with the opportunity to explore alternative marketing strategies.

The authority for regulation is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70. The handling regulation is specified under § 946.336 of the order's administrative rules and regulations. The new reporting requirement is specified in § 946.143.

The Committee anticipates that this rule will not negatively impact small businesses. This rule continues to suspend minimum quality, maturity, pack, marking, and inspection requirements. Though inspections will not be mandated for russet potatoes handled under the order during the 2010–2011 season, handlers may at their discretion choose to have their potatoes inspected. Handlers are thus able to control costs—which are generally passed on to producers—based on the demands of their customers. The Committee reports that during the 2008–2009 season, the total cost of inspection—at $0.07 per hundredweight for the approximately 7,800,000 hundredweight of Washington russet potatoes shipped—was about $546,000. This represents approximately $12,133 per handler.

The Committee discussed alternatives to this recommendation. In addition to making no changes to the regulations, the Committee considered temporarily suspending the handling regulation for all types of potatoes, not just russet type potatoes. However, the Committee believes that it is beneficial to the industry to maintain the handling regulation and inspection requirements for round type potatoes. The Committee reports that round type potatoes generally command premium prices. The Washington potato industry believes that the order's round potato quality regulations, in conjunction with mandatory inspections, are valuable marketing tools. Therefore, the Committee recommended suspending the handling regulation for russet potatoes only.

An alternative to establishing the alternative reporting requirements would have been relieving handlers from paying assessments on shipments of russet potatoes. However, approximately 76 percent of the fresh potato shipments in Washington are comprised of russet varieties (as opposed to round white and round red or long white type potatoes), which generates a substantial portion of the Committee's revenue. The Committee determined that it would not be able to cover the cost of its operation if shipments of russet potatoes were not assessed.

This rule continues in effect the action that established a monthly reporting requirement for russet potato handlers. The report will provide the Committee with information necessary to track shipments and collect assessments. While this rule establishes new reporting requirements for russet potato shipments, the suspension of the handling regulation for russet potatoes also temporarily suspends the more frequent reporting requirements that are specified under the safeguard requirements for russet potatoes shipped under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and for experimentation.

The burden of additional reporting or recordkeeping requirements on either small or large russet potato handlers is expected to be offset by the temporary suspension of other reporting requirements normally in effect. Also, the suspension of the handling regulation and inspection requirements for russet potatoes is expected to further reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. Like all committee meetings, the January 26, May 11, and June 1, 2010, meetings were public meetings, and all entities, both large and small, were able to express views on this issue.

An interim rule concerning this action was published in the **Federal Register** on July 23, 2010 (75 FR 43042). Copies of the rule were provided to handlers by the Committee's staff. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period, which ended September 21, 2010. No comments were received on the regulatory or information collection aspects of this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the additional information collection burden and form associated with the new reporting requirements have been approved by the Office of Management and Budget (OMB) and merged into OMB No. 0581–0178, Generic OMB Vegetable and Specialty Crops.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim rule, with the following changes, will tend to effectuate the declared policy of the Act.

The interim rule added § 946.143 to the order's administrative rules and regulations and specified that handlers would be required to report russet potato shipments beginning on July 26, 2010. This final interim rule revises § 946.143 to specify that the first assessment report from handlers shall contain the required information for russet potatoes handled beginning on July 24, 2010.

In addition, when the interim rule was published, several paragraphs of the regulatory text of § 946.336 were inadvertently deleted. This rule corrects § 946.336 by adding the deleted paragraphs back into the regulation.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ Accordingly, the interim rule amending 7 CFR part 946, which was published at 75 FR 43042 on July 23, 2010, is adopted as a final rule with the following changes:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 946.143 [Amended]

■ 2. Amend the introductory text of § 946.143 by removing the words "July 26, 2010" and adding in their place the words "July 24, 2010."

■ 3. Section 946.336 is revised to read as follows:

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41: *Provided,* That from July 24, 2010, through June 30, 2011, russet type potatoes shall be exempt from the requirements of paragraphs (a), (b), (c), (d), (e), and (g) of this section.

(a) *Minimum quality requirements*—(1) *Grade: All varieties*—U.S. No. 2 or better grade.

(2) *Size:* (i) At least 1⅞ inches in diameter, except that all red, yellow fleshed, and white types may be ¾ inch (19.1 mm) minimum diameter, if they otherwise meet the requirements of U.S. No. 1.

(ii) All Russet types, 2 inches (54.0 mm) minimum diameter, or 4 ounces minimum weight.

(iii) Any type of any size may be packed in a 3-pound or less container if the potatoes otherwise meet the requirements of U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances*—The tolerance for size contained in the U.S. Standards for Grades of Potatoes shall apply.

(3) *Cleanness:* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements*—(1) *Red, yellow fleshed and white types:* Not more than "moderately skinned."

(2) *Russet types:* Not more than "slightly skinned."

(c) *Pack and marking:*

(1) *Domestic:* Potatoes packed in cartons shall be either:

(i) U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped without regard to this requirement provided the lot contains no more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(ii) U.S. No. 2 grade, provided the cartons are permanently and conspicuously marked as to grade. This marking requirement does not apply to cartons containing potatoes meeting the requirements of (c)(1)(i).

(2) *Export:* Potatoes packed in cartons shall be U.S. No. 1 grade or better.

(d) *Special purpose shipments.* (1) The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not apply to shipments of potatoes for any of the following purposes:

(i) Livestock feed;

(ii) Charity;

(iii) Seed;

(iv) Prepeeling;

(v) Canning, freezing, and "other processing" as hereinafter defined;

(vi) Grading or storing at any specified location in Morrow or Umatilla Counties in the State of Oregon;

(vii) Experimentation.

(2) Shipments of potatoes for the purposes specified in paragraphs (d)(1)(i) through (vii) of this section shall be exempt from the inspection requirements specified in paragraph (g) of this section, except that shipments pursuant to paragraph (d)(1)(vi) of this section shall comply with the inspection requirements of paragraph (e)(2) of this section. Shipments specified in paragraphs (d)(1)(i), (ii), (iii), (v) and (vii) of this section shall be exempt from assessment requirements as specified in § 946.248 and established pursuant to § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment, a copy of which must also accompany each shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver to sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to ship potatoes for grading or storing to any specified location in Morrow or Umatilla Counties in the State of Oregon shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Special Purpose Certificate to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports, or cause reports to be furnished, for each shipment pursuant to the applicable Special Purpose Certificate;

(iv) Mail to the office of the committee a copy of the bill of lading for each Special Purpose Certificate shipment promptly after the date of shipment unless other arrangements are made;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for experimentation shall:

(i) First apply to the committee for and obtain a Special Purpose Certificate to make shipments for experimentation;

(ii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Special Purpose Certificate.

(6) Handlers diverting potatoes to livestock feed are not required to apply for a Special Purpose Certificate nor report such shipments to the committee.

(7) Each handler desiring to make shipments of potatoes for charity shall:

(i) First apply to the committee for, and obtain, a Special Purpose Certificate for the purpose of making shipments for charity: *Provided,* That shipments for charity of 1,000 pounds or less are exempt from the application and reporting requirements: *And provided further,* That potatoes previously graded, assessed, and inspected in preparation for shipment to the fresh market are exempt from the application and reporting requirements.

(ii) Each handler shipping potatoes to charity must inform the recipient that the potatoes cannot be resold or otherwise placed in commercial market channels.

(8) Each handler making shipments of seed potatoes shall furnish, at the request of the committee, reports on the total volume of seed potatoes handled.

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 5 hundredweight of potatoes per day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment over 5 hundredweight of potatoes.

(g) *Inspection.* (1) Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless a Federal-State Inspection Notesheet or certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the document is valid at the time of shipment.

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

(h) *Definitions.* The terms *U.S. No. 1, U.S. No. 2, not seriously damaged by dirt, fairly clean, slightly skinned,* and *moderately skinned* shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), including the tolerances set forth in it. The term *prepeeling* means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 52.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 52.2421–52.2433). The term *other processing* has the same meaning as the term appearing in the Act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

Dated: December 7, 2010.

David R. Shipman,

Acting Administrator.

[FR Doc. 2010–31202 Filed 12–13–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0141; RIN 0790–AI66]

32 CFR Part 241

Pilot Program for the Temporary Exchange of Information Technology Personnel

AGENCY: Department of Defense (DoD), Assistant Secretary of Defense (Networks and Information Integration)/DoD Chief Information Officer (ASD(NII)/DoD CIO).

ACTION: Interim final rule.

SUMMARY: The Department of Defense (DoD) is issuing regulations to implement provisions contained in section 1110 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010, October 28, 2009, which authorizes DoD to establish a Pilot Program for the Temporary Exchange of Information Technology (IT) Personnel. This statute authorizes the temporary assignments of DoD IT employees to private sector organizations. This statute also gives DoD the authority to accept IT employees for temporary assignments from private sector organizations. This Pilot is envisioned to promote the interchange of DoD and private sector IT professionals to enhance skills and competencies. The prompt implementation of an interim final rule is crucial in assisting DoD to pilot a program to enhance its position and expertise in the IT field, particularly in cybersecurity.

The Administration has expressed considerable interest in the IT area, and stressed its importance in a recent Cyberspace Review Report. Given the changing workforce dynamics in the IT field, DoD needs to take advantage of these types of professional development programs to proactively position itself to keep pace with the changes in technology.

The immediate implementation of an Interim Final Rule is viable to enhance IT professional skills, particularly in the area of cybersecurity. Several Components including Defense Information Systems Agency, Defense

Advanced Research Projects Agency, Office of Naval Research, Office of the DoD's Chief Information Officer, and Department Air Force, and Department of the Army are ready to participate. The program is not controversial and delayed implementation would deny an important benefit to the Department and the public. The ITEP would serve the public good by enhancing the DoD IT workforce skills to protect and defend our nation.

DATES: Effective December 14, 2010. Comments must be received by February 14, 2011.

ADDRESSES: You may submit comments, identified by docket number and/or RIN 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, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Tina-Marie Buckman at (703) 699–0105 or by e-mail at *tina-marie.buckman@osd.mil.*

SUPPLEMENTARY INFORMATION: This Pilot Program ("Pilot") is authorized by section 1110 of the NDAA for FY2010 (Pub. L. 111–84). Section 1110 authorizes DoD Components to assign an exceptional IT employee to a private sector organization for purposes of training, development and sharing of best practices. It also gives DoD Components the authority to accept comparable IT employees on an assignment from the private sector for the training and development purposes and sharing of best practices and insight of government practices. DoD is proposing the addition of a new Part 241, to title 32 of the Code of Federal Regulations (CFR), entitled "Pilot Program for the Temporary Exchange of Information Technology Personnel," to implement the Pilot authorized by Section 1110. This Pilot will be referred to as the Information Technology Exchange Program (ITEP). The Assistant Secretary of Defense (Networks & Information Integration)/Department of Defense Chief Information Officer (ASD(NII)/DoD CIO) is responsible for administration of ITEP Pilot. Heads of DoD Components have responsibility for implementation of the Pilot. As required by NDAA FY2010, an annual reporting requirement on activities carried out for this information technology exchange program is required to be submitted to the defense congressional committees.

a. Executive Order 12866, "Regulatory Planning and Review"

Under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), a "significant regulatory action" is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may 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.

This rule is substantive, non-significant regulatory action under section 3(f) of Executive Order 12866. OMB has reviewed this rule.

b. Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been certified that 32 CFR part 241 does not contain a Federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

c. Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 241 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

d. Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 241 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

e. Executive Order 13132, "Federalism"

It has been certified that 32 CFR part 241 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 241

Government employees, information technology.

■ Accordingly, 32 CFR part 241 is added to read as follows:

PART 241—PILOT PROGRAM FOR TEMPORARY EXCHANGE OF INFORMATION TECHNOLOGY PERSONNEL

Sec.

241.1 Purpose.
241.2 Definitions.
241.3 Assignment authority.
241.4 Eligibility.
241.5 Written agreements.
241.6 Length of assignments.
241.7 Termination.
241.8 Terms and conditions.
241.9 Costs and reimbursements.
241.10 Small business consideration.
241.11 Numerical limitation.
241.12 Reporting requirements.
241.13 Implementation.

Authority: Pub. L. 111–84, section 1110, October 28, 2009.

§ 241.1 Purpose.

(a) The purpose of this part is to implement section 1110 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), which authorizes DoD to implement a Pilot Program for the Temporary Exchange of Information Technology (IT) Personnel. This statute authorizes the temporary assignment of IT employees between DoD and private sector organizations. This statute also gives DoD the authority to accept private sector IT employees assigned under the Pilot. This Pilot is referred to as the Information Technology Exchange Program (ITEP).

(b) Heads of DoD Components may approve assignments as a mechanism for improving the DoD workforce's competency in using IT to deliver government information and services. Heads of DoD Components may not

make assignments under this part to circumvent personnel ceilings, or as a substitute for other more appropriate personnel decisions or actions. Approved assignments must meet the strategic program goals of the DoD Components. The benefits to the DoD Components and the private sector organizations are the primary considerations in initiating assignments; not the desires or personal needs of an individual employee.

§ 241.2 Definitions.

In this part:

Assignment means the detail of a DoD employee to a private sector organization without a change of position; or the assignment of a private sector employee to a DoD Component without a change of position.

DoD employee means a Federal civilian employee of the DoD.

Exceptional employee for the purposes of this pilot means an employee who demonstrates unusually good performance which is consistently better than expected at the fully successful level or above. Performance meets or exceeds all standards established at the fully successful level or above and makes significant contributions towards achieving the organizational goals.

Information technology (IT) as defined in section 11101 of title 40, U.S.C. includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

Information Technology Management (ITM) means the planning, organizing, staffing, directing, integrating, or controlling of information technology, including occupational specialty areas such as systems administration, IT project management, network services, operating systems, software application, cybersecurity, enterprise architecture, policy and planning, internet/web services, customer support, data management and systems analysis.

Private sector organization means nonpublic or commercial individuals and businesses, nonprofit organizations, academia, scholastic institutions, and nongovernmental organizations.

Small business concern means a business concern that satisfies the definitions and standards by the Administrator of the Small Business Administration (SBA) as defined by section 3703 (e)(2)(A) of title 5, U.S.C.

§ 241.3 Assignment authority.

The Secretary of Defense may with the agreement, of the private sector organization concerned, arrange for the temporary assignment of an employee to such a private sector organization or from such a private sector organization to a DoD Component.

§ 241.4 Eligibility.

(a) To be eligible for an ITEP assignment, a DoD or private sector employee must:

(1) Work in the field of information technology management;

(2) Be considered an exceptional employee;

(3) Be expected to assume increased information technology management responsibilities in the future; and

(4) Must be compensated at the GS–11 level or above (or the equivalent).

(b) In addition to meeting the requirements of paragraph (a) of this section, the DoD employee must be serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

(c) The private sector employee must meet citizenship requirements for Federal employment in accordance with 5 CFR 7.3 and 338.101, as well as any other statutory requirements. When a position requires a security clearance, the person must possess, or be able to obtain an appropriate security clearance.

(d) Proposed assignment meets applicable requirements of section 209(b) of the E–Government Act of 2002.

§ 241.5 Written agreements.

(a) Before an assignment begins, the head of the DoD Component, private sector organization and the employee to be assigned to ITEP must sign a three-party agreement. Prior to the agreement being signed the relevant legal office for the DoD Component shall review and approve the agreement. The agreement must include, but is not limited to the following elements:

(1) The duties to be performed and length of assignment;

(2) An individual development plan describing the core IT competencies and technical skills that the detailee will be expected to enhance or acquire;

(3) Identification of the supervisor of detailee.

(b) The agreement shall require DoD employees, upon completion of the assignment serve in the civil service for a period equal to the length of the assignment; and

(c) Provide that if the employee of the DoD or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason as determined by the Secretary of Defense.

§ 241.6 Length of assignments.

(a) An assignment shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year by heads of DoD Components and private sector organizations.

(b) No assignment may commence after September 30, 2013, unless an individual began an assignment by September 30, 2013. This extension may be granted in 3-month increments not to exceed 1 year.

§ 241.7 Termination.

An assignment may, at any time and for any reason be terminated by the DoD or the private sector organization concerned.

§ 241.8 Terms and conditions.

(a) A DoD employee assigned under this part:

(1) Remains a Federal employee without loss of employee rights and benefits attached to that status. These include, but are not limited to:

(i) Consideration for promotion;

(ii) Leave accrual;

(iii) Continuation of retirement benefits and health, life, and long-term care insurance benefits; and

(iv) Pay increases the employee otherwise would have received if he or she had not been assigned;

(2) Remains covered for purposes of the Federal Tort Claims Act, and for purposes of injury compensation as described in 5 U.S.C. chapter 81; and

(3) Is subject to any action that may impact the employee's position while he or she is assigned.

(b) An employee of a private sector organization:

(1) May continue to receive pay and benefits from the private sector organization from which such employee is assigned;

(2) Is deemed to be an employee of the DoD for the purposes of:

(i) Chapter 73 of title 5, United States Code (Suitability, Security, and Conduct);

(ii) Sections 201 (Bribery of Public Officials and Witnesses), 203 (Compensation to Members of Congress, Officers and Employees Against and Other Matters Affecting the Government) 205, (Activities of Officers and Employees in Claims Against Other

Matters Affecting the Government), 207 (Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches), 208 (Acts Affecting a Personal Financial Interest), 209 (Salary of Government Officials and Employees Payable only by the United States), 603 (Making Political Contributions), 606 (Intimidation to Secure Political Contributions), 607, (Place of Solicitation), 643 (Accounting Generally for Public Money), 654 (Officer or Employee of the United States Converting Property of Another, 1905 (Disclosure of Confidential Information Generally), and 1913 (Lobbying with Appropriated Moneys) of title 18, United States Code;

(iii) Sections 1343, 1344, and 1349 (b) of title 31, United States Code;

(iv) The Federal Tort Claims Act and any other Federal tort liability statute;

(v) The Ethics in Government Act of 1978;

(vi) Section 1043 of the Internal Revenue Code of 1986; and

(vii) Section 27 of the Office of Federal Procurement Policy Act; and

(3) May not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he or she is assigned;

(4) Is subject to such regulations as the President may prescribe; and

(5) Is covered by 5 U.S.C. chapter 81, Compensation for Work Injuries.

(6) Does not have any right or expectation for Federal employment solely on the basis of his or her assignment.

§ 241.9 Costs and reimbursements.

(a) *Payment of salary and allowances.* The lending organization (DoD or private sector organization) has full responsibility for payment of all salary and allowances to their employee participating in an ITEP assignment.

(b) *Business training and travel expenses.* The engaging organization may pay for any business training and travel expenses incurred by the employee while on an ITEP assignment.

(c) *Prohibition.* A private sector organization may not charge the DoD or any agency of the Federal Government, as direct or indirect costs under a Federal contract, for the costs of pay or benefits paid by that organization to an employee assigned to a DoD Component.

§ 241.10 Small business consideration.

The ASD(NII)/DoD CIO on behalf of the Secretary of Defense shall:

(a) Ensure that, of the assignments made each year, at least 20 percent are small business concerns (as defined by 5 U.S.C. 3703(e)(2)(A)).

(b) Take into consideration the questions of how assignments might be used to help meet the needs of the DoD with respect to the training of employees in ITM.

§ 241.11 Numerical limitation.

The ITEP Pilot is an opportunity for the exchange of knowledge, experience and skills between DoD and the private sector. The DoD has the flexibility to send their employees to the private sector or receive private sector employees, or participate in a one-for-one exchange. In no event may more than 10 employees participate in assignments under this section at any given time.

§ 241.12 Reporting requirements.

(a) For each of fiscal years 2010 through 2015, the Secretary of Defense shall submit annual reports to the congressional defense committees, not later than 1 month after the end of the fiscal year involved, a report on any activities carried out during such fiscal year, including the following information:

(1) Respective organizations to and from which an employee is assigned;

(2) Positions those employees held while they were so assigned;

(3) Description of the tasks they performed while they were so assigned; and

(4) Discussion of any actions that might be taken to improve the effectiveness of the Pilot program, including any proposed changes in the law.

(b) These reports will be prepared and submitted by ASD(NII)/DoD CIO in coordination with DoD Components participating in the pilot, to the appropriate congressional committees.

§ 241.13 Implementation.

The ASD(NII)/DoD CIO is responsible for administering, coordinating and implementing the Pilot Program for the Temporary Exchange of Information Personnel, referred to as the Information Technology Exchange Program (ITEP). The ASD(NII)/DoD CIO will coordinate with DoD Components.

Dated: December 7, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–31255 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1011]

RIN 1625–AA00

Safety Zone; San Diego Parade of Lights Fireworks, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable water of the San Diego Bay in San Diego, CA in support of the two San Diego Parade of Lights Fireworks Displays on December 12 and December 19, 2010. This safety zone is necessary to ensure the safety of vessels, spectators, participants and others in the vicinity of the fireworks displays. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 p.m. on December 12, 2010, to 8 p.m. on December 19, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1011 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1011 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7267, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants and others in the vicinity of the fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary to ensure the safety of the crew, spectators, and other vessels and users of the waterway.

Basis and Purpose

Fireworks and Stage FX America INC are sponsoring the San Diego Parade of Lights Fireworks Displays, which will include two fireworks presentations conducted from a tug and barge in San Diego Bay on December 12 and December 19, 2010. The barge will be located near the navigational channel in the vicinity of Harbor Island. The safety zone will cover a 500 foot area around the firing barge. The sponsor will provide a chase boat to patrol the safety zone and inform vessel operators that a safety zone is in place. This safety zone is necessary to ensure the safety of vessels, spectators, participants and others in the vicinity of the fireworks displays.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 5:30 p.m. to 8 p.m. on December 12, 2010 and December 19, 2010. The limits of the safety zone will cover a 500 foot area around the tug and barge in approximate position 32°43.25′ N., 117°11.50′ W.

The safety zone is necessary to ensure the safety of vessels, spectators, participants and others in the vicinity of the fireworks displays. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, two and a half hours, and is limited to a relatively small geographic area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. This rule involves establishment of a safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–374 to read as follows:

§ 165.T11–374 Safety zone; San Diego Parade of Lights Fireworks; San Diego, California.

(a) *Location.* The limits of the safety zones for both fireworks displays will cover a 500 foot area around the tug and barge in approximate position 32°43.25′ N., 117°11.50″ W.

(b) *Enforcement Period.* This section will be enforced from 5:30 p.m. to 8 p.m. on December 12, 2010 and December 19, 2010.

(c) *Definitions.* The following definition applies to this section: Designated representative, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: November 23, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–31305 Filed 12–13–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0435; FRL–9237–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Limiting Emissions of Volatile Organic Compounds From Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to Delaware's State Implementation Plan (SIP). This SIP revision includes an amendment to Delaware's regulation for Volatile Organic Compounds (VOC) from Consumer and Commercial Products, Section 3.0—Portable Fuel Containers. This amendment will reduce VOC emissions from portable fuel containers, and therefore, will help Delaware attain and maintain the national ambient air quality standard (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on February 14, 2011 without further notice, unless EPA receives adverse written comment by January 13, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0435 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0435, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0435. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 1, 2010, Delaware submitted to EPA a SIP revision concerning Delaware's regulation for reducing VOCs from portable fuel containers (i.e. gas cans) in Delaware (Regulation No. 1141—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products, Section 3.0—Portable Fuel Containers).

I. Background

Regulation No. 1141—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products, Section 3.0—Portable Fuel Containers is concerned specifically with the use of portable fuel containers and reducing refueling emissions from equipment and engines that are predominantly refueled with portable containers. On November 22, 2002 (67 FR 57776), EPA approved the previous version of Section 3.0.

Effective January 1, 2009, the EPA began to regulate emissions from portable fuel containers (*see,* 72 FR 8428). The Federal rule provides more stringent emission control of portable fuel containers, and thereby achieves greater VOC emission reductions than the current Delaware regulation. Delaware, therefore, revised Regulation No. 1141 such that it does not apply to portable fuel containers manufactured on and after January 1, 2009, and that Delaware instead rely on the Federal rule to control emissions from this source.

II. Summary of SIP Revision

On April 1, 2010, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware State Implementation Plan (SIP) that consists of Delaware's regulation for reducing volatile organic compounds (VOCs) from portable fuel containers (*i.e.* gas cans) in Delaware (Regulation No. 1141—Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products, Section 3.0—Portable Fuel Containers). The revision to Regulation No. 1141 amends existing Section 3.0—Portable Fuel Containers. The effective date of this regulation was April 11, 2010.

Regulation No. 1141, Section 3.0 is revised to apply to any portable fuel container or spout or both portable fuel container and spout manufactured between January 1, 2003 and December 31, 2008. It eliminates the applicability of Section 3.0 to portable fuel containers manufactured on and after January 1, 2009, and instead these portable fuel containers are regulated by Federal regulation (*see,* 72 FR 8428).

III. Final Action

EPA is approving the Delaware SIP revision pertaining to Delaware's adoption of the Federal rule for portable fuel containers. This revision will result in greater VOC emission reductions from portable fuel containers, continuing to help Delaware attain and maintain NAAQS for ozone. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 14, 2011 without further notice unless EPA receives adverse comment by January 13, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this 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 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 Clean Air Act; 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 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.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action pertaining to Delaware's portable fuel containers regulation may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 30, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the entry for Regulation 1141, Section 3.0 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State regulation (7 DNREC 1100)	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	*	*
1141	Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products			
* *	*	*	*	*
Section 3.0	Portable Fuel Containers	4/11/10	12/14/10 [Insert page number where the document begins].	
* *	*	*	*	*

* * * * *

[FR Doc. 2010–31220 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9238–5]

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay for permit applications.

SUMMARY: On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process in response to their request for reconsideration of certain provisions in the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. Among the provisions that EPA is reconsidering

is a requirement that certain affected sources obtain a permit. EPA is staying until March 14, 2011, the requirement for certain affected sources to comply with the title V permit program. Because we believe the reconsideration process may not be completed within 90 days, we are also proposing in a separate notice to stay the provision requiring certain sources to obtain a permit after the final reconsideration rule is published in the **Federal Register**.

DATES: Effective December 14, 2010, 40 CFR 63.11494(e) of subpart VVVVVV is stayed until March 14, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources on October 29, 2009. 40 CFR part 63, subpart VVVVVV (74 FR 56008). Included in the final rule was a new provision requiring any major source that had installed a control device on a chemical manufacturing process unit after November 15, 1990, and, as a result, became an area source under CFR 40 part 63, obtain a title V permit under 40 CFR part 70 or 40 CFR part 71. 40 CFR 63.11494(e).

On February 12, 2010, the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates (collectively referred to as "Petitioners") sought reconsideration of six provisions in the final rule, including the provision requiring certain sources to obtain a title V permit. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process. EPA also separately notified Petitioners that the provision requiring certain sources to obtain a title V permit was among the provisions for which EPA would grant reconsideration.

By letter dated October 28, 2010, Petitioners requested a stay of the requirement to comply with the title V permit program, specifically the requirement to submit a title V permit application, pending completion of the reconsideration process. Petitioners stated in their letter that they were requesting the stay because, "under one interpretation of EPA's [40 CFR part 70 and 40 CFR part 71] regulations, existing sources must file title V permit applications: October 29, 2010." Petitioners maintained that it would be unreasonable and inequitable to require facilities to prepare and submit title V applications at the same time that EPA is reconsidering the requirement to obtain a title V permit. As explained below, EPA believes that it is appropriate to stay the effectiveness of the requirement in 40 CFR 63.11494(e) for certain sources to obtain a title V permit during the pendency of the reconsideration process.

Pursuant to Clean Air Act (CAA) section 307(d)(7)(B), EPA is staying for 90 days the provision in 40 CFR 63.11494(e) that requires "[a]ny source that was a major source and installed a control device on a CMPU [1] after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71." This provision was first introduced in the final rule and represented a significant change from the proposal. Facilities had no chance to comment on this new requirement in the final rule. We are staying this provision because both the affected universe of sources and the substantive requirement could change as a result of this reconsideration process. Specifically, we will be reconsidering whether the affected sources noted above should be subject to title V, or whether they should be exempt from title V requirements. Because we cannot pre-judge the outcome of the reconsideration process, we think a limited stay during the duration of the administrative reconsideration process is appropriate so that sources are not incurring the cost associated with applying for a title V permit in advance of our final decision on the issue.

EPA believes that it may not be able to complete the reconsideration process within the 3-month stay period authorized in CAA section 307(d)(7)(B). For this reason, we are also proposing in a separate notice to stay the provision requiring certain sources to obtain a permit under 40 CFR part 70 or 40 CFR part 71 until the final reconsideration rule is published in the **Federal Register**.

II. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action," and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), or require prior consultation with State officials, as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues, as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This action also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 29, 2009, **Federal Register** document.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

[1] Chemical manufacturing process unit.

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this notice and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. The stay of these particular provisions in 40 CFR subpart VVVVVV is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: December 7, 2010.

Lisa P. Jackson,

Administrator.

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

PART 63—[AMENDED]

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

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

§ 63.11494 [STAYED IN PART]

■ 2. In § 63.11494, paragraph (e) is stayed from December 14, 2010 until March 14, 2011.

[FR Doc. 2010–31327 Filed 12–13–10; 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]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final 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.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final 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 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are 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) Modified	Communities affected
Arapahoe County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1050			
Bear Gulch	Approximately 1 mile upstream of East 72nd Avenue	+5,355	Unincorporated Areas of Arapahoe County.
	Approximately 2.1 miles upstream of the 56th Avenue alignment.	+5,482	
Bear Gulch Tributary	At the confluence with Bear Gulch	+5,402	Unincorporated Areas of Arapahoe County.
	Approximately 900 feet upstream of the confluence with Bear Gulch.	+5,408	
Blackmer Gulch	Approximately 200 feet upstream of South Monroe Lane	+5,418	City of Cherry Hills Village.
	Just upstream of High Line Canal	+5,491	
Box Elder Creek	Approximately 1,400 feet upstream of 72nd Avenue	+5,367	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 0.5 mile downstream of Yale Avenue	+5,691	
Cherry Creek	Approximately 0.92 mile downstream of Arapahoe Road	+5,624	City of Aurora, City of Centennial, Unincorporated Areas of Arapahoe County.
	Approximately 1.7 mile upstream of East Broncos Parkway.	+5,713	
Coyote Run	At the confluence with Box Elder Creek	+5,393	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 3.8 miles upstream of East Alameda Avenue.	+5,814	
Goldsmith Gulch	Just upstream of East Belleview Avenue	+5,590	City of Centennial, City of Greenwood Village, Unincorporated Areas of Arapahoe County.
	Approximately 100 feet downstream of East Arapahoe Road.	+5,773	
Goldsmith Gulch West Tributary	Approximately 400 feet upstream of the confluence with Goldsmith Gulch.	+5,641	City of Greenwood Village, Unincorporated Areas of Arapahoe County.
	Approximately 100 feet downstream of East Peakview Avenue.	+5,738	
Greenwood Gulch	Just upstream of Clarkson Street	+5,344	City of Centennial, City of Cherry Hills Village, City of Greenwood Village.
	Just upstream of Holly Street	+5,525	
Little Dry Creek	Just upstream of Clarkson Street	+5,339	City of Centennial, City of Cherry Hills Village, City of Greenwood Village, Unincorporated Areas of Arapahoe County.
	Just downstream of South Quebec Street	+5,618	
Murphy Creek	Just downstream of East Alameda Avenue	+5,523	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 1,700 feet downstream of East Wheatlands Parkway.	+6,011	
Prentice Gulch	At the confluence with Greenwood Gulch	+5,405	City of Greenwood Village.
	Just upstream of Holly Street	+5,525	
Quincy Gulch	At the confluence with Blackmer Gulch	+5,414	City of Cherry Hills Village.
	Approximately 300 feet upstream of High Line Canal	+5,494	
SJCD 6200	At the confluence with the South Platte River	+5,360	City of Littleton, Unincorporated Areas of Arapahoe County.
	Approximately 400 feet downstream of South Platte Canyon Road.	+5,404	
Willow Creek	At the confluence with Little Dry Creek	+5,536	Unincorporated Areas of Arapahoe County.
	Just downstream of the Englewood Dam outlet structure	+5,559	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Aurora
Maps are available for inspection at 15151 East Alameda Parkway, 3rd Floor, Aurora, CO 80012.

City of Centennial
Maps are available for inspection at the Arapahoe County Department of Public Works and Development, 10730 West Briarwood Avenue, Centennial, CO 80112.

City of Cherry Hills Village
Maps are available for inspection at 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.

City of Greenwood Village
Maps are available for inspection at 6060 South Quebec Street, Greenwood Village, CO 80111.

City of Littleton
Maps are available for inspection at 2255 West Berry Avenue, Littleton, CO 80165.

Unincorporated Areas of Arapahoe County
Maps are available for inspection at the Arapahoe County Department of Public Works and Development, 10730 East Briarwood Avenue, Centennial, CO 80112.

New Haven County, Connecticut (All Jurisdictions)
Docket Nos.: FEMA–B–1038 and FEMA–B–1069

Bladens River (Upper Reach)	Approximately 2,053 feet downstream of Bear Hill Road	+230	Town of Seymour.
	Approximately 1,903 feet downstream of Bear Hill Road	+231	
Branford River (Lower Reach)	Approximately 0.51 mile upstream of School Ground Road.	+31	Town of North Branford.
	Approximately 0.64 mile upstream of School Ground Road.	+32	
Coguinchaug River	At the county boundary	+199	Town of Guilford.
	Approximately 26 feet upstream of the county boundary	+199	
Cove River	Approximately 0.44 mile upstream of Fresh Meadow Road	+141	Town of Orange.
	Approximately 0.58 mile upstream of Fresh Meadow Road	+146	
Farm River	Approximately 700 feet downstream of West Main Street (U.S. Route 1).	+10	Town of Branford, Town of East Haven.
	At the mouth of the Farm River	+15	
Hoadley Creek	Approximately 700 feet upstream of State Route 146	+10	Town of Branford.
	Approximately 800 feet upstream of State Route 146	+10	
Housatonic River	Approximately 1.7 mile upstream of Merritt Parkway	+14	City of Milford.
	Approximately 2.2 miles upstream of Merritt Parkway	+14	
Mad River (Lower Reach)	Approximately 73 feet upstream of Sharon Road	+461	City of Waterbury.
	Approximately 800 feet upstream of Sharon Road	+461	
Muddy River Tributary C	Approximately 528 feet downstream of State Route 22	+80	Town of North Haven.
	Approximately 328 feet downstream of State Route 22	+81	
Naugatuck River	Approximately 0.65 mile downstream of the Kinneytown Dam.	+40	Town of Seymour.
	Approximately 0.53 mile downstream of the Kinneytown Dam.	+43	
Neck River	Just downstream of Fort Path Road	+15	Town of Guilford, Town of Madison.
	Approximately 0.8 mile upstream of Blinn Shed Road	+143	
Quinnipiac River	At the confluence with Wharton Brook	+21	Town of North Haven.
	Just downstream of Toelles Road	+23	
Wharton Brook	At the confluence with the Quinnipiac River	+21	Town of North Haven.
	Approximately 500 feet upstream of the confluence with the Quinnipiac River.	+21	
Willow Brook	Approximately 400 feet upstream of the confluence with the Mill River.	+114	Town of Hamden.
	At Mount Sanford Road	+125	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

ADDRESSES

City of Milford
Maps are available for inspection at the Planning and Zoning Office, 70 West River Street, Milford, CT 06460.

City of Waterbury
Maps are available for inspection at the Public Works Department, 26 Kendrick Avenue, 2nd Floor, Waterbury, CT 06702.

Town of Branford
Maps are available for inspection at the Town Hall, 1019 Main Street, Branford, CT 06405.

Town of East Haven
Maps are available for inspection at the East Haven Town Engineering Office, 461 North High Street, East Haven, CT 06512.

Town of Guilford
Maps are available for inspection at the Town Hall South, 50 Boston Street, Guilford, CT 06437.

Town of Hamden
Maps are available for inspection at the Hamden Town Planning and Zoning Department, 2750 Dixwell Avenue, Hamden, CT 06518.

Town of Madison
Maps are available for inspection at the Town Hall, 8 Campus Drive, Madison, CT 06443.

Town of North Branford
Maps are available for inspection at the Town Hall, 909 Foxon Road, North Branford, CT 06471.

Town of North Haven
Maps are available for inspection at the North Haven Town Hall Annex, 18 Church Street, North Haven, CT 06473.

Town of Orange
Maps are available for inspection at the Town Hall, 617 Orange Center Road, Orange, CT 06477.

Town of Seymour
Maps are available for inspection at the Town Hall, 1 1st Street, Seymour, CT 06483.

Holmes County, Florida, and Incorporated Areas
Docket No.: FEMA–B–1071

Bay Branch	Approximately 1,922 feet upstream of the confluence with West Pittman Creek.	+80	Unincorporated Areas of Holmes County.
	Approximately 1.5 mile upstream of the confluence with West Pittman Creek.	+80	
Blue Creek	Just downstream of Valee Road	+74	Unincorporated Areas of Holmes County.
	Approximately 1.9 mile upstream of Jack Johnson Road	+88	
Camp Branch	Approximately 670 feet downstream of Bonifay Chipley Road.	+87	City of Bonifay, Unincorporated Areas of Holmes County.
	Approximately 364 feet upstream of North Waukesha Street.	+122	
Camp Branch Tributary 1	Approximately 1,216 feet downstream of Joe White Road	+87	City of Bonifay, Unincorporated Areas of Holmes County.
	Approximately 1,047 feet upstream of Industrial Drive	+124	
Caney Branch	Approximately 1,725 feet upstream of the confluence with Wrights Creek.	+68	Unincorporated Areas of Holmes County.
	Approximately 0.9 mile upstream of the confluence with Wrights Creek.	+68	
Cow Branch	Approximately 1,232 feet downstream of Ammons Road	+70	Town of Ponce De Leon, Unincorporated Areas of Holmes County.
	Approximately 0.4 mile upstream of Grant Road	+92	
Cow Branch Tributary 1	At the confluence with Cow Branch	+82	Town of Ponce De Leon, Unincorporated Areas of Holmes County.
	Approximately 0.7 mile upstream of Grant Road	+153	
Hathaway Mill Creek	Just downstream of Hathaway Mill Road	+63	Unincorporated Areas of Holmes County.
	Approximately 0.4 mile upstream of Hathaway Mill Road	+63	
Merrill Branch	At the confluence with Bay Branch	+80	Unincorporated Areas of Holmes County.
	Approximately 0.8 mile upstream of the confluence with Bay Branch.	+80	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Mill Creek	Approximately 1,492 feet downstream of Jack Brown Drive.	+59	Town of Ponce De Leon, Unincorporated Areas of Holmes County.
	Approximately 735 feet downstream of Jack Brown Drive	+76	
Old Creek	Just downstream of R.M. Ward Road	+59	Town of Westville.
	Approximately 0.6 mile upstream of R.M Ward Road	+59	
Parrot Creek	Just upstream of Rum Road	+88	Unincorporated Areas of Holmes County.
	At the confluence with Hand Branch	+88	
Sandy Creek	Approximately 200 feet downstream of County Road 81A	+84	Unincorporated Areas of Holmes County.
	Approximately 1.5 mile upstream of County Road 183A	+102	
Unnamed Tributary to Bay Branch.	At the confluence with Bay Branch	+80	Unincorporated Areas of Holmes County.
	Approximately 0.8 mile upstream of the confluence with Bay Branch.	+80	
West Pittman Creek	Just downstream of County Road 179A	+80	Unincorporated Areas of Holmes County.
	Approximately 1,454 feet upstream of County Road 179A	+80	
Wrights Creek	Just downstream of Adolph Whitaker Road	+88	Unincorporated Areas of Holmes County.
	Approximately 1.9 mile upstream of Bush Road	+148	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bonifay
Maps are available for inspection at City Hall, 301 J. Harvey Ethridge Street, Bonifay, FL 32425.

Town of Ponce De Leon
Maps are available for inspection at the Town Hall, 1580 U.S. Route 90, Ponce de Leon, FL 32455.

Town of Westville
Maps are available for inspection at the Town Hall, 2523 North Pine Street, Westville, FL 32464.

Unincorporated Areas of Holmes County
Maps are available for inspection at the Holmes County Chamber of Commerce, 106 East Byrd Avenue, Bonifay, FL 32425.

Jackson County, Florida, and Incorporated Areas
Docket No.: FEMA–B–1078

Buck Pelt Creek	Just upstream of Fillmore Drive	+83	Unincorporated Areas of Jackson County.
	Approximately 0.4 mile upstream of State Road 73	+137	
Chipola River	Approximately 1,450 feet upstream of County Road 162	+88	Unincorporated Areas of Jackson County.
	At the confluence with Marshall Creek	+93	
Chipola River Tributary 7	Approximately 0.4 mile downstream of Jefferson Street	+83	City of Marianna, Unincorporated Areas of Jackson County.
	Approximately 1.6 mile upstream of Penn Avenue	+134	
Dry Creek	Approximately 2.7 miles upstream of the confluence with the Chipola River.	+74	Unincorporated Areas of Jackson County.
	Just downstream of Mill Road	+97	
Dry Creek Tributary 11	At the confluence with Dry Creek	+74	Unincorporated Areas of Jackson County.
	Approximately 1.5 mile upstream of the confluence with Dry Creek.	+74	
Little Creek	Just downstream of Ezell Road	+147	Unincorporated Areas of Jackson County.
	Approximately 590 feet downstream of Ezell Road	+147	
Long Branch	At the confluence with Dry Creek	+74	Unincorporated Areas of Jackson County.
	Approximately 0.8 mile upstream of I–10	+132	
Long Branch Tributary 2	At the confluence with Long Branch	+78	Unincorporated Areas of Jackson 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) Modified	Communities affected
	Approximately 0.7 mile upstream of the confluence with Long Branch.	+98	
Long Branch Tributary 3	At the confluence with Long Branch	+87	Unincorporated Areas of Jackson County.
	Approximately 1.3 mile upstream of Thompson Road	+129	
Unnamed Stream 59	At the confluence with Unnamed Stream 59–1	+77	Unincorporated Areas of Jackson County.
	Approximately 1.1 mile upstream of the confluence with Unnamed Stream 59–1.	+96	
Unnamed Stream 59–1	At the confluence with Unnamed Stream 59	+77	Unincorporated Areas of Jackson County.
	Approximately 0.5 mile upstream of Bright Prospect Road	+108	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Marianna
Maps are available for inspection at City Hall, 2898 Green Street, Marianna, FL 32446.

Unincorporated Areas of Jackson County
Maps are available for inspection at the Jackson County Chamber of Commerce, 4318 Lafayette Street, Marianna, FL 32446.

Appling County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1080

Sweet Water Creek	Approximately 400 feet upstream of Satilla Church Road	+166	City of Baxley.
	Approximately 0.97 mile upstream of Satilla Church Road	+169	
Tributary B	Approximately 150 feet upstream of the confluence with Sweet Water Creek.	+169	City of Baxley.
	Approximately 150 feet downstream of State Route 15	+194	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Baxley
Maps are available for inspection at 282 East Parker Street, Baxley, GA 31513.

Bacon County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1078

Hurricane Creek	Approximately 1,650 feet upstream of State Route 32	+143	Unincorporated Areas of Bacon County.
	Approximately 575 feet upstream of U.S. Route 1	+149	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Bacon County
Maps are available for inspection at 502 West 12th Street, Alma, GA 31510.

Baldwin County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1078

Fishing Creek	Approximately 0.4 mile downstream of U.S. Route 441	+276	City of Milledgeville.
	Approximately 1.9 mile upstream of Blandy Road	+297	
Fishing Creek (backwater effects).	Approximately 0.5 mile southwest of Blandy Road and the railroad.	+289	Unincorporated Areas of Baldwin County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Milledgeville
Maps are available for inspection at the Water Department, 119 East Hancock Street, Milledgeville, GA 31061.

Unincorporated Areas of Baldwin County
Maps are available for inspection at the Baldwin County Commissioner's Office, 121 North Wilkinson Street, Suite 314, Milledgeville, GA 31061.

Burke County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1080

McIntosh Creek	Approximately 260 feet downstream of State Route 121	+210	City of Waynesboro.
	Approximately 420 feet upstream of State Route 121	+213	
Savannah River	Approximately 1.54 mile downstream of the confluence with McBean Creek.	+107	Unincorporated Areas of Burke County.
	Approximately 6.84 miles upstream of the confluence with McBean Creek.	+112	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Waynesboro
Maps are available for inspection at 628 Myrick Street, Waynesboro, GA 30830.

Unincorporated Areas of Burke County
Maps are available for inspection at 602 North Liberty Street, Waynesboro, GA 30830.

Candler County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1078

Lotts Creek	At the Bulloch County boundary	+165	Unincorporated Areas of Candler County.
	Approximately 300 feet upstream of the Bulloch County boundary.	+165	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Candler County
Maps are available for inspection at the Candler County Courthouse, 705 North Lewis Street, Metter, GA 30439.

Effingham County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1080

Dasher Creek	Approximately 0.51 mile upstream of North Carolina Avenue.	+47	City of Rincon, Unincorporated Areas of Effingham County.
	Approximately 2.14 miles upstream of McCall Road	+62	
Sweigoffer Creek	Approximately 90 feet upstream of Seaboard Coast Line Railroad.	+39	Unincorporated Areas of Effingham County.
	Approximately 0.91 mile upstream of Georgia Southern Railway.	+57	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Rincon
Maps are available for inspection at 302 South Columbia Avenue, Rincon, GA 31326.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Effingham County			
Maps are available for inspection at 601 North Laurel Street, Springfield, GA 31329.			
Emanuel County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1080			
Crooked Creek	Approximately 200 feet downstream of Old Nunez Road	+200	Unincorporated Areas of Emanuel County.
	Approximately 1,400 feet downstream of Meadowlake Parkway.	+241	
Holloway Pond/Yam Grandy Creek Tributary.	Entire shoreline of Holloway Pond	+251	Unincorporated Areas of Emanuel County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Emanuel County

Maps are available for inspection at 101 North Main Street, Swainsboro, GA 30401.

Greene County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1076			
Oconee River	Approximately 0.79 mile downstream of the Oglethorpe County boundary.	+459	Unincorporated Areas of Greene County.
	At the Oglethorpe County boundary	+462	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Greene County

Maps are available for inspection at the Greene County Administration Building, 1034 Silver Drive, Suite 104, Greensboro, GA 30642.

Jackson County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1078			
Middle Oconee River	At the downstream Athens-Clarke County boundary	+621	Unincorporated Areas of Jackson County.
	Just downstream of State Route 330	+651	
Mulberry River	Approximately 0.54 mile southwest of the intersection of Etheridge Road and Cedar Grove Church Road.	+696	Unincorporated Areas of Jackson County.
	Approximately 0.86 mile southwest of the intersection of Etheridge Road and Cedar Grove Church Road.	+701	
Walton Creek	At the downstream Athens-Clarke County boundary	+651	Unincorporated Areas of Jackson County.
	At the upstream Athens-Clarke County boundary	+656	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Jackson County

Maps are available for inspection at the Jackson County Administration Building, 67 Athens Street, Jefferson, GA 30549.

Lanier County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1078			
Big Creek	Approximately 1,700 feet downstream of East Main Street	+159	Unincorporated Areas of Lanier County.
	Approximately 1,550 feet upstream of East Main Street	+159	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 2,990 feet upstream of Brantley Street (State Route 135).	+167	
	Approximately 3,150 feet upstream of Brantley Street (State Route 135).	+167	
Mill Creek	Approximately 4,000 feet upstream of North Pecan Street	+176	Unincorporated Areas of Lanier County.
	Approximately 4,090 feet upstream of North Pecan Street	+176	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Lanier County

Maps are available for inspection at the Lanier County Courthouse, 100 Main Street, Lakeland, GA 31635.

Laurens County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1078

Ford Branch	Approximately 400 feet upstream of Shamrock Drive	+205	Unincorporated Areas of Laurens County.
	Approximately 1,170 feet upstream of Shamrock Drive	+206	
Hunger and Hardship Creek	At the confluence with the Oconee River	+181	Unincorporated Areas of Laurens County.
	Approximately 79 feet upstream of Parker Dairy Road	+182	
Long Branch	At the confluence with the Oconee River	+176	Unincorporated Areas of Laurens County.
	Approximately 1,880 feet upstream of Brown Road	+220	
Oconee River	At the confluence with Long Branch	+176	Town of East Dublin, Unincorporated Areas of Laurens County.
	At the confluence with Hunger and Hardship Creek	+181	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of East Dublin

Maps are available for inspection at 116 Savannah Avenue, East Dublin, GA 31027.

Unincorporated Areas of Laurens County

Maps are available for inspection at 101 East Jackson Street, Dublin, GA 31021.

Oglethorpe County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1083

Oconee River	At the confluence with Falling Creek	+461	Unincorporated Areas of Oglethorpe County.
	Approximately 0.4 mile upstream of the county boundary	+477	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Oglethorpe County

Maps are available for inspection at the Oglethorpe County Board of Commissioners Office, 341 West Main Street, Lexington, GA 30648.

Tattnall County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1080

Ohoopee River	At Georgia Central Railroad	+109	Unincorporated Areas of Tattnall 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) Modified	Communities affected
	Approximately 2.66 miles upstream of State Route 292 (6th Avenue).	+118	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Tattnall County

Maps are available for inspection at the Tattnall County Courthouse, 108 West Brazell Street, Reidsville, GA 30453.

Twiggs County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1076

Ocmulgee River	Approximately 0.5 mile southwest of the intersection of Alfred Bond Drive and Cochran Short Route.	+277	Unincorporated Areas of Twiggs County.
	Approximately 1.3 mile northwest of the intersection of Alfred Bond Drive and Cochran Short Route.	+278	
Stone Creek	Approximately 600 feet downstream of the downstream-most Bibb County boundary.	+357	Unincorporated Areas of Twiggs County.
	Approximately 300 feet upstream of the upstream-most Bibb County boundary.	+373	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Twiggs County

Maps are available for inspection at the Twiggs County Courthouse, 425 Railroad Street North, Jeffersonville, GA 31044.

Wayne County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1078

Little McMillen Creek	Approximately 2,800 feet upstream of Bethlehem Road	+48	City of Jesup.
	Approximately 3,050 feet downstream of Grantham Road	+49	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Jesup

Maps are available for inspection at City Hall, 162 East Cherry Street, Jesup, GA 31546.

Wilkinson County, Georgia, and Incorporated Areas
Docket No.: FEMA–B–1083

Little Commissioner Creek	Approximately 0.4 mile upstream of State Route 18	+332	Unincorporated Areas of Wilkinson County.
	Approximately 0.5 mile upstream of State Route 18	+332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Wilkinson County

Maps are available for inspection at the Wilkinson County Courthouse, 100 Bacon Street, Irwinton, GA 31042.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Calhoun County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1080			
Illinois River	Approximately at Springfield Street extended (Jersey County boundary, approximately River Mile 1.2).	+439	Unincorporated Areas of Calhoun County, Village of Hardin, Village of Kampsville.
	Approximately 1,500 feet downstream of Bee Creek Road extended (Pike County boundary, approximately River Mile 38.9).	+441	
Mississippi River	Approximately at Springfield Street extended (Jersey County boundary, approximately River Mile 219.15).	+439	Unincorporated Areas of Calhoun County, Village of Hamburg.
	Approximately 1.0 mile upstream of Lock and Dam No. 24 (approximately River Mile 274.43).	+457	
Pohlman Creek	Approximately 75 feet downstream of Main Street (Village of Brussels).	+454	Unincorporated Areas of Calhoun County.
	Approximately 20 feet upstream of Main Street (Village of Brussels).	+456	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Calhoun County

Maps are available for inspection at the Calhoun County Courthouse, 102 South County Road, Hardin, IL 62047.

Village of Hamburg

Maps are available for inspection at the Village Hall, 211 Washington Street, Hamburg, IL 62045.

Village of Hardin

Maps are available for inspection at the Village Hall, 100 Main Street, Hardin, IL 62047.

Village of Kampsville

Maps are available for inspection at the Village Hall, 210 Oak Street, Kampsville, IL 62053.

Carroll County, Illinois, and Incorporated Areas Docket Nos.: FEMA–B–1054 and FEMA–B–1078			
Lake Carroll	Bounded by the Lake Carroll Boulevard loop	+746	Unincorporated Areas of Carroll County.
Mississippi River	Approximately 1.1 mile downstream of Fairhaven Road extended (approximately 524.8 miles upstream of the confluence with the Ohio River).	+593	Unincorporated Areas of Carroll County.
	Approximately 500 feet upstream of Fairhaven Road extended (approximately 526 miles upstream of the confluence with the Ohio River).	+593	
Mississippi River	Approximately at Birch Road extended (approximately 526.6 miles upstream of the confluence with the Ohio River).	+594	Village of Thomson.
	Approximately at Main Street extended (approximately 527 miles upstream of the confluence with the Ohio River).	+594	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Carroll County

Maps are available for inspection at the Carroll County Courthouse, 301 North Main Street, Mount Carroll, IL 61053.

Village of Thomson

Maps are available for inspection at the Village Hall, 800 Main Street, Thomson, IL 61285.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Ogle County, Illinois, and Incorporated Areas Docket No.: FEMA–B–1078			
Kyle River	Approximately 525 feet upstream of Jack Dame Drive	+773	City of Rochelle, Unincorporated Areas of Ogle County.
	Approximately 120 feet downstream of Treatment Plant Road.	+777	
Lake Mistake Drain	Just above the confluence with Gale Creek (at the railroad).	+703	Unincorporated Areas of Ogle County.
	Approximately 0.68 mile upstream of Pines Road	+703	
Rock River	Approximately 0.97 mile downstream of State Route 64	+672	City of Oregon.
	Approximately 0.89 mile upstream of State Route 64	+677	
Rock River	Approximately 0.61 mile downstream of the confluence with Stillman Creek.	+686	City of Byron.
	Approximately 500 feet upstream of the confluence with Stillman Creek.	+686	
South Branch Kishwaukee River.	Upstream side of East Edison Road	+733	Unincorporated Areas of Ogle County.
	Approximately 1,200 feet upstream of East Line Road	+733	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Byron
Maps are available for inspection at City Hall, 232 West 2nd Street, Byron, IL 61010.

City of Oregon
Maps are available for inspection at City Hall, 115 North 3rd Street, Oregon, IL 61061.

City of Rochelle
Maps are available for inspection at City Hall, 420 North 6th Street, Rochelle, IL 61068.

Unincorporated Areas of Ogle County
Maps are available for inspection at the Ogle County Zoning Administrator's Office, Ogle County Courthouse Annex, 106 South 5th Street, Oregon, IL 61061.

Monroe County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1029			
Beanblossom Creek	Approximately 14,256 feet downstream of Pike Road	+580	Unincorporated Areas of Monroe County.
	At Old State Road 37	+599	
Clear Creek	Approximately 400 feet downstream of Dillman Road	+616	City of Bloomington, Unincorporated Areas of Monroe County.
	Approximately 350 feet upstream of 1st Street	+731	
East Branch Jackson Creek	At the confluence with Jackson Creek	+739	City of Bloomington.
	Approximately 520 feet upstream of the confluence with Jackson Creek.	+739	
East Fork Jackson Creek	Approximately 100 feet upstream of Moores Pike	+822	City of Bloomington.
	Approximately 400 feet upstream of Moores Pike	+822	
Griffy Creek	Approximately 430 feet upstream of North Dunn Street	+602	City of Bloomington.
	Approximately 2,760 feet upstream of North Headly Road	+602	
Jacks Defeat Creek	Approximately 400 feet upstream of the confluence with Beanblossom Creek.	+563	Town of Ellettsville, Town of Stinesville, Unincorporated Areas of Monroe County.
	Approximately 550 feet downstream of Harrison Road	+706	
Jackson Creek	At the confluence with Clear Creek	+634	City of Bloomington, Unincorporated Areas of Monroe County.
	Approximately 1,120 feet upstream of Buick Cadillac Boulevard.	+772	
Sinking Creek	At West 3rd Street	+855	City of Bloomington.
	Approximately 420 feet upstream of West 3rd Street	+855	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Stout Creek	At the confluence with Beanblossom Creek	+581	Unincorporated Areas of Monroe County.
	Approximately 7,000 feet upstream of the confluence with Beanblossom Creek.	+584	
West Branch Jackson Creek	At the confluence with Jackson Creek	+739	City of Bloomington.
	Approximately 220 feet upstream of Convenanter Drive	+796	
West Fork Clear Creek	At the confluence with Clear Creek	+648	City of Bloomington, Unincorporated Areas of Monroe County.
	Approximately 1,780 feet upstream of Sudburg Lane	+737	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bloomington
Maps are available for inspection at City Hall, 401 North Morton Street, Bloomington, IN 47404.

Town of Ellettsville
Maps are available for inspection at the Town Hall, 221 North Sale Street, Ellettsville, IN 47429.

Town of Stinesville
Maps are available for inspection at the Town Hall, 7835 West Buskirk Street, Stinesville, IN 47464.

Unincorporated Areas of Monroe County
Maps are available for inspection at the Monroe County Courthouse, Room 322, 100 West 5th Street, Bloomington, IN 47404.

Jackson County, Iowa, and Incorporated Areas
Docket No.: FEMA–B–1075

Deutel Hollow Branch 2	At the confluence with Mill Creek	+613	City of Bellevue.
	Approximately 170 feet upstream of Park Street	+623	
Deutel Hollow Main Branch	At the confluence with Mill Creek	+614	City of Bellevue.
	Just downstream of Maple Street	+680	
Mill Creek	At the confluence with the Mississippi River	+602	Unincorporated Areas of Jackson County.
	Approximately 0.28 mile upstream of Riverview Street	+604	
	Approximately 0.74 mile downstream of State Highway 62	+614	
	Approximately 0.25 mile upstream of State Highway 62	+629	
Mississippi River	At the Clinton County boundary	+594	Unincorporated Areas of Jackson County.
	Approximately 11 miles upstream of Lock and Dam No. 12.	+603	
Prairie Creek	Approximately 150 feet downstream of South Main Street	+677	City of Maquoketa, Unincorporated Areas of Jackson County.
	Just downstream of U.S. Route 61	+681	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Bellevue
Maps are available for inspection at 106 North 3rd Street, Bellevue, IA 52031.

City of Maquoketa
Maps are available for inspection at 201 East Pleasant Street, Maquoketa, IA 52060.

Unincorporated Areas of Jackson County
Maps are available for inspection at 201 West Platt Street, Maquoketa, IA 52060.

Republic County, Kansas, and Incorporated Areas
Docket No.: FEMA–B–1078

Republic River	Approximately 4,475 feet downstream of U.S. Route 36	+1,434	Unincorporated Areas of Republic 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) Modified	Communities affected
	Approximately 1,475 feet upstream of U.S. Route 36	+1,438	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Republic County

Maps are available for inspection at the Republic County Courthouse, 1815 M Street, Belleville, KS 66935.

Adair County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1076

Bryant Creek (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1.3 mile upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Casey Creek (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 3.4 miles upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Casey Creek Tributary 10 (backwater effects from Green River Lake).	From the confluence with Casey Creek to approximately 1.1 mile upstream of the confluence with Casey Creek.	+713	Unincorporated Areas of Adair County.
Casey Creek Tributary 8 (backwater effects from Green River Lake).	From the confluence with Casey Creek to approximately 0.6 mile upstream of the confluence with Casey Creek.	+713	Unincorporated Areas of Adair County.
Crooked Creek (backwater effects from Green River Lake).	From the confluence with Casey Creek to approximately 2.1 miles upstream of the confluence with Casey Creek.	+713	Unincorporated Areas of Adair County.
Crooked Creek Tributary 10 (backwater effects from Green River Lake).	From the confluence with Crooked Creek to approximately 0.2 mile upstream of the confluence with Crooked Creek.	+713	Unincorporated Areas of Adair County.
Denton Branch (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 0.6 mile upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Green River (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 3.5 miles upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Green River Lake	Entire shoreline	+713	Unincorporated Areas of Adair County.
North White Oak Creek (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1.1 mile upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Snake Creek (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 1.4 mile upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
Spout Springs Branch (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 2.1 miles upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.
West Butler Creek (backwater effects from Green River Lake).	From the confluence with Green River Lake to approximately 0.9 mile upstream of the confluence with Green River Lake.	+713	Unincorporated Areas of Adair County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Adair County

Maps are available for inspection at 424 Public Square, Suite 1, Columbia, KY 42728.

Bath County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1083

Caney Creek (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 0.6 mile upstream of the confluence with Cave Run Lake.	+747	Unincorporated Areas of Bath 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) Modified	Communities affected
Cave Run Lake	Entire shoreline	+747	Unincorporated Areas of Bath County.
Sulpher Branch (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to 2,000 feet upstream of the confluence with Cave Run Lake.	+747	Unincorporated Areas of Bath County.
Trough Lick Branch (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to 2,000 feet upstream of the confluence with Cave Run Lake.	+747	Unincorporated Areas of Bath County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Bath County

Maps are available for inspection at 19 East Main Street, Owingsville, KY 40360.

Greene County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1056

Galloway Creek	Just downstream of the U.S. Route 60 Access Ramp	+1,154	City of Springfield.
	Just upstream of East Seminole Street	+1,301	
Jordan Creek	Just downstream of West Bennett Street	+1,223	City of Springfield.
	Just upstream of North Washington Avenue	+1,277	
Mount Pleasant Branch	Approximately 65 feet upstream of U.S. Route 160	+1,186	City of Willard.
North Branch Jordan Creek	Just downstream of East Brower Street	+1,281	City of Springfield.
	Just upstream of North Yates Avenue	+1,356	
North Fork Mount Pleasant Branch.	Just downstream of U.S. Route 160	+1,157	City of Willard.
	Just upstream of U.S. Route 160	+1,160	
South Branch Jordan Creek	Just downstream of North Sherman Avenue	+1,283	City of Springfield.
	Just upstream of North Patterson Avenue	+1,330	
South Creek	Just downstream of U.S. Route 160 (County Route FF)	+1,162	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of South Kickapoo Avenue	+1,307	
Ward Branch	Just downstream of South Farm Road 139	+1,114	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of East Independence Street	+1,251	
Yarbrough Creek	Just downstream of West Lakewood Street	+1,187	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of South Campbell Avenue	+1,212	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Springfield
Maps are available for inspection at 840 Boonville Avenue, Springfield, MO 65801.

City of Willard
Maps are available for inspection at 224 West Jackson Street, Willard, MO 65781.

Unincorporated Areas of Greene County

Maps are available for inspection at 940 Boonville Street, Springfield, MO 65802.

Cibola County, New Mexico, and Incorporated Areas
Docket No.: FEMA–B–1069

Grants Canyon Creek	At the confluence with the Rio San Jose	+6,429	City of Grants.
	Approximately 900 feet upstream of Del Norte Boulevard	+6,495	
Rio San Jose	Approximately 1,900 feet downstream of Burlington Northern Santa Fe Railroad.	+6,412	City of Grants, Unincorporated Areas of Cibola County, Village of Milan.
	Just upstream of Stanley Avenue	+6,533	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Zuni Canyon	At the confluence with the Rio San Jose	+6,506	Areas of Cibola County, Village of Milan.
	Approximately 0.5 mile upstream of North Quail Lane	+6,545	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Grants
Maps are available for inspection at Code Enforcement, 600 West Santa Fe Avenue, Grants, NM 87020.

Unincorporated Areas of Cibola County
Maps are available for inspection at Rural Addressing, 515 West High Street, Grants, NM 87020.

Village of Milan
Maps are available for inspection at the Milan Court System Building, 628 Uranium Avenue, Milan, NM 87021.

Otero County, New Mexico, and Incorporated Areas
Docket Nos.: FEMA–B–1026 and FEMA–B–1078

Beeman Canyon Creek	Where the flow path meets the dam	+4,442	City of Alamogordo, Unincorporated Areas of Otero County.
	Approximately 1,906 feet upstream of North Scenic Drive	+4,603	
Cherokee Bill Canyon	Approximately 2.71 miles downstream of the intersection of U.S. Route 70 and White Tail Road.	+6,699	Mescalero Apache Indian Reservation.
	Approximately 2.61 miles downstream of the intersection of U.S. Route 70 and White Tail Road.	+6,716	
Flow Path #2	Approximately 1,450 feet upstream of the dam	+4,449	Unincorporated Areas of Otero County.
	Approximately 3,520 feet upstream of the dam	+4,481	
Flow Path #3	Approximately 741 feet downstream of Eddy Drive	+4,344	Unincorporated Areas of Otero County.
	Approximately 51 feet upstream of Eddy Drive	+4,350	
Flow Path #12	Approximately 758 feet downstream of Octillo Lane	+4,471	Unincorporated Areas of Otero County.
	Approximately 3,560 feet upstream of South Canyon Road.	+4,670	
Flow Path #16	Approximately 461 feet downstream of Caneadea Loop	+4,461	Unincorporated Areas of Otero County.
	Approximately 2,904 feet upstream of Rocky Mountain Road.	+4,803	
Flow Path #30	At the City of Alamogordo corporate limits	+4,122	City of Alamogordo, Unincorporated Areas of Otero County.
	Approximately 7,117 feet upstream of the City of Alamogordo corporate limits.	+4,202	
Flow Path #31	Approximately 2,699 feet downstream of Lavelle Road	+4,270	Unincorporated Areas of Otero County.
	Approximately 2,617 feet downstream of Lavelle Road	+4,270	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Alamogordo
Maps are available for inspection at 1376 East 9th Street, Alamogordo, NM 88310.

Mescalero Apache Indian Reservation
Maps are available for inspection at 1000 New York Avenue, Alamogordo, NM 88310.

Unincorporated Areas of Otero County
Maps are available for inspection at 1000 New York Avenue, Alamogordo, NM 88310.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Grand Forks County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–1075			
Red River of the North	Approximately 2,137 feet downstream of 13th Avenue Northeast extended.	+837	City of Grand Forks, Unincorporated Areas of Grand Forks County.
	Just downstream of the southern county boundary	+854	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Grand Forks
Maps are available for inspection at 225 North 4th Street, Grand Forks, ND 58506.

Unincorporated Areas of Grand Forks County
Maps are available for inspection at 151 South 4th Street, Grand Forks, ND 58506.

Warren County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1075			
Hoff Run	Just upstream of the confluence with the Great Miami River.	+613	City of Mason.
	Approximately 1,535 feet upstream of Eagle View Drive	+829	
Little Miami River	Approximately 1.6 mile upstream of South Main Street	+634	Village of South Lebanon.
Muddy Creek	Approximately 0.4 mile downstream of Mason-Morrow-Millgrove Road.	+656	City of Mason.
	Just downstream of Tylersville Road	+803	
Muddy Creek Branch No. 1	Approximately 575 feet downstream of U.S. Route 42	+742	City of Mason.
	Approximately 650 feet upstream of Mason Road	+819	
Pine Run	Approximately 400 feet downstream of Kings Mill Road	+752	City of Mason.
	Approximately 0.15 mile upstream of Tylersville Road	+857	
Satterthwaites Run	Approximately 1,400 feet upstream of U.S. Route 42	+767	Unincorporated Areas of Warren County.
	Approximately 1,465 feet upstream of U.S. Route 42	+768	
Turtle Creek	Approximately 530 feet upstream of Mason-Morrow-Millgrove Road.	+634	Village of South Lebanon.
	Approximately 1,190 feet downstream of I–71	+635	
Twin Creek No. 2	Just upstream of Pennyroyal Road	+874	Unincorporated Areas of Warren County.
	Approximately 1,250 feet upstream of Pennyroyal Road	+882	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Mason
Maps are available for inspection at 202 West Main Street, Mason, OH 45040.

Unincorporated Areas of Warren County
Maps are available for inspection at 406 Justice Drive, Room 167, Lebanon, OH 45036.

Village of South Lebanon
Maps are available for inspection at 99 North High Street, Lebanon, OH 45036.

Jasper County, Texas, and Incorporated Areas Docket No.: FEMA–B–1080			
Pin Oak Creek	Approximately 550 feet downstream of Lanier Street	+99	Unincorporated Areas of Jasper County.
	Approximately 1,000 feet upstream of County Road 404	+110	
Sandy Creek	Just upstream of Burlington Northern Santa Fe Corporation Railroad.	+214	Unincorporated Areas of Jasper County.
	Approximately 0.5 mile upstream of Burlington Northern Santa Fe Corporation Railroad.	+217	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Trotti Creek	Just upstream of FM 2799	+198	Unincorporated Areas of Jasper County.
	Just downstream of County Road 128	+204	
Trotti Creek	Approximately 450 feet upstream of FM 2800	+240	Unincorporated Areas of Jasper County.
	Approximately 0.7 mile upstream of FM 2800	+244	
Trout Creek	Approximately 481 feet downstream of the confluence with Pin Oak Creek.	+99	Unincorporated Areas of Jasper County.
	Approximately 0.72 mile upstream of U.S. Route 96	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Jasper County

Maps are available for inspection at 121 North Austin Street, Room 106, Jasper, TX 75951.

Kendall County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1080

Cibolo Creek	Approximately 2 miles upstream of the confluence with Balcones Creek.	+1,301	Unincorporated Areas of Kendall County.
	Approximately 2.6 miles upstream of the confluence with Balcones Creek.	+1,309	
Guadalupe River	Just upstream of FM 3351	+1,122	Unincorporated Areas of Kendall County.
	Approximately 1,750 feet upstream of Gourly Road	+1,164	
Ranger Creek	Approximately 2.5 miles upstream of the confluence with Cibolo Creek.	+1,552	Unincorporated Areas of Kendall County.
	Approximately 4.2 miles upstream of the confluence with Cibolo Creek.	+1,655	
Spring Creek	At the confluence with the Guadalupe River	+1,150	Unincorporated Areas of Kendall County.
	Approximately 0.6 mile downstream of the confluence with Black Creek.	+1,176	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Kendall County

Maps are available for inspection at 201 East San Antonio Drive, Suite 122, Boerne, TX 78006.

Van Zandt County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1078

Mill Creek	Approximately 400 feet upstream of State Highway 64	+457	Unincorporated Areas of Van Zandt County.
	Just downstream of State Highway 243	+467	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Van Zandt County

Maps are available for inspection at 121 East Dallas Street, Room 204, Canton, TX 75103.

Alleghany County, Virginia, and Incorporated Areas
Docket No.: FEMA–B–1076

Jackson River	Approximately 1.1 mile downstream of State Route 18	+1,187	City of Covington.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1,200 feet upstream of the confluence with Dry Run Branch.	+1,246	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Covington

Maps are available for inspection at City Hall, 333 West Locust Street, Covington, VA 24426.

Botetourt County, Virginia, and Incorporated Areas
Docket No.: FEMA–B–1076

Cowpasture River Reach 1	At the county boundary	+1,014	Unincorporated Areas of Botetourt County.
	At the confluence with the James River	+1,014	
Cowpasture River Reach 2	Approximately 1,300 feet downstream of the downstream county boundary.	+1,030	Unincorporated Areas of Botetourt County.
	At the upstream county boundary	+1,042	
Jackson River	At the confluence with the James River	+1,014	Unincorporated Areas of Botetourt County.
	At the county boundary	+1,014	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Botetourt County

Maps are available for inspection at the Botetourt County Courthouse, 1 West Main Street, Fincastle, VA 24090.

Crawford County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1075

Baker Creek	Approximately 590 feet downstream of the confluence with Unnamed Tributary to Baker Creek.	+758	Village of Soldiers Grove.
	Approximately 230 feet downstream of U.S. Route 61	+778	
Kickapoo River	Approximately 1 mile upstream of State Highway 179	+672	Unincorporated Areas of Crawford County, Village of Steuben.
	Approximately 3,190 feet upstream of Bridge Street	+676	
	Approximately 1,540 feet upstream of County Highway S	+695	
	Approximately 1.75 mile upstream of State Highway 171	+705	
	Approximately 0.8 mile upstream of Trout Creek Road	+734	
Mississippi River	Approximately at River Mile Marker 636	+629	City of Prairie Du Chien, Unincorporated Areas of Crawford County,Village of De Soto, Village of Ferryville, Village of Lynxville.
	Approximately 4.25 miles upstream of State Highway 82	+633	
Unnamed Tributary to Baker Creek.	Approximately 3,075 feet upstream of U.S. Route 61	+902	Unincorporated Areas of Crawford County.
Wisconsin River	Approximately 205 feet downstream of River Mile Marker 15.	+640	Village of Wauzeka.
	Approximately 1,245 feet upstream of River Mile Marker 17.	+643	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

ADDRESSES

City of Prairie Du Chien
Maps are available for inspection at 214 East Blackhawk Avenue, Prairie Du Chien, WI 53821.

Unincorporated Areas of Crawford County
Maps are available for inspection at 225 North Beaumont Road, Prairie Du Chien, WI 53821.

Village of De Soto
Maps are available for inspection at 115 South Houghton Street, De Soto, WI 54624.

Village of Ferryville
Maps are available for inspection at 170 Pine Street, Ferryville, WI 54628.

Village of Lynxville
Maps are available for inspection at 475 Bench Street, Lynxville, WI 54626.

Village of Soldiers Grove
Maps are available for inspection at 102 Passive Sun Drive, Soldiers Grove, WI 54655.

Village of Steuben
Maps are available for inspection at 123 Midway Street, Steuben, WI 54657.

Village of Wauzeka
Maps are available for inspection at 213B East Front Street, Wauzeka, WI 53826.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: December 7, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–31360 Filed 12–13–10; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[FCC 10–145; WT Docket No. 07–250]

Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets; Announcement of Effective Date

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission announces that it has received OMB approval for collection 3060–099. The Commission adopted these rules to ensure that consumers with hearing loss are able to access wireless communications services.

DATES: The amendment to 47 CFR 20.19(f) published at 75 FR 54508, September 8, 2010, is effective December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Federal Communications Commission, at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

OMB Control No.: 3060–0999.

Expiration Date: 12/31/13.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form No.: FCC Form 655—electronic only.

Estimated Annual Burden: 925 respondents; 925 responses; 12,063 total annual hours.

Needs and Uses: In the Report and Order in WT Docket 01–309, FCC 03–168, adopted and released in September 2003, the Federal Communications Commission modified the exemption for telephones used with public mobile services from the requirements of the Hearing Aid Compatibility Act of 1988 (HAC Act). The Order required digital wireless phone manufacturers and service providers to make certain digital wireless phones capable of effective use with hearing aids. As part of that Order, manufacturers and service providers were required to label certain phones they sold with information about their compatibility with hearing aids, and also to report to the Commission (at first every six months, then on an annual basis) on the numbers and types of hearing aid-compatible phones they were producing or offering to the public.

In February 2008, the Commission adopted final rules in a Report and Order, FCC 08–68, which updated several of the performance benchmarks for manufacturers and service providers, and instituted new requirements for manufacturers to refresh their product lines and for service providers to offer hearing aid-compatible handset models with differing levels of functionality. The Commission also adopted a new version of the technical standard for measuring hearing aid compatibility, and addressed the application of the rules to phones that operate in multiple frequency bands or air interfaces. In order to avoid potential consumer confusion over technical capabilities, the Order also modified the product labeling requirements slightly.

To assist the Commission in monitoring the implementation of the new requirements and to provide information to the public, the Report and Order also required manufacturers and service providers to continue to file annual reports on the status of their compliance with these requirements, and required manufacturers and service providers that maintain public Web sites to publish up-to-date information on those Web sites regarding their hearing aid-compatible handset models. The annual reports required in the Order contained different and

additional information than in previous versions of this information collection and, for the first time, were required to be submitted by manufacturers and service providers using electronic FCC Form 655. The reporting and third party disclosure requirements for the aforementioned Report and Order were approved most recently by OMB on June 5, 2009 under OMB Control Number 3060–0999.

Recently, on August 5, 2010, the Commission adopted final rules in a Second Report and Order, published at FCC 10–145, 75 FR 54508, September 8, 2010, that, among other things, updated disclosure requirements for manufacturers and service providers. Manufacturers and service providers are now required to adequately inform consumers about the functionality and the limitations of their handsets in two specific situations. For handsets that meet hearing aid compatibility requirements over all air interfaces and frequency bands for which hearing aid compatibility technical standards have been established, but that are also capable of supporting voice operations in any new frequency band or air interface for which such standards do not exist, beginning March 8, 2011, the following disclosure language must be clearly and effectively conveyed to consumers wherever the hearing aid compatibility rating for the handset is provided, including at the point of sale [1] and on company Web sites: "This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer."

The Second Report and Order also modifies the *de minimis* exception in the existing rule so that all large entities are required to offer at least one hearing aid-compatible model after a two-year initial period. Further, the Commission is allowing companies that offer one or two handset models over the Global System for Mobile Communications ("GSM") air interface, if they would have been eligible for the amended *de minimis* exception but for their size, to satisfy their obligation to offer one hearing aid-compatible handset over the GSM air interface by offering a handset that lets the consumer reduce maximum transmit power for GSM operations in the 1900 MHz band by up to 2.5 decibels. The Commission grants this exception subject to certain conditions, one of which is that companies that choose to use this exception must adequately inform consumers of the need to select the power reduction option to achieve hearing aid compatibility and of the consequences of doing so. Specifically, wherever a manufacturer or service provider provides the hearing aid compatibility rating for such a handset, it shall indicate that user activation of a special mode is necessary to meet the hearing aid compatibility standard for radio frequency (RF) interference reduction. In addition, the handset manual or a product insert must explain how to activate the special mode and that doing so may result in a diminution of coverage.[2]

Beyond the updated disclosure requirements noted above, certain fields have been changed on Form 655 in order to clarify information previously gathered in this collection and bring the collection into conformance with the amended rules. Specifically, manufacturers and service providers are asked to provide the brand names under which they are offering digital commercial mobile radio services (if a service provider) or handsets (if a device manufacturer), in order to avoid confusion by identifying products and services offered under more than one brand name. In addition, the questions concerning handsets capable of Wi-Fi voice operation have been expanded to include handsets that are capable of voice communication without changes to the hardware in the handset over any air interface or frequency band for which hearing aid compatibility technical standards do not exist.

The updated disclosures will create no additional burden for manufacturers and service providers, but will ensure that consumers and the Commission are provided with consistent and sufficient information about the functionality and the limitations of offered handsets. These actions are taken to ensure that consumers who use hearing aids and cochlear implants have access to a variety of phones and are adequately informed about the functionality and the limitations of the handsets, while preserving competitive opportunities for small companies as well as opportunities for innovation and investment. Similarly, the additional fields will create no significant additional burden for manufacturers and service providers but will clarify the responses already required by Form 655, helping the Commission compile data and monitor compliance with the hearing aid compatibility rules while making more complete and accessible information available to consumers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–31358 Filed 12–13–10; 8:45 am]

BILLING CODE 6712–01–P

[1] Means of providing this language at the point of sale could include, for example, call-out cards or an insert in the handset's packaging.

[2] The need for the consumer to reduce the power in order to meet the hearing aid compatibility standard should also be clearly stated in the filing for equipment certification.

Proposed Rules

Federal Register
Vol. 75, No. 239
Tuesday, December 14, 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 732

RIN 3206–AM27

Designation of National Security Positions

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing to revise its regulation regarding designation of national security positions. This proposed rule is one of a number of initiatives OPM has undertaken to simplify and streamline the system of Federal Government investigative and adjudicative processes to make them more efficient and as equitable as possible. The purpose of this revision is to clarify the requirements and procedures agencies should observe when designating national security positions as required under E.O. 10450, *Security Requirements for Government Employment.* The proposed regulations maintain the current standard which defines a national security position as "any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security." The purpose of the revisions is to clarify the categories of positions which, by virtue of the nature of their duties, have the potential to bring about a material adverse impact on the national security, whether or not the positions require access to classified information.

Another purpose of the amendments is to acknowledge, for greater clarity, complementary requirements set forth in part 731, *Suitability,* so that every position is properly designated with regard to both public trust risk and national security sensitivity considerations, both of which are necessary for determining appropriate investigative requirements. Finally, the proposed rule clarifies when reinvestigation of individuals in national security positions is required.

DATES: OPM will consider comments received on or before February 14, 2011.

ADDRESSES: You may submit comments, identified by "3206–AM27," using either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please organize comments by section designation. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

All Mail: Tim Curry, Deputy Associate Director, Partnership and Labor Relations, Employee Services, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Debra Buford, U.S. Office of Personnel Management, Employee Services, 1900 E St., NW., Room 7H28, Washington, DC 20415–8200; fax to 202–606–2613; e-mail to *PLR@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM proposes to amend part 732 of title 5, Code of Federal Regulations (CFR), to clarify its coverage, and the procedural requirements for making position sensitivity designations. OPM also proposes various revisions to make the regulations more readable.

Scope

OPM proposes to update the definition of "national security position" in § 732.102, Definitions and applicability, to include positions that may have a material adverse impact on the national security, but that may not seem to fall squarely within the current definition in § 732.102(a) of this chapter. While access to classified information is, in and of itself, a reason to designate a position as a national security position, positions may have the requisite national security impact independent of whether the incumbent of the position requires eligibility for access to classified information. For example, positions involving protection from terrorism have the potential to bring about a material adverse impact on the national security, especially where the position duties involve protection of borders and ports, critical infrastructure, or key resources. Positions that include responsibilities related to public safety, law enforcement, and the protection of Government information systems could also legitimately be designated as national security positions, where neglect of such responsibilities or malfeasance could bring about a material adverse effect on the national security.

OPM therefore proposes to update the definition of "national security position" to add positions where the duties include "protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including * * * protecting the nation's borders, ports, critical infrastructure or key resources and where the occupant's neglect, action or inaction could bring about a material adverse effect on the national security." The new text would appear in § 732.102(a)(2)(i) of the proposed rule. In utilizing the terms "critical infrastructure" and "key resources" OPM has been guided by their definitions in the USA PATRIOT Act of 2001 and the Homeland Security Act of 2002, both enacted in the aftermath of the September 11, 2001, terrorist attacks. OPM intends that agencies, likewise, be guided in their assessment of positions with these types of duties by referring to these statutes.

For clarity, OPM also proposes to update its regulations to specify that an agency may designate a position as national security sensitive where it involves other responsibilities, including but not limited to protecting or controlling access to facilities or information systems; controlling, maintaining custody, safeguarding or disposing of hazardous materials, arms, ammunition, or explosives; exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing; exercising criminal justice, public safety or law enforcement duties; or conducting audits or investigations of these functions, where the occupant's neglect, action or inaction could bring about a material adverse effect on the national security. The new text appears in § 732.102(a)(2)(iv) through (viii) of the proposed rule.

In proposing these changes, OPM cautions that not all positions with these responsibilities must be designated as national security

positions. Rather, in each instance, agencies must make a determination of whether the occupant's neglect, action or inaction could bring about a material adverse effect on the national security, *i.e.,* could cause at least "significant or serious damage to the national security." *See* proposed §§ 732.102(a) (general standard for designating a national security position) and 732.201(a)(1) (standard for designating the minimum level of a national security position).

OPM believes that, with these updates and clarifications, the regulation will more fully conform to section 3(b) of E.O. 10450, as amended, under which an agency head shall designate as sensitive "any position * * * the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security." Consistent with this provision, agencies are reminded that sensitivity designations are based on the nature of a position, not on the mission of the agency or of its subcomponents. OPM will issue further detailed guidance in its Position Designation System and other supplementary issuances.

The regulations currently cover only positions in the competitive service and certain Senior Executive Service positions. OPM proposes, in § 732.102(b), to extend part 732 to apply to positions where the incumbent can be noncompetitively converted to the competitive service. Such positions include those to which appointments are made with the intent of converting the employee to an appointment in the competitive service if the employee satisfies eligibility requirements. In these instances, the process for entry into the competitive service is continuous, beginning with initial appointment to the excepted service and ending in (noncompetitive) conversion to the competitive service, all while generally serving in the same position. Extension of the regulation's scope to include sensitivity designations of such positions is consistent with OPM's authority to investigate persons entering or employed in the competitive service. Excepted service positions that can lead to noncompetitive conversion to the competitive service should be subject to the same sensitivity designation assessments as other covered positions. This change would also serve to align this part with the current coverage of part 731.

Part 732, if amended as proposed, would apply to the limited category of excepted service employees whose appointments lead to noncompetitive conversion into the competitive service. Part 732 would not apply, however, to any other employees whose positions are in the excepted service. The proposed rule would note that agencies may apply the requirements of this part to other excepted service positions within the executive branch, and to contractor positions, to the extent consistent with law, but this option would be wholly at the discretion of each agency.

Implementation

Proposed § 732.103 would authorize OPM to issue appropriate implementing guidance.

Sensitivity Levels

The proposed rule changes further clarify the designation of national security positions and provide examples of duties that would result in a sensitivity designation at each level. These non-exclusive examples are intended to assist agency personnel in placing positions at the Noncritical-Sensitive, Critical-Sensitive, or Special-Sensitive level, once they have been properly designated as national security positions. As noted in the proposed regulations, to avoid the risk of over-designation, a position's duties support a determination that a national security position is Critical-Sensitive, rather than Noncritical-Sensitive, only if the occupant's neglect, action, or inaction could bring about "exceptionally grave damage to the national security." Further, a position's duties support a determination that a national security position is Special-Sensitive, rather than Critical-Sensitive, only if the occupant's neglect, action, or inaction could bring about "inestimable damage to the national security."

To avoid the risk of under-designation, the proposed regulations also note that the position duties supporting a designation include but are "not limited to" those listed in the examples. Therefore, positions not listed in the examples could be properly designated as national security positions at one of the three prescribed levels if the occupant's neglect, action, or inaction could bring about a "material adverse effect on the national security," *i.e.,* could cause, at a minimum, "significant or serious damage to the national security." *See* proposed §§ 732.102(a) and 732.201(a)(1).

This section complements 5 CFR 731.106, discussing public trust risk designations related to suitability. When read together, the two sections provide that every covered position must be evaluated based on public trust risk as well as national security sensitivity considerations in order to determine the appropriate investigation required. OPM currently issues guidance on how to designate a position's risk and sensitivity level, and the resulting level of investigation that is appropriate based on those designations. OPM will make revisions to the Position Designation System required to conform to amendments OPM proposes in this part.

Periodic Reinvestigation Requirements

OPM has long prescribed reinvestigation requirements for positions covered by part 732, consistent with its authority under section 8(b) of E.O. 10450, as amended, to conduct the personnel investigations for persons entering or employed in the competitive service. The reinvestigation requirements in 5 CFR 732.203 must be revised, however, to accommodate three recent Presidential Executive orders. E.O. 12968 of August 2, 1995, established requirements for periodic and event-driven reinvestigations of employees requiring eligibility for access to classified information. These individuals' positions are already designated as national security positions under the current version of 5 CFR part 732. E.O. 13467 of June 30, 2008, retained these reinvestigation requirements while also authorizing "continuous evaluation" by amending E.O. 12968. E.O. 13488 of January 22, 2009, provided for reinvestigation of individuals whose positions are designated as public trust positions under 5 CFR part 731. OPM proposes to amend § 732.203 to incorporate these requirements.

Currently, under 5 CFR 732.203, an employee in a Special-Sensitive or Critical-Sensitive position is subject to a national security reinvestigation at least every 5 years, while an employee in a Noncritical-Sensitive position is not subject to a reinvestigation. This provision of regulation potentially conflicts with E.O. 12968, as amended. Under E.O. 12968, where an employee, including an employee in a Noncritical-Sensitive position, requires eligibility for access to classified information, he or she is subject to the national security reinvestigation and continuous evaluation requirements prescribed by the Executive order. OPM proposes to amend § 732.203 to recognize that when an employee in a national security position requires eligibility for access to classified information, the reinvestigation requirements of E.O. 12968 are controlling.

Numerous employees in national security positions do not require eligibility for access to classified information. Prior to the issuance of E.O. 13488, the only Governmentwide

requirement for periodically reinvestigating such employees was in 5 CFR 732.203. As noted above, under 5 CFR 732.203, an employee in a Special-Sensitive or Critical-Sensitive position is subject to a national security reinvestigation at least every 5 years, while an employee in a Noncritical-Sensitive position is not subject to any reinvestigation. However, E.O. 13488 now requires public trust suitability reinvestigations under 5 CFR part 731 for every covered employee at a frequency to be determined by OPM.

Unless conforming changes are made to the regulations, there is a risk that an employee in a Special-Sensitive or Critical-Sensitive position will unnecessarily be subject to two separate reinvestigations at least every 5 years: A national security reinvestigation under part 732, and a public trust reinvestigation under E.O. 13488. Requiring multiple reinvestigations of the same individual at least every 5 years would be inconsistent with E.O. 13467, which calls for investigations to be aligned "using consistent standards to the extent possible."

To avoid this outcome, OPM proposes to amend § 732.203 to make every incumbent of a national security position who does not require eligibility for access to classified information subject to a national security reinvestigation at least every 5 years, and to provide that such reinvestigation must be conducted using a Questionnaire for National Security Positions, at a frequency and scope that will satisfy the reinvestigative requirements for both national security and public trust positions. This amendment will avoid the risk of unnecessarily subjecting an employee in a Special-Sensitive or Critical-Sensitive position to two separate reinvestigations every 5 years, and will confirm OPM's long-standing policy that every employee in a national security position must be reinvestigated using a Questionnaire for National Security Positions, not a Questionnaire for Public Trust Positions. OPM will propose conforming changes to part 731 of this chapter in a separate rulemaking to implement E.O. 13488.

Reassessment of Current Positions

The proposed rule, in § 732.204, would require agencies to assess all current positions using the definitions of sensitivity level designations provided in § 732.201 of the proposed regulation within 24 months of the effective date of the final rule. This is necessary to ensure that all positions are properly designated using the updated definition. OPM believes that the 24-month timeframe would allow agencies ample opportunity to fully review the duties of positions within their organizations to determine whether or not they impact national security under the updated definition and make the appropriate designation changes. The proposal does not require that all investigations be completed within the 24-month timeframe, only that positions be re-evaluated by then, and that any required investigation be initiated within 14 days of a person's occupancy of a position that has been newly designated as sensitive, consistent with 5 CFR 736.201(c). Agencies may provide advance notice of the redesignation of a position to allow adequate time for the employee to complete investigative questionnaires, releases, and any other information needed from the employee. This will help ensure that agencies have a full 14 days to initiate the investigation, *i.e.,* to submit all the information needed by the investigations service provider.

Agencies retain the right to determine whether or not an incumbent in a position redesignated as a national security position may continue to exercise national security position duties pending the outcome of any required investigation. The incumbent may continue to occupy such sensitive position pending the completion of an investigation, but agencies may remove the incumbent's national security duties, as authorized by section 3(b) of E.O. 10450.

Savings Provision

The proposed rule contains the addition of a savings provision intended to avoid any adverse impact to the procedural rights of employees resulting from designations made where employees are awaiting adjudication of a prior investigation at the time of any redesignation of positions required by the final rule. OPM specifically requests comment on the necessity of such a provision in protecting employee procedural rights or agency right to take action relative to administrative or other review procedures ongoing at the time of any redesignation of positions. This savings provision would appear at § 732.205.

Waivers and Exceptions

OPM is proposing some changes to the procedures and standards for waivers and exceptions to preappointment investigative requirements, to ensure that waivers and exceptions do not pose unacceptable risks to the national security. This is to better meet the requirements of section 3(b) of E.O. 10450, as amended, under which emergency waivers of preappointment investigative requirements must be "necessary in the national interest," and section 3(a) of the same order, under which OPM may authorize such exceptions from investigative requirements "as may meet the requirements of the national security." The proposed rule addresses a waiver of the requirement to conduct the pre-appointment investigation, not to be confused with the temporary access to classified information before an investigation is adjudicated, which is governed by E.O. 12968 and Intelligence Community policy guidance. Some of the proposed changes are made possible by the more automated environment in which checks are now conducted. OPM will issue guidance with detailed instructions for agencies to make waiver and exception requests.

No change is proposed to § 732.202(a)(2)(i), which states that for Special-Sensitive positions, preappointment investigative requirements may not be waived. This requirement derives from a separate regulation, 5 CFR 736.201(c).

Under the proposed revisions, to waive the preappointment check for Critical-Sensitive positions based on an emergency, the agency would be required to initiate an investigation based on a completed questionnaire, and a Federal Bureau of Investigation fingerprint check portion of the required investigation would be required to be completed and to support a waiver. Currently, the standard is that a check is initiated but not all responses have been received within 5 days, or that the waiver decision is made on the basis of other favorably completed checks. Under the proposed regulations, a waiver of the preappointment check for Noncritical-Sensitive positions would be required to be based on an emergency, and the agency would be required to favorably evaluate a completed questionnaire and initiate the required investigation within 14 days after appointment. Currently, agencies may waive investigative requirements for these positions without a specific finding of an emergency.

OPM also proposes amending § 732.202(b) to eliminate the automatic exceptions from investigative requirements of E.O. 10450 that are currently given to positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days, as well as for aliens employed outside the United States. The proposed regulations would provide that an agency head may request an exception for those positions from OPM, but they

would no longer be automatically excepted.

To fulfill its continuing study responsibility under section 14 of E.O. 10450, as amended, OPM proposes detailed requirements related to appropriate documentation when granting waivers and exceptions to investigative requirements. These documentation requirements conform to current operating guidance provided by OPM. These requirements are further clarified to include notice to applicants that any appointment granted based on a waiver is conditional, and that continuation in the position is dependent on the favorable adjudication of the investigation.

Finally, OPM proposes an amendment to make § 732.202 inapplicable to investigations, waivers of investigative requirements, or exceptions from investigative requirements under 42 U.S.C. 2165(b), because this statute makes preemployment investigations mandatory for certain positions unless waivers or exceptions are made under the terms of the statute.

Procedural Rights

OPM proposes to amend § 732.301 to improve its terminology and ensure agencies comply with all applicable procedural requirements when making adjudicative decisions. OPM proposes to add a reference to the procedural requirements of E.O. 12968, which had not yet been issued at the time part 732 was originally promulgated, and to the agency's own procedural regulations. Part 732 is not intended to provide an independent authority for agencies to take adverse actions when the retention of an employee is not consistent with the national security. Nor should part 732 be construed to require or encourage agencies to take adverse actions on national security grounds under 5 CFR part 752 when other grounds are sufficient. Nor, finally, does part 732 have any bearing on the Merit Systems Protection Board's appellate jurisdiction or the scope of the Board's appellate review of an adverse action. To make this clear, in § 732.301(a), we propose deleting the reference to adjudicative decisions made "under this part."

Reporting

OPM proposes to amend § 732.302 to require agencies to report the completion of investigations, as well as the initiation of investigations, and to collect additional data needed to comply with process efficiency requirements. These changes support OPM's obligation to maintain security and suitability databases and to report on security investigations. OPM further proposes to require agencies to report an adjudicative determination and action taken as a result of investigation within 90 days after receipt of the final report of investigation. The current regulation implies that the ultimate determination is required no later than 90 days after receipt of the final report of investigation. OPM recognizes that in certain instances, an initial adjudicative determination may not be final; however, in order to meet the reporting requirements established in section 14(c) of E.O. 10450, an official report of adjudication is required within 90 days after receipt of the final report of investigation.

Former Employees Terminated in the Interest of National Security

OPM proposes to clarify requirements for agency actions and rights of former employees under 5 U.S.C. 7312 and section 7 of E.O. 10450, as amended, regarding employment of former employees who were terminated under 5 U.S.C. 7532 or any other statute or Executive order authorizing removal in the interest of national security. Where an employee is removed under 5 U.S.C. 7532, 5 U.S.C. 7312 provides that the individual may accept reemployment with another agency, if the head of the other agency first consults with OPM, and that OPM, upon the request of the individual or the agency head, may determine the individual's reemployment eligibility. Section 7 of E.O. 10450 provides more broadly that the requirement to consult with OPM applies whether the employee is removed under 5 U.S.C. 7532 or under "any other security or loyalty program relating to officers or employees of the Government." Currently, the regulation implementing these requirements explains that the former employee may request a determination of reemployment eligibility from OPM, but does not explain that the agency head must consult with OPM before reemploying an individual removed for national security reasons. OPM proposes to amend § 732.401 to explain this requirement and to clarify that the employee or agency seeking a determination of reemployment eligibility from OPM should submit a copy of the vacancy announcement since OPM's decision affects only selections from that vacancy announcement. We note that the requirement applies only in the specific case where an employee is removed under a statute authorizing summary termination in the interest of national security, such as 5 U.S.C. 7532. There is no requirement for an agency or an individual to contact OPM for a determination of reemployment eligibility, where the individual was removed in an adverse action under 5 U.S.C. 7513 due to revocation of a security clearance.

OPM also proposes to remove § 732.401(b)(2), which authorizes OPM to debar or cancel the reinstatement eligibility of an individual who was previously terminated for national security reasons and whose eligibility was obtained through fraud. This section of the regulations is obsolete and should accordingly be eliminated. OPM may take a suitability action against an applicant based on his or her deception or fraud in examination or appointment under a separate authority, 5 CFR part 731, which provides full procedural protections for the applicant.

Technical Amendment

A technical amendment is proposed in the Authorities for this part to reflect 5 U.S.C. 1103(a)(5), which broadly authorizes the Director of OPM to execute, administer, and enforce the civil service laws, rules and regulations. Finally, OPM proposes a technical amendment to include E.O. 10577, as amended, rule V of which requires the Director of OPM to promulgate and enforce regulations necessary to carry out the provisions of all Executive orders imposing responsibilities on OPM (including E.O. 10450); to include E.O. 13467, which expresses the policy of aligning investigative requirements to the extent possible; and to include E.O. 12968, referenced in proposed §§ 732.203(a) and 732.301.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

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

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 732

Administrative practices and procedures, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to revise part 732, title 5, Code of Federal Regulations, to read as follows:

PART 732—DESIGNATION OF NATIONAL SECURITY POSITIONS

Subpart A—Scope

Sec.
732.101 Purpose.
732.102 Definition and applicability.
732.103 Implementation.

Subpart B—Designation and Investigative Requirements

732.201 Sensitivity level designations and investigative requirements.
732.202 Waivers and exceptions to preappointment investigative requirements.
732.203 Periodic reinvestigation requirements.
732.204 Reassessment of current positions.
732.205 Savings provision.

Subpart C—Procedural Rights and Reporting

732.301 Procedural rights.
732.302 Reporting to OPM.

Subpart D—Security and Related Determinations

732.401 Reemployment eligibility of certain former Federal employees.

Authority: 5 U.S.C. 1103(a)(5), 3301, 3302, 7312; 50 U.S.C. 403; E.O. 10450, 3 CFR, 1949–1953 Comp., p. 936; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 12968, 3 CFR, 1996 Comp., p. 391; E.O. 13467, 3 CFR, 2009 Comp., p. 196.

Subpart A—Scope

§ 732.101 Purpose.

(a) This part sets forth certain requirements and procedures which each agency shall observe for determining national security positions pursuant to Executive Order 10450—Security Requirements for Government Employment (April 27, 1953), 18 FR 2489, 3 CFR 1949–1953 Comp., p. 936, as amended.

(b) All positions must be evaluated for a position sensitivity designation commensurate with the responsibilities and assignments of the position as they relate to the impact on the national security, including but not limited to eligibility for access to classified information.

§ 732.102 Definition and applicability.

(a) For purposes of this part, the term "national security position" includes any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security.

(1) Such positions include those requiring eligibility for access to classified information.

(2) Other such positions include, but are not limited to, those whose duties include:

(i) Protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including those positions where the occupant's duties involve protecting the nation's borders, ports, critical infrastructure or key resources, and where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(ii) Developing defense plans or policies;

(iii) Planning or conducting intelligence or counterintelligence activities, counterterrorism activities and related activities concerned with the preservation of the military strength of the United States;

(iv) Protecting or controlling access to facilities or information systems where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(v) Controlling, maintaining custody, safeguarding, or disposing of hazardous materials, arms, ammunition or explosives, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(vi) Exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(vii) Exercising duties related to criminal justice, public safety or law enforcement, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security; or

(viii) Investigations or audits related to the functions described in paragraphs (a)(2)(i) through (a)(2)(vii) of this section, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security.

(b) The requirements of this part apply to positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service within the executive branch. Departments and agencies may apply the requirements of this part to other excepted service positions within the executive branch and contractor positions, to the extent consistent with law.

§ 732.103 Implementation.

OPM may set forth policies, general procedures, criteria, standards, quality control procedures, and supplementary guidance for the implementation of this part in OPM issuances.

Subpart B—Designation and Investigative Requirements

§ 732.201 Sensitivity level designations and investigative requirements.

(a) For purposes of this part, the head of each agency shall designate, or cause to be designated, a position within the department or agency as a national security position pursuant to § 732.102(a). National security positions must then be designated, based on the degree of potential damage to the national security, at one of the following three sensitivity levels:

(1) *Noncritical-Sensitive* positions are national security positions which have the potential to cause significant or serious damage to the national security, including, but not limited to:

(i) Positions requiring eligibility for access to Secret, Confidential, or "L" classified information; or

(ii) Positions not requiring eligibility for access to classified information, but having the potential to cause significant or serious damage to the national security.

(2) *Critical-Sensitive* positions are national security positions which have the potential to cause exceptionally grave damage to the national security, including, but not limited to:

(i) Positions requiring eligibility for access to Top Secret or "Q" classified information;

(ii) Positions involving development or approval of war plans, major or special military operations, or critical and extremely important items of war;

(iii) National security policy-making or policy-determining positions;

(iv) Positions with investigative duties, including handling of completed counter-intelligence or background investigations, the nature of which have the potential to cause exceptionally grave damage to the national security;

(v) Positions involving adjudication or granting of personnel security clearance eligibility;

(vi) Positions involving duty on personnel security boards;

(vii) Senior management positions in key programs, the compromise of which could result in grave damage to the national security,

(viii) Positions having direct involvement with diplomatic relations and negotiations;

(ix) Positions involving independent responsibility for planning or approving continuity of Government operations;

(x) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the protection, control, and safety of the nation's borders and ports or immigration or customs control or policies, where there is a potential to cause exceptionally grave damage to the national security;

(xi) Positions involving major and immediate responsibility for, and the ability to act independently without detection to compromise or exploit, the design, installation, operation, or maintenance of critical infrastructure systems or programs;

(xii) Positions in which the occupant has the ability to independently damage public health and safety with devastating results;

(xiii) Positions in which the occupant has the ability to independently compromise or exploit biological select agents or toxins, chemical agents, nuclear materials, or other hazardous materials;

(xiv) Positions in which the occupant has the ability to independently compromise or exploit the nation's nuclear or chemical weapons designs or systems;

(xv) Positions in which the occupant obligates, expends, collects or controls revenue, funds or items with monetary value in excess of $50 million, or procures or secures funding for goods and/or services with monetary value in excess of $50 million annually, with the potential for exceptionally grave damage to the national security;

(xvi) Positions in which the occupant has unlimited access to and control over unclassified information, which may include private, proprietary or other controlled unclassified information, but only where the unauthorized disclosure of that information could cause exceptionally grave damage to the national security;

(xvii) Positions in which the occupant has direct, unrestricted control over supplies of arms, ammunition, or explosives or control over any weapons of mass destruction;

(xviii) Positions in which the occupant has unlimited access to or control of access to designated restricted areas or restricted facilities that maintain national security information classified at the Top Secret or "Q" level;

(xix) Positions working with significant life-critical/mission-critical systems, such that compromise or exploitation of those systems would cause exceptionally grave damage to essential Government operations or national infrastructure; or

(xx) Positions in which the occupant conducts internal and/or external investigation, inquiries, or audits related to the functions described in paragraphs (a)(2)(i) through (a)(2)(xix) of this section, where the occupant's neglect, action, or inaction could cause exceptionally grave damage to the national security.

(3) *Special-Sensitive* positions are those national security positions which have the potential to cause inestimable damage to the national security, including but not limited to positions requiring eligibility for access to Sensitive Compartmented Information (SCI), requiring eligibility for access to any other intelligence-related Special Sensitive information, requiring involvement in Top Secret Special Access Programs (SAP), or positions which the agency head determines must be designated higher than Critical-Sensitive consistent with Executive order.

(b) OPM issues, and periodically revises, a Position Designation System which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security. Agencies must use the Position Designation System to designate the sensitivity level of each position covered by this part.

(c) All positions receiving a position sensitivity designation under this part must also receive a risk designation under part 731 of this chapter (*see* 5 CFR 731.106). The Position Designation System provides guidance enabling agencies, where appropriate, to base risk designations under part 731 on the position sensitivity designations made under this part; and specifies appropriate investigative requirements to avoid duplication of effort.

§ 732.202 Waivers and exceptions to preappointment investigative requirements.

(a) *Waivers*—(1) *General.* A waiver of the preappointment investigative requirement contained in section 3(b) of Executive Order 10450 for employment in a national security position may be made only for a limited period:

(i) In case of emergency if the head of the department or agency concerned finds that such action is necessary in the national interest; and

(ii) When such finding is made a part of the records of the department or agency.

(2) *Specific waiver requirements.*

(i) The preappointment investigative requirement may not be waived for appointment to positions designated Special-Sensitive under this part.

(ii) For positions designated Critical-Sensitive under this part, the records of the department or agency required by paragraph (a)(1) of this section must document the decision as follows:

(A) The nature of the emergency which necessitates an appointment prior to completion of the investigation and adjudication process;

(B) A record demonstrating the successful initiation of the required investigation based on a completed questionnaire; and

(C) A record of the Federal Bureau of Investigation fingerprint check portion of the required investigation supporting a preappointment waiver.

(iii) When a waiver for a position designated Noncritical-Sensitive is granted under this part, the agency head will determine documentary requirements needed to support the waiver decision. In these cases, the agency must favorably evaluate the completed questionnaire and initiate the required investigation. The required

investigation must be initiated within 14 days of placing the individual in the position.

(iv) When waiving the preappointment investigation requirements, the applicant must be notified that the preappointment decision was made based on limited information, and that the ultimate appointment decision depends upon favorable completion and adjudication of the full investigative results.

(b) *Exceptions to investigative requirements.* Pursuant to section 3(a) of E.O. 10450, as amended, upon request of an agency head, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirement of national security with respect to:

(1) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments; or

(2) Positions filled by aliens employed outside the United States.

(c) This section does not apply to investigations, waivers of investigative requirements, and exceptions from investigative requirements under 42 U.S.C. 2165(b).

§ 732.203 Periodic reinvestigation requirements.

(a) The incumbent of a national security position requiring eligibility for access to classified information is subject to the reinvestigation requirements of E.O. 12968, as amended.

(b) The incumbent of a national security position that does not require eligibility for access to classified information is subject to periodic reinvestigation at least once every five years. Such reinvestigation must be conducted using a national security questionnaire, and at a frequency and scope that will satisfy the reinvestigative requirements for both national security and public trust positions.

§ 732.204 Reassessment of current positions.

(a) Agency heads must assess each position covered by this part within the agency using the standards set forth in this regulation as well as guidance provided in OPM issuances to determine whether changes in position sensitivity designations are necessary within 24 months of [EFFECTIVE DATE OF THE FINAL RULE].

(b) Where the sensitivity designation of the position is changed, and requires a higher level of investigation than was previously required for the position,

(1) The agency must initiate the investigation no later than 14 working days after the change in designation, and

(2) The agency will determine whether the incumbent's retention in sensitive duties pending the outcome of the investigation is consistent with the national security.

(c) Agencies may provide advance notice of the redesignation of a position to allow time for completion of the forms, releases, and other information needed from the incumbent to initiate the investigation.

§ 732.205 Savings provision.

No provision of the regulations in this part shall be applied in such a way as to affect any administrative proceeding pending on the effective date of the final regulation. An administrative proceeding is deemed to be pending from the date of the agency or OPM notice described in § 732.301(a)(4).

Subpart C—Procedural Rights and Reporting

§ 732.301 Procedural rights.

(a) When an agency makes an adjudicative decision based on an OPM investigation, or when an agency, as a result of information in an OPM investigation, changes a tentative favorable placement or clearance decision to an unfavorable decision, the agency must comply with all applicable administrative procedural requirements, as provided by law, rule, regulation, or Executive order, including E.O. 12968, as amended, and the agency's own procedural regulations, and must:

(1) Ensure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual in any determination;

(2) Consider all available, relevant information in reaching its final decision;

(3) Keep any record of the agency action required by OPM as published in its issuances;

(4) At a minimum, provide the individual concerned:

(i) Notice of the specific reason(s) for the decision;

(ii) An opportunity to respond; and

(iii) Notice of appeal rights, if any.

(b) [Reserved]

§ 732.302 Reporting to OPM.

(a) Each agency conducting an investigation under E.O. 10450 is required to notify OPM when the investigation is initiated and when it is completed.

(b) Agencies shall report to OPM an adjudicative determination and action taken with respect to an individual investigated pursuant to E.O. 10450 as soon as possible and in no event later than 90 days after receipt of the final report of investigation.

(c) To comply with process efficiency requirements, additional data may be collected from agencies conducting investigations or taking action under this part. These collections will be identified in separate OPM guidance, issued as necessary under § 732.103.

Subpart D—Security and Related Determinations

§ 732.401 Reemployment eligibility of certain former Federal employees.

(a) *Request.* (1) A former employee who was terminated from a department or agency of the Government under 5 U.S.C. 7532, or other statute or Executive order authorizing termination in the interest of national security, may submit a request to OPM in writing, including a copy of the vacancy announcement, to determine whether the individual is eligible for employment in another department or agency of the Government.

(2) A department or agency (other than the agency from which the former employee was removed) seeking to appoint a former employee who was terminated from a department or agency of the Government under 5 U.S.C. 7532, or other statute or Executive order authorizing termination in the interest of national security, must submit a request to OPM in writing, including a copy of the vacancy announcement, to determine the former employee's eligibility for employment.

(b) *Action by OPM.* OPM shall determine, and will notify the former employee, and where applicable, the agency seeking to appoint such former employee, after appropriate consideration of the case, including such investigation as it considers necessary, whether the individual is eligible for appointment to the position outlined in the vacancy announcement.

[FR Doc. 2010–31373 Filed 12–13–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1160; Directorate Identifier 2010–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Series 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 all Model 767 airplanes. The existing AD currently requires repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary. This proposed AD would reduce the initial compliance time and repetitive inspection interval in the existing AD. This proposed AD results from fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. We are proposing this AD to detect and correct chafing of the fuel pump wire insulation and consequent exposure of the electrical conductor, which could result in electrical arcing between the wires and conduit and consequent fire or explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by January 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 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, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; 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–2010–1160; Directorate Identifier 2010–NM–148–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 May 23, 2000, we issued AD 2000–11–06, amendment 39–11754 (65 FR 34928, June 1, 2000), for all Model 767 airplanes. (A correction of the rule was published in the **Federal Register** on August 1, 2000 (65 FR 46862).) That AD requires repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary. That AD resulted from reports of chafing of Teflon sleeves that surround and protect electrical wires inside conduits installed in the fuel tanks. We issued that AD to ensure adequate protection to the fuel pump wire insulation. Such chafing of the wire insulation could eventually result in exposure of the electrical conductor, permit arcing from the wire to the conduit, and create a potential for a fuel tank fire or explosion.

Actions Since Existing AD Was Issued

Since we issued AD 2000–11–06, we received fleet information from the manufacturer indicating that excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. Due to that fact, the manufacturer has revised the service information to reduce the initial and repetitive inspection intervals.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010. Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999, was referred to as the appropriate source of service information for accomplishing the actions in the existing AD. Revision 2 of this service bulletin reduces the initial compliance time and repetitive inspection interval for the repetitive inspections required by the existing AD.

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 products of the same type design. For this reason, we are proposing this AD, which would supersede AD 2000–11–06 and would retain the requirements of the existing AD at reduced compliance times.

Change to Existing AD

This proposed AD would retain all requirements of AD 2000–11–06. 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 2000–11–06	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (b)	paragraph (h).
paragraph (c)	paragraph (i).
paragraph (d)	paragraph (j).
paragraph (e)	paragraph (k).

Costs of Compliance

There are about 932 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 410 airplanes of U.S. registry. The new requirements of this proposed AD add no additional economic burden. The current costs for this proposed AD are repeated below for the convenience of affected operators.

The actions that are required by AD 2000–11–06 and retained in this proposed AD take about 5 work-hours per airplane (for airplanes with jettison pumps) or 3 work-hours per airplane (for airplanes without jettison pumps), at an average labor rate of $85 per work-hour. Required parts cost about $336 per airplane. Based on these figures, the estimated cost of the currently required actions is either $761 or $591 per airplane, 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 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 39–11754 (65 FR 34928, June 1, 2000) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–1160; Directorate Identifier 2010–NM–148–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 28, 2011.

Affected ADs

(b) This AD supersedes AD 2000–11–06, Amendment 39–11754.

Applicability

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

Subject

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

Unsafe Condition

(e) This AD results from fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. The Federal Aviation Administration is issuing this AD to detect and correct chafing of the fuel pump wire insulation and consequent exposure of the electrical conductor, which could result in electrical arcing between the wires and conduit and consequent fire or explosion of the fuel tank.

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 2000–11–06, Amendment 39–11754

Inspections

(g) Perform a detailed visual inspection to detect discrepancies—including the presence of splices, cuts, splits, holes, worn areas, and lacing ties installed on the outside of the sleeves (except at the sleeve ends)—of the Teflon sleeves surrounding the wiring of the fuel tank boost pumps and override/jettison pumps, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; as applicable. Repeat the inspection thereafter at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first. After the effective date of this AD, only Revision 2 of Boeing Alert Service Bulletin 767–28A0053 may be used.

(1) Prior to the accumulation of 50,000 total flight hours, or within 90 days after July 6, 2000 (the effective date of AD 2000–11–06), whichever occurs later.

(2) Within 18 months after July 6, 2000.

Note 1: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(h) If any discrepancy is detected during any inspection required by paragraph (g) of this AD: Prior to further flight, remove the Teflon sleeves and perform a detailed visual inspection to detect damage of the wiring, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; as applicable. After the effective date of this AD, only Revision 2 of Boeing Alert Service Bulletin 767–28A0053 may be used.

(1) If no damage to the wiring is detected, prior to further flight, install new Teflon sleeves in accordance with Boeing Service

Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010.

(2) If any damage to the wiring is detected, prior to further flight, accomplish the requirements of paragraph (i) of this AD.

(i) If any damage to the wiring is detected during any inspection required by paragraph (h) of this AD: Prior to further flight, perform a detailed visual inspection to determine if the wiring damage was caused by arcing, in accordance with paragraph D. of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010, as applicable. After the effective date of this AD, only Revision 2 of Boeing Alert Service Bulletin 767–28A0053 may be used.

(1) If the wire damage was not caused by arcing: Prior to further flight, repair any damaged wires or replace the wires with new or serviceable wires, as applicable, and install new Teflon sleeves; in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010.

(2) If any damage caused by arcing is found: Prior to further flight, perform an inspection for signs of fuel inside the conduit or on the wires, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010.

(i) If no sign of fuel is found, accomplish the actions specified by paragraphs (i)(2)(i)(A), (i)(2)(i)(B), (i)(2)(i)(C), and (i)(2)(i)(D) of this AD.

(A) Prior to further flight, repair the wires or replace the wires with new or serviceable wires, as applicable, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010.

(B) Prior to further flight, install new Teflon sleeves, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010.

(C) Repeat the inspection for signs of fuel inside the conduit thereafter at intervals not to exceed 500 flight hours, until the requirements of paragraph (h)(2)(i)(D) of this AD have been accomplished. If any fuel is found inside the conduit during any inspection required by this paragraph, prior to further flight, replace the conduit with a new or serviceable conduit in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010. Thereafter, repeat the inspection specified in paragraph (g) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

(D) Within 6,000 flight hours or 18 months after the initial fuel inspection specified by paragraph (h)(2) of this AD, whichever occurs first, replace the conduit with a new or serviceable conduit, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010. Such conduit replacement constitutes terminating action for the repetitive fuel inspections required by paragraph (i)(2)(i)(C) of this AD.

(ii) If any fuel is found in the conduit or on any wire: Prior to further flight, replace the conduit with a new or serviceable conduit, replace damaged wires with new or serviceable wires, and install new Teflon sleeves; in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; or Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010. Thereafter, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first.

Pump Retest

(j) For any wire bundle removed and reinstalled during any inspection required by this AD: Prior to further flight after such reinstallation, retest the fuel pump in accordance with paragraph G., H., I., or J., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999.

Reporting Requirement

(k) Submit a report of positive inspection findings (findings of discrepancies only), along with any damaged wiring and sleeves, to the Seattle Manufacturing Inspection District Office (MIDO), 2500 East Valley Road, Suite C–2, Renton, Washington 98057–3356; fax (425) 227–1159; at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the airplane serial number; the number of total flight hours and flight cycles on the airplane; the location of the electrical cable on the airplane; and a statement indicating, if known, whether any wire has ever been removed and inspected during maintenance, along with the date (if known) of any such inspection. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection required by paragraph (g) of this AD is accomplished after July 6, 2000: Submit the report within 10 days after performing the initial inspection.

(2) For airplanes on which the initial inspection required by paragraph (g) of this AD has been accomplished prior to July 6, 2000: Submit the report for the initial inspection within 10 days after the effective date of this AD.

New Reduced Inspection Intervals

Repetitive Inspections

(l) Do the inspection required by paragraph (g) of this AD at the time specified in paragraph (l)(1) or (l)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010. Repeat the inspection thereafter at intervals not to exceed 15,000 flight hours. Accomplishing the first inspection in this paragraph ends the repetitive inspection requirements of paragraph (g) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection within 15,000 flight hours after the most recent inspection or within 6,000 flight hours after the effective date of this AD, whichever occurs later; but not to exceed 60,000 flight hours after the most recent inspection required by paragraph (g) of this AD.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before the accumulation of 15,000 total flight hours or within 6,000 flight hours after the effective date of this AD, whichever occurs later.

Paperwork Reduction Act Burden Statement

(m) A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

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) 917–6505; 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 reference this AD.

(3) AMOCs approved previously in accordance with AD 2000–11–06, Amendment 39–11754, are approved as

alternative methods of compliance with the corresponding requirements of this AD. Compliance time extensions approved previously in accordance with AD 2000–11–06 are not approved as alternative methods of compliance for the compliance times required by paragraph (l) of this AD.

Issued in Renton, Washington, on November 15, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31371 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1158; Directorate Identifier 2010–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 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 all Model 747 airplanes. The existing AD currently requires repetitive inspections to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, the existing AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This proposed AD would reduce the initial compliance time and repetitive inspection interval in the existing AD. This proposed AD results from fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. We are proposing this AD to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and aluminum conduit and consequent fire or explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by January 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 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: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6506; 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–2010–1158; Directorate Identifier 2010–NM–125–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 December 9, 1997, we issued AD 97–26–07, Amendment 39–10250 (62 FR 65352, December 12, 1997), for all Model 747 airplanes. That AD currently requires repetitive inspections to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. That AD resulted from reports of chafing of the sleeving. We issued that AD to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank.

Actions Since Existing AD Was Issued

Since we issued AD 97–26–07, we received fleet information from the manufacturer indicating that excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. Due to that fact, the manufacturer has revised the service information to reduce the repetitive inspection intervals.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. The service information reduces the initial compliance time and repetitive inspection interval for detecting damage

of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed) specified in Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997. Revision 1 of this service bulletin was referred to in AD 97–26–07 as the appropriate source of service information for accomplishing the specified actions. The actions described in Revision 3 of this service bulletin are essentially the same as those described in Revision 1 of this service bulletin.

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 97–26–07 and would retain the requirements of the existing AD at reduced compliance times.

Change to Existing AD

This proposed AD would retain all requirements of AD 97–26–07. Since AD 97–26–07 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 97-26-07	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g).
paragraph (b)	paragraph (h).
paragraph (c)	paragraph (i).
paragraph (d)	paragraph (j).
paragraph (e)	paragraph (k).
paragraph (f)	paragraph (l).
paragraph (g)	paragraph (m).

Costs of Compliance

There are about 772 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 215 airplanes of U.S. registry. The new requirements of this proposed AD add no additional economic burden. The current costs for this proposed AD are repeated below for the convenience of affected operators.

The actions that are required by AD 97–26–07 and retained in this proposed AD take about 4 work-hours per airplane, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $73,100, or $340 per airplane, 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 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 39–10250 (62 FR 65352, December 12, 1997) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–1158; Directorate Identifier 2010–NM–125–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 28, 2011.

Affected ADs

(b) This AD supersedes AD 97–26–07, Amendment 39–10250.

Applicability

(c) This AD applies to all The Boeing Company Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400, –400D, –400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from fleet information indicating that the repetitive inspection interval in the existing AD is too long because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. The Federal Aviation Administration is issuing this AD to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and aluminum conduit and consequent fire or explosion of the fuel tank.

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 96–26–06, Amendment 39–9870

Inspections/Repair or Replace if Necessary

(g) Perform an initial inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed), in accordance with Boeing Service Bulletin 747–28A2204, dated December 19, 1996, or Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010, at the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. After the effective date of this AD,

only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(1) For airplanes having line numbers 001 through 432 inclusive: Inspect within 120 days after January 21, 1997 (the effective date of AD 96–26–06, amendment 39–9870, which was superseded by AD 97–26–07).

(2) For airplanes having line numbers 433 and subsequent: Inspect at the later of the times specified in paragraphs (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Prior to the accumulation of 20,000 flight cycles or 60,000 flight hours, whichever occurs first; or

(ii) Within 120 days after December 29, 1997 (the effective date of AD 97–26–07).

(h) Repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 20,000 flight cycles or 60,000 flight hours since the last inspection, whichever occurs first, until the first inspection required by paragraph (n) of this AD has been accomplished.

(i) If any damaged sleeving is found, prior to further flight, replace the sleeving with new sleeving, in accordance with Boeing Service Bulletin 747–28A2204, dated December 19, 1996, or Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(j) If any damaged wire is found, prior to further flight, repair or replace the wire with a new wire, in accordance with Boeing Service Bulletin 747–28A2204, dated December 19, 1996, or Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(k) If any burned wire is found, prior to further flight, perform an inspection to detect damage of the conduit, in accordance with Boeing Service Bulletin 747–28A2204, dated December 19, 1996, or Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. If any damage is found, prior to further flight, replace the conduit with a serviceable conduit, in accordance with Boeing Service Bulletin 747–28A2204, dated December 19, 1996, or Revision 1, dated October 30, 1997; or Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. After the effective date of this AD, only Revision 3 of Boeing Alert Service Bulletin 747–28A2204 may be used.

(l) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (g) of this AD, submit a report of any damaged sleeving (i.e., holes, breaks, cuts, splits), damaged wire (*i.e.,* worn or cracked insulation, exposed conductor, indication of arcing/burning), or damaged conduit to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98057–3356; fax (425) 227–1181. The report shall include the information specified in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), and (l)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The airplane serial number.

(2) The total hours' time-in-service accumulated on the airplane.

(3) The total number of flight cycles accumulated on the airplane.

(4) A description of any damage found.

(5) The location of where the damaged part was installed.

(m) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (g) of this AD, submit any damaged part to the Manager, Seattle ACO. The damaged part shall be tagged to include the information specified in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), and (l)(5) of this AD. Additionally, operators shall align the inner sleeving, outer sleeving, and wire as installed in the airplane, and secure the sleeving and wiring in place by taping or other means when submitting the damaged part to the Manager, Seattle ACO. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Reduced Inspection Intervals

Repetitive Inspections

(n) Do the next inspection required by paragraph (h) of this AD at the time specified in paragraph (n)(1) or (n)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–28A2204, Revision 3, dated March 11, 2010. Repeat the inspection thereafter at intervals not to exceed 15,000 flight hours. Accomplishing the initial inspection in this paragraph ends the repetitive inspection requirements of paragraph (h) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraph (n)(1)(i) and (n)(1)(ii) of this AD.

(i) Within 15,000 flight hours after the most recent inspection, or within 6,000 flight hours after the effective date of this AD, whichever occurs later.

(ii) Within 20,000 flight cycles or 60,000 flight hours after the most recent inspection required by paragraph (g) or (h) of this AD, whichever occurs first.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before the accumulation of 15,000 total flight hours, or within 6,000 flight hours after the effective date of this AD, whichever occurs later.

Paperwork Reduction Act Burden Statement

(o) A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle 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: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6506; 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 reference this AD.

(3) AMOCs approved previously in accordance with AD 97–26–07, Amendment 39–10250, are approved as alternative methods of compliance with the corresponding requirements of this AD. Compliance time extensions approved previously in accordance with AD 97–26–07, are not approved as alternative methods of compliance for the compliance times required by paragraph (n) of this AD.

Issued in Renton, Washington, on November 15, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31375 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1198; Directorate Identifier 2010–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Corrosion has been found on the rear spar upper cap of the horizontal stabilizer of SAAB 2000 aeroplanes. The affected areas are adjacent to the inboard elevator hinge where the electrical wiring harnesses are located and wired through the lightening holes. The upper spar cap is a primary structural element and is important to the structural integrity of the horizontal stabilizer.
>
> Corrosion damage in these areas, if not detected and corrected, can result in a starting point for future crack propagation, which would impair the integrity of the horizontal stabilizer upper spar cap structure.

* * * * *

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 January 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1198; Directorate Identifier 2010–NM–145–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0115, dated June 17, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion has been found on the rear spar upper cap of the horizontal stabilizer of SAAB 2000 aeroplanes. The affected areas are adjacent to the inboard elevator hinge where the electrical wiring harnesses are located and wired through the lightening holes. The upper spar cap is a primary structural element and is important to the structural integrity of the horizontal stabilizer.
>
> Corrosion damage in these areas, if not detected and corrected, can result in a starting point for future crack propagation, which would impair the integrity of the horizontal stabilizer upper spar cap structure.
>
> For the reasons describe above, this AD requires a detailed visual inspection (DVI) of the LH and RH horizontal stabilizer rear spar adjacent to the inboard elevator hinge and the harnesses installed in the adjacent areas, installation of convoluted tubing on the harness, and corrective actions depending on findings.

The corrective actions include installing convoluted tubing on the harness, applying corrosion prevention compound to the inspected area, making sure clearance exists between the spar cap and the harnesses/convoluted tube, and contacting Saab for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab AB, Saab Aerosystems has issued Service Bulletin 2000–55–013, dated July 6, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 8 products of U.S. registry. We also estimate that it would take about 2 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 $1,360, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2010–1198; Directorate Identifier 2010–NM–145–AD.

Comments Due Date

(a) We must receive comments by January 28, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Corrosion has been found on the rear spar upper cap of the horizontal stabilizer of SAAB 2000 aeroplanes. The affected areas are adjacent to the inboard elevator hinge where the electrical wiring harnesses are located and wired through the lightening holes. The upper spar cap is a primary structural element and is important to the structural integrity of the horizontal stabilizer.

Corrosion damage in these areas, if not detected and corrected, can result in a starting point for future crack propagation, which would impair the integrity of the horizontal stabilizer upper spar cap structure.

* * * * *

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 12 months after the effective date of this AD: Do a detailed visual inspection for corrosion of the left-hand and right-hand horizontal stabilizers, do a detailed visual inspection for chafing or damage on the harness installed in the adjacent area, and install convoluted tubing on the harness, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–55–013, dated July 6, 2009.

(h) If, during the inspection required by paragraph (g) of this AD, corrosion is found, before next flight, repair the corrosion using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

FAA AD Differences

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

Other FAA AD Provisions

(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:* Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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:* A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence

Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0115, dated June 17, 2010; and Saab Service Bulletin 2000–55–013, dated July 6, 2009; for related information.

Issued in Renton, Washington, on December 3, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31378 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0032]

29 CFR Parts 1910 and 1926

Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise

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

ACTION: Proposed Interpretation; extension of written comment period.

SUMMARY: On October 19, 2010, OSHA published a notice of proposed interpretation entitled *Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise,* giving interested parties 60 days to comment. The comment period is being extended by 90 days to give interested parties additional time to assess the impact of the proposed interpretation and submit comments.

DATES: Comments must be submitted (postmarked or sent) by March 21, 2011.

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

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* the Federal Rulemaking Portal. Follow the instructions online for making electronic submissions;

Fax: You may fax submissions not longer than 10 pages, including attachments, to the OSHA Docket Office at 202–693–1648.

Mail, hand delivery, express mail, messenger and courier service: If you use this option, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0032, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted from 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the agency name and the OSHA docket number for this interpretation (OSHA–2010–0032). Submissions are placed in the public docket without change and may be accessed online *http://www.regulations.gov.* Be careful about submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; some information (e.g., copyrighted material), however, *cannot* be read or downloaded at the Web site. All submissions, including copyrighted material, can be examined or copied at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: *General information or press inquiries:* MaryAnn Garrahan, Acting Director, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202–693–1999.

For Technical Inquiries: Audrey Profitt, Senior Industrial Hygienist, Directorate of Enforcement Programs, Room N–3119, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* 202–693–2190, or *fax:* 202–693–1681.

SUPPLEMENTARY INFORMATION:

Extension of the Comment Period

On October 19, 2010, OSHA published a notice of proposed interpretation entitled *Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise.* The notice proposed to clarify that the term *feasible administrative or engineering controls* as used in the applicable sections of OSHA's General Industry and Construction Occupational Noise Exposure standards has its ordinary meaning of capable of being done. The Agency announced its intention to revise and clarify its current enforcement policy to reflect this interpretation, and solicited comments from interested parties within 60 days, ending on December 20, 2010.

OSHA's current enforcement policy for exposures less than 100 dBA has not reflected the noise standard's requirement that feasible engineering and administrative controls be used as the primary means of reducing noise exposure. Instead, the Agency has allowed many employers to rely upon a hearing conservation program, including the use of hearing protectors.

Excessive noise levels continue to be a cause of hearing loss in the nation's workplaces. Since 2004, the Bureau of Labor Statistics (BLS) has reported that over 125,000 workers have suffered significant, permanent hearing loss. In 2008 alone, BLS reported 22,000 hearing loss cases.

Two commenters, the National Association of Manufacturers and the Coalition for Workplace Safety (CWS), representing employers who would be affected by the proposed interpretation, have requested an extension of 90 days to assess the operating changes that their members would be required to make to comply with the interpretation. In addition, CWS cites the proximity of the current deadline to the winter holidays as an additional reason for the extension.

OSHA believes that these requests are reasonable. OSHA is interested in hearing from and carefully considering the views of affected persons before making a final decision on the proposed interpretation. Accordingly, to facilitate the submission of more thorough comments and help the agency assess the issues, OSHA is extending the comment period by 90 days from December 20, 2010 to March 21, 2011.

Authority: 29 U.S.C. 655; 29 CFR 1910.95(b)(1) & 1926.52(b); Secretary of Labor's Order 4–2010, 75 FR 55355, September 10, 2010.

Signed at Washington, DC, on December 7, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–31359 Filed 12–13–10; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0435; FRL–9237–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Limiting Emissions of Volatile Organic Compounds From Portable Fuel Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision includes an amendment to Delaware's regulation for Volatile Organic Compounds (VOC) from Consumer and Commercial Products, Section 3.0, Portable Fuel Containers. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 13, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0435 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0435, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0435. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Delaware; Limiting Emissions of Volatile Organic Compounds from Portable Fuel Containers," that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: November 30, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–31222 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9238–6]

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process in response to their request for reconsideration of certain provisions in the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. Among the provisions that EPA is reconsidering is a requirement that certain affected sources obtain a permit. In a separate rule published today, EPA is taking final action to stay for 90 days, the requirement for certain affected sources to comply with the title V permit program. Because we believe the reconsideration process may not be completed within 90 days, we are proposing to stay the provision requiring certain sources to obtain a permit until the final reconsideration rule is published in the **Federal Register**. EPA is requesting public comment on this proposed stay.

DATES: *Comments.* Comments must be received on or before January 28, 2011.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 27, 2010, a public hearing will be held on December 29, 2010. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0334, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2008–0334.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0334.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2008–0334.

• *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0334. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be 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 EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–5402; fax number: (919) 541–0246; e-mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The EPA published final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources on October 29, 2009. 40 CFR part 63, subpart VVVVVV (74 FR 56008). Included in the final rule was a new provision requiring any major source that had installed a control device on a chemical manufacturing process unit after November 15, 1990, and, as a result, became an area source under CFR 40 part 63 to obtain a title V permit under 40 CFR part 70 or 40 CFR part 71. *See* 40 CFR 63.11494(e).

On February 12, 2010, the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates (collectively referred to as "Petitioners") sought reconsideration of six provisions in the final rule, including the provision requiring certain sources to obtain a title V permit. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process. EPA also separately notified Petitioners that the provision requiring certain sources to obtain a title V permit was among the provisions for which EPA would grant reconsideration.

By letter dated October 28, 2010, Petitioners requested a stay of the requirement to comply with the title V permit program, specifically the requirement to submit a title V permit application, pending completion of the reconsideration process. Petitioners stated in their letter that they were requesting the stay because EPA has yet to initiate the reconsideration process and, "under one interpretation of EPA's [40 CFR part 70 and 40 CFR part 71] regulations, existing sources must file Title V permit applications [by] October 29, 2010." Petitioners maintained that it would be unreasonable and inequitable to require facilities to prepare and submit title V applications at the same time that EPA is reconsidering the requirement to obtain a title V permit. As explained below, EPA believes that it is appropriate to stay the effectiveness of the requirement in 40 CFR 63.11494(e) for certain sources to obtain a title V permit during the pendency of the reconsideration process.

EPA is proposing to stay the provision in 40 CFR 63.11494(e) that requires "[a]ny source that was a major source and installed a control device on a CMPU [1] after November 15, 1990, and, as a result, became an area source under 40 CFR part 63 is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71." We are proposing to stay the provision until after the final reconsideration rule is published in the **Federal Register**. This provision was first introduced in the final rule and represented a significant change from the proposal. Facilities had no chance to comment on this new requirement in the final rule. We are proposing to stay this provision because both the affected universe of sources and the substantive requirement could change as a result of this reconsideration process. Specifically, we will be reconsidering whether the affected sources noted above should be subject to title V, or whether they should be exempt from title V requirements. Because we cannot pre-judge the outcome of the reconsideration process, we think a limited stay during the duration of the administrative reconsideration process is appropriate so that sources are not incurring the cost associated with applying for a title V permit in advance of our final decision on the issue.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action," and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials, as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues, as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Pursuant to the Regulatory Flexibility

[1] Chemical manufacturing process unit.

Act, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on any entities because it does not impose any additional regulatory requirements. This action also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 29, 2009, **Federal Register** document.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Monitoring, Reporting and recordkeeping.

Dated: December 7, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–31330 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0041; MO 92210–0–0008]

RIN 1018–AV97

Endangered and Threatened Wildlife and Plants; Endangered Status for Dunes Sagebrush Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the dunes sagebrush lizard (*Sceloporus arenicolus*), a lizard known from southeastern New Mexico and adjacent west Texas, as endangered under the Endangered Species Act of 1973, as amended. If we finalize the rule as proposed, it would extend the Act's protections to this species. We have determined that critical habitat for the dunes sagebrush lizard is prudent but not determinable at this time.

DATES: We will consider comments received or postmarked on or before February 14, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by January 28, 2011.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R2–ES–2010–0041 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R2–ES–2010–0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna, NE., Albuquerque, NM 87113; by telephone 505–761–4718 or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The historical and current status and distribution of the dunes sagebrush lizard, its biology and ecology, and ongoing conservation measures for the species and its habitat.

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' 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 and threats to the species or its habitat.

(3) Which areas would be appropriate as critical habitat for the species and why they should be proposed for designation as critical habitat.

(4) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act of 1973, including whether the benefits of designation would outweigh threats to the species that designation could cause, such that the designation of critical habitat is or is not prudent.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire

submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the New Mexico Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Action

On December 30, 1982, we published our notice of review classifying the sand dune lizard (dunes sagebrush lizard) as a Category 2 species (47 FR 58454). Category 2 status included those taxa for which information in the Service's possession indicated that a proposed rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. Please note that we will be referring to this species throughout this finding using the currently accepted common name of dunes sagebrush lizard (Crother *et al.* 2008, p. 39).

On September 18, 1985, we published our notice of review re-classifying the dunes sagebrush lizard as a Category 3C species (50 FR 37958). Category 3C status included taxa that were considered more abundant or widespread than previously thought or not subject to identifiable threats. Species in this category were not included in our subsequent notice of reviews unless their status had changed. Therefore, in our notice of review on November 21, 1991 (56 FR 58804), the dunes sagebrush lizard was not listed as a candidate species.

On November 15, 1994, our animal candidate notice of review once again included the dune sagebrush lizard as a Category 2 species (59 FR 58982), indicating that its conservation status had changed. On February 28, 1996, we published a Candidate Notice of Review (CNOR) that announced changes to the way we identify candidates for listing under the Act (61 FR 7596). In that document, we provided notice of our intent to discontinue maintaining a list of Category 2 species, and we dropped all former Category 2 species from the list. This was done in order to reduce confusion about the conservation status of those species, and to clarify that we no longer regarded them as candidate species. As a result, the dunes sagebrush lizard did not appear as a candidate in our 1996 (61 FR 7596; February 28, 1996), 1997 (62 FR 49398; September 19, 1997), or 1999 (64 FR 57534; October 25, 1999) notices of review.

In our 2001 CNOR, the dunes sagebrush lizard was placed on our candidate list with listing priority number (LPN) of 2 (66 FR 54807; October 30, 2001). Service policy (48 FR 43098, September 21, 1983) requires the assignment of an LPN to all candidate species that are warranted for listing. This listing priority system was developed to ensure that the Service has a rational system for allocating limited resources in a way that ensures that the species in greatest need of protection are the first to receive such protection. A smaller LPN reflects a need for greater protection than a larger LPN. The LPN is based on the magnitude and immediacy of threats and the species' taxonomic uniqueness with a value range from 1 to 12. A listing priority number of 2 for the dunes sagebrush lizard means that the magnitude and the immediacy of the threats to the species are high. Since 2001, the species has remained on our candidate list with an LPN of 2.

On June 6, 2002, the Service received a petition from the Center for Biological Diversity to list the dunes sagebrush lizard. On June 21, 2004, the United States District court for the District of Oregon (*Center for Biological Diversity* v. *Norton,* Civ. No. 03–1111–AA) found that our resubmitted petition findings for the southern Idaho ground squirrel, the dunes sagebrush lizard, and the Tahoe yellow cress that we published as part of the CNOR on May 4, 2004 (69 FR 24876), were not sufficient. The court indicated we did not specify what listing action is proposed for the higher priority species that precluded publishing a proposed rule for these three species, and that we did not adequately explain the reasons why actions for the identified species are deemed higher in priority, or why such actions result in the preclusion of listing actions for the southern Idaho ground squirrel, sand dune lizard, or Tahoe yellow cress. The court ordered that we publish updated findings for these species within 180 days of the order.

On December 27, 2004, the Service published its 12-month finding, which determined that listing was warranted, but precluded by higher priorities (69 FR 77167). In that finding, the species remains on the candidate list with a LPN of 2.

Species Information

The dunes sagebrush lizard is a small, light brown phrynosomatid lizard (family Phrynosomatidae, genus *Sceloporus*) with a maximum snout-to-vent length of 70 millimeters (mm) (2.8 inches (in)) for females and 65 mm (2.6 in) for males (Degenhardt *et al.* 1996, p. 160). Sabath (1960, p. 22) first described the occurrence of light-colored sagebrush lizards in southeastern New Mexico and western Texas. Kirkland L. Jones collected the type specimen for *Sceloporus arenicolus* on April 27, 1968, in eastern Chaves County, New Mexico (Degenhardt *et al.* 1996, p. 159). Degenhardt and Jones (1972, p. 213) described the dunes sagebrush lizard (*Sceloporus graciosus arenicolus*) as a subspecies of the sagebrush lizard (*Sceloporus graciosus*). The dunes sagebrush lizard was elevated to a species in 1992 and this elevation was validated with molecular and morphological evidence in 1997 (Painter *et al.* 1999, p. 3). Much of the previous literature concerning *Sceloporus arenicolus* refers to it by the common name of sand dune lizard (*e.g.,* Degenhardt *et al.* 1996, p. 159); however, the currently accepted common name is dunes sagebrush lizard (Crother *et al.* 2008, p. 39).

The dunes sagebrush lizard's nearest relative is the sagebrush lizard (*Sceloporus graciosus*), which is found in sagebrush habitat in northwestern New Mexico. The dunes sagebrush lizard and sagebrush lizard were isolated from each other about 15,000 years ago during the late Pleistocene era, when areas that had become warm and dry separated suitable habitat for each species. It is estimated that the shinnery oak sand dune habitat with which the dunes sagebrush lizard is associated was also formed during this time (Bailey and Painter 1994, p. 22; Chan *et al.* 2008, p. 8). The dunes sagebrush lizard is a habitat specialist that is native to a small area of shinnery oak dunes in southeastern New Mexico and adjacent western Texas. The shinnery oak dune habitat extends from the San Juan Mesa in northeastern Chaves County, Roosevelt County, through eastern Eddy and southern Lea Counties in New Mexico (Fitzgerald *et al.* 1997, p. 15). In Texas, the dunes sagebrush lizard is found in a narrow band of shinnery oak dunes in Gaines, Ward, Winkler, and Andrews Counties (Laurencio *et al.* 2007, p. 8).

Dunes sagebrush lizards are active between March and October and are dormant underground during the colder winter months. Mating has been observed in April and May (Sena 1985, p. 17). Females produce one to two clutches per year, with three to five eggs per clutch. Hatchlings appear between July and September (Hill and Fitzgerald 2007, p. 2; Sena 1985, p. 6).

Habitat

The dunes sagebrush lizard is considered to be a habitat specialist because it has adapted to thrive only in a narrow range of environmental conditions that exist within shinnery oak dunes. Its survival is directly linked to the quality and quantity of available shinnery oak dune habitat (Fitzgerald *et al.* 1997, p. 8). Shinnery oak dune habitat is dependent upon the existence of shinnery oak (*Quercus havardii*) in areas of appropriate sediment availability. Each shinnery oak tree occurs primarily under ground, with only one-tenth of the plant standing 0.6 to 0.8 meters (m) (2 to 3 feet (ft)) above ground level. Shinnery oaks are clonal, meaning that each plant in a clone is descended asexually from a single ancestor. One clone can cover up to 81 hectares (ha) (205 acres (ac)) and can live over 13,000 years, although individual stems on the surface may not be that old (Peterson and Boyd 1998, p. 5). These trees, with large root and stem masses and an extensive underground system of horizontal stems, support the dynamic dune system that is required by this lizard. Shinnery oak generally grows in permeable sandy soils, and does not grow in areas with high amounts of calcium carbonate or caliche, a hardened deposit of calcium carbonate (Peterson and Boyd 1998, p. 7), as discussed further below. Shinnery oak is very drought-tolerant and has a vertical root system that extends 4.6 to 6.1 m (15 to 20 ft) below the surface (Peterson and Boyd 1998, p. 5).

The unique shinnery oak dune ecosystem was formed in the late Pleistocene era when wind erosion of the Blackwater Draw formation and shinnery oak encroachment formed the dune system. The prevailing winds blow from the southwest to the northeast, creating the sand accumulation along the western edge of the Llano Estacado (a large mesa or tableland) (Muhs and Holliday 2001, p. 82). The dune fields of western Texas and eastern New Mexico are being stabilized by the shinnery oak cover and would flatten without the stability provided by this vegetation (Muhs and Holliday 2001, p. 75). The dune system is stable in most areas except where land practices have caused vegetation removal and shifting sands (Muhs and Holliday 1995, p. 198). It is estimated that shinnery oak historically covered 1,068,370 ha (2,640,000 ac) in New Mexico and 1,416,400 ha (3,500,000 ac) in Texas (Peterson and Boyd 1998, p. 2). Large portions of this shinnery oak habitat have been converted to cropland and rangeland. The shinnery oak community is not spreading, and its boundaries have not changed since early surveys, suggesting that new habitat is not being created (Peterson 1992, p. 2).

In 1982, it was estimated that there was one million acres (404,686 ha) of shinnery oak dunes in New Mexico (McDaniel *et al.* 1982, p.12). Currently, the amount of shinnery oak dune habitat is estimated to be 600,000 acres (248,811 ha), a 40 percent loss since 1982. Continued loss of shinnery oak dunes within the geographic range of the dunes sagebrush lizard since then has likely further decreased the amount of habitat available.

The connection between dunes sagebrush lizards and the shinnery oak dune system is very specific, and the range of the species is closely linked to the distribution of shinnery oak dunes (Fitzgerald *et al.* 1997, p. 4). The landscape created by the shinnery oak dune community is a spatially dynamic system. Shinnery oak and sand dunes form large dune complexes that are separated by flat areas without dunes called shinnery oak flats. It would be feasible to find dunes sagebrush lizards in shinnery oak flats that are adjacent to occupied dunes. Suitable habitat is separated by a mosaic of habitat types within or near the range of dunes sagebrush lizard. Landforms separating habitat may include mesquite hummocks, grasslands, and tabosa flats that are lacking shinnery oak and dominated by tabosa grass (*Hilaria mutica*) and scattered mesquite (*Prosopis glandulosa*).

Shinnery oak dune habitat is altered and moved by natural processes like wind and rain. Over time, with wind and rain eroding sand dunes, areas that contain dunes flatten out and new dunes form in the flats (Muhs and Holliday 2001, p. 75). These new dune complexes may then support dunes sagebrush lizards, so that areas that are currently unoccupied may become occupied with shifts in dunes over time (Fitzgerald *et al.* 1997, p. 27).

As discussed above, dunes sagebrush lizards are not found at sites lacking shinnery oak dune habitat (Fitzgerald *et al.* 1997, p. 2). Shinnery oak provides structure to the dune system, shelter for thermoregulation (regulation of body temperature), and habitat for the dunes sagebrush lizard's insect prey base (Bailey and Painter 1994, p. 22, Fitzgerald *et al.* 1997, p. 4). Within the shinnery oak dune system, dunes sagebrush lizards are found in deep, wind-hollowed depressions called blowouts, which are near vegetated edges where they escape under leaf litter or loose sand during the hot part of the day and at night (Painter *et al.* 2007, p. 3). The large, steep blowouts provide habitat for thermoregulation, foraging, predator avoidance, and the dunes sagebrush lizard's prey base. The diet of the dunes sagebrush lizard includes ants (Order Hymenoptera, Family Formicidae) and their pupae; small beetles (Order Coleoptera), including lady bird beetles (Family Coccinellidae) and their larvae; crickets (Order Orthoptera); grasshoppers (Order Orthoptera); and spiders (Order Araneae) (Degenhardt *et al.* 1996, p. 160).

Sand grain size appears to be a limiting factor in the distribution and occurrence of the dunes sagebrush lizard within the shinnery oak dunes. Laboratory and field experiments designed to determine sand grain preference demonstrated that dunes sagebrush lizards select sites with more medium sand grains and do not use finer sands (Fitzgerald *et al.* 1997, p. 6). Finer sand grain sizes are thought to limit the dunes sagebrush lizard's ability to effectively breathe when they bury themselves to avoid predators or to thermoregulate. Dunes sagebrush lizards instead prefer sand that is suitable for burying but not too fine to prevent respiration (Fitzgerald *et al.* 1997, p. 23). Sand grain size is also important in the establishment of dune blowouts and can influence the dune structure (Fitzgerald *et al.* 1997, p. 6).

The shinnery oak flats are used for movement of females to find nesting sites and for possible dispersal of recent hatchlings (Hill and Fitzgerald 2007, p. 5). Females often utilize more than one dune during the nesting season and have home range sizes of about 436 square meters (m^2) (4,693 square feet (ft^2)). The largest recorded home range is 2,799.7 m^2 (9,185.4 ft^2), which includes the movement of the tracked female from her primary home range to her nesting site (Hill and Fitzgerald 2007, p. 5). Females build nest chambers and lay eggs in the moist soil below the surface. Nests have been observed on west-facing, open sand slopes with little to no vegetation, approximately 18 centimeters (7.1 in) below the sand surface (Hill and Fitzgerald 2007, p. 5).

Distribution

The dunes sagebrush lizard is limited to a narrow, isolated band of shinnery oak dunes between elevations of 780 and 1,400 m (2,600 and 4,600 ft) in southeastern New Mexico and adjacent western Texas. Populations are separated by vast areas of naturally unsuitable and unoccupied habitat (Painter *et al.* 1999, p. 1).

New Mexico

The known geographic range of the dunes sagebrush lizard in New Mexico includes portions of Chaves, Roosevelt, Lea, and Eddy Counties (Fitzgerald *et al.* 1997, p. 23). At its widest, the dunes sagebrush lizard's range is 2,693 hectares (6,654 ac) and in some areas is less than 233 hectares (576 ac) wide (Fitzgerald *et al.* 1997, p. 2).

The distribution of the dunes sagebrush lizard in New Mexico was not formally described until 1997, using the results of 169 standardized surveys conducted at 157 sites. Of the 157 sites surveyed, 72 sites were determined to be occupied by dunes sagebrush lizards. Thirty of these sites are in Chaves County, 8 in Eddy County, 4 in Roosevelt County, and 30 in Lea County (Fitzgerald *et al.* 1997, Appendix 1). During 2008, 54 of the 72 positive sites that were surveyed during the 1997 study were re-surveyed. Dunes sagebrush lizards were absent from 11 of the 54 sites (20 percent) in which they were recorded during the 1997 study (Painter 2008a, p. 1). Not all of the 72 positive sites surveyed during the 1997 study were re-surveyed in 2008 due to poor weather conditions or access issues. Additional surveys were conducted during 2010 to investigate the status of the population of dunes sagebrush lizards at the remaining sites. The total number of historic sites that were surveyed in 1997 was 72, and 17 of those (24 percent) no longer have lizards. Some of these sites have been sprayed with tebuthiuron (a herbicide used to remove shinnery oak), and some were in areas where the habitat was removed (Painter 2010, p. 1).

In New Mexico, there are three genetically and geographically distinct populations of dunes sagebrush lizards: the northern population (near Kenna, New Mexico), the central population (at the Caprock Wildlife Area, north of US Highway 380), and the southern population (near Loco Hills and Hobbs, New Mexico). These populations are separated by geologic and ecologic landscape barriers, such as the caliche caprock of the Llano Estacado plateau, mesquite hummock landscapes, highways, roads, and oil and gas pads, that form areas of unsuitable vegetation, and dune structure (Chan *et al.* 2008, p. 13). The northernmost population near Kenna is evolutionarily considered to be the youngest population that is now genetically isolated from the central and southern populations. Genetic divergence of the northern population from the central populations has occurred due to natural and human-caused habitat conversion, including mesquite hummock landscapes, road and pad construction associated with oil and gas development, land conversion for agriculture, and the presence of short and tall grass prairie (Chan *et al.* 2008, p. 13).

The southern population is considered to be the oldest population of dunes sagebrush lizard and is genetically isolated from the central population due to the presence of the uninhabitable caliche caprock of the Llano Estacado plateau. Due to the presence of the caprock, where dunes sagebrush lizards do not occur, suitable shinnery oak dune habitat is limited to a narrow 8-km (4.9-mile) patch between the southern and central populations. Data from Chan *et al.* (2008, p. 10) suggest that conservation of large areas that contain a network of dune complexes is needed to maintain historical levels of connectivity, and maintain the unique genetic qualities of the three dunes sagebrush lizard populations in New Mexico.

Texas

In Texas, the species was historically found in Andrews, Crane, Ward, and Winkler Counties. During 2006 and 2007, surveys were conducted to determine the current distribution of the dunes sagebrush lizard in the State. Surveys were conducted at 27 sites (19 of these sites were historical localities) that contained potential dunes sagebrush lizard habitat in Andrews, Crane, Cochran, Edwards, Ward, and Winkler Counties. Dunes sagebrush lizards were found at only 3 of the 27 sites surveyed (Laurencio *et al.* 2007, p. 7). Two of the sites were in large patches of shinnery oak dunes that stretch through Ward, Winkler, and Andrews Counties. In north and western Crane County, shinnery oak dune habitat exists, but dunes sagebrush lizards were not found. One dunes sagebrush lizard was found at a site in Gaines County that is within the easternmost contiguous habitat that stretches from the southernmost population in New Mexico (Laurencio *et al.* 2007, p. 11). The sites where dunes sagebrush lizards were detected in either 2006 or 2007 likely comprise the last occupied habitat for dunes sagebrush lizards in Texas (Laurencio *et al.* 2007, p. 11). During these surveys the search time to find dunes sagebrush lizards was between 68 and 115 person-minutes. The species is considered rare at sites where it takes more than 60 minutes to find a dunes sagebrush lizard. By comparison, at some sites in shinnery oak dune habitat in New Mexico, 74 percent of dunes sagebrush lizards are found within 31 person-minutes. The longer search time required to encounter individuals in a given area may represent a lower number of individuals in that area. Future surveys should incorporate detection probabilities and utilize standard survey techniques for the species, in order to more accurately compare results.

Dunes sagebrush lizard populations in Texas are all on private land except for the population at Monahans Sandhills State Park, a 1,554-ha (3,840-ac) park where dunes sagebrush lizards were thought to be extirpated after surveys were completed in 2007 (Laurencio *et al.* 2007, p. 11). In 2010, the park was again surveyed, and dunes sagebrush lizards were present (Fitzgerald 2010, p. 1). Monahans Sandhills State Park is a well-known historic locality that is the only area where dunes sagebrush lizards have been known to occur on public lands in Texas. It is evident that the dunes sagebrush lizard is still present at the park, but the negative survey data from 2007 suggests they may be present in small numbers, and that further monitoring should be done at this site.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species 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; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In 1982, there was an estimated 400,000 ha (1,000,000 ac) of habitat suitable for the dunes sagebrush lizard in New Mexico. Today, there is an estimated 240,000 ha (600,000 ac) of suitable habitat, a decrease of 40 percent. Within the remaining suitable habitat, the current occupied range is estimated to cover 405,599 ac (165,759 ha) (McDaniel *et al.* 1982, p. 12). Other portions of the range have been developed for oil and gas infrastructure. The shinnery oak community that supports the dunes sagebrush lizard is now considered a highly threatened community (Dhillion *et al.* 1994, p. 52). Changes in either land management practices or climate that impact the vegetative community could destabilize the dunes and reduce the potential for the habitat to persist (Muhs and Holliday 2001, p. 86).

In addition to habitat loss, habitat fragmentation breaks up large areas of suitable habitat into smaller patches. This causes the removal of interior habitat, the loss of vegetation and cover, and an increase in the proportion of habitat edge to interior. Habitat edge is the outer portion of a patch that abuts converted or otherwise unsuitable habitat, and it is where there are the greatest interactions between the shinnery oak dune natural habitat and human-altered unsuitable habitat (Dramsted *et al.* 1996, p. 27). Shinnery oak provides basic needs that impact survivorship, growth, and reproductive ability for the dunes sagebrush lizard. In general, interior habitat provides protection from predators, habitat for mating and foraging, shade, and habitat for the dunes sagebrush lizard's insect prey base (Degenhardt *et al.* 1996, p. 160). It is thought that habitat edges that are adjacent to well pads and roads do not provide the basic structure for survivorship, growth, and reproduction. In general, individuals that live near the habitat's edge have limited resources because the exterior areas do not provide adequate shade, cover, or resources for an insect prey base (Dramstad *et al.* 1996, p. 28).

We do not know how large habitat patches need to be in order to maintain viable populations of dunes sagebrush lizards. However, literature published on other lizard species has shown that populations within smaller habitat patches have a greater risk of extinction than those in large habitat patches because small patches support fewer individuals and have a higher proportion of less suitable edge habitat than more suitable interior habitat (Dramsted *et al.* 1996, p. 20). Larger habitat patches provide vegetative cover, maintain dune structure, and provide habitat for the insect prey base. Dunes sagebrush lizard populations move across the landscape with the movement of the shinnery oak dune system. The movement of this dynamic system could be interrupted by habitat fragmentation that would prevent the natural shift in dunes and cause the current dune structures to collapse. There is no evidence to suggest that dunes sagebrush lizards will traverse unsuitable habitat to find suitable habitat patches (Fitzgerald *et al.* 1997, p. 26). Connectivity and movement between patches could play an important role in determining the occupancy and sustainability of each patch (Barrows and Allen 2007, p. 66). Removal of a patch reduces the size of a population, increasing the probability of local extinctions and reducing the stability of the population (Dramsted *et al.* 1996, p. 23). If dunes sagebrush lizards are unable to move between habitat patches because of fragmentation and habitat loss, genetic diversity will be lost (Chan *et al.* 2008, p. 10). For this reason, areas of apparently suitable, but currently unoccupied habitat may be important to the long term survival of dunes sagebrush lizards, but we have no data to support this hypothesis for dunes sagebrush lizards.

In the dynamic shinnery oak dune system, habitat patches have not been consistent over time, and genetic diversity of populations has historically been linked to the connectivity of the entire system (Chan *et al.* 2008, p. 10). The habitat for the dunes sagebrush lizard is currently patchy and fragmented throughout the dunes sagebrush lizard's range, and populations are not connected by suitable habitat due to natural and human-caused processes (Chan *et al.* 2008, p. 10). Therefore, the loss of habitat and fragmentation can lower migration rates and genetic connectivity among remaining populations of dunes sagebrush lizards, reducing genetic variability and increasing extinction risk.

For the similar sand-dwelling Coachella Valley fringe-toed lizard (*Uma inornata*), a decrease in habitat patch size resulted in an increased probability of local extinction. For isolated habitat patches to sustain lizard populations, patch size needed to be at least 100 ha (247 ac) (Chen *et al.* 2006, p. 28). When large habitat patches are divided into smaller patches, there is increased edge habitat, decreased interior habitat, and increased probability of local extinction of the species within these patches. Lizards within smaller habitat patches have an increased chance of going extinct because they have less of a barrier between the core patch and the habitat disturbance. The probability of a species going extinct in local habitat patches increases with the increasing isolation and decreasing size of that patch (Dramstad *et al.* 1996, pp. 20–24). Additional research will verify if this is true for dunes sagebrush lizard.

The shinnery oak dune system has undergone extensive alteration and fragmentation because of past and present land uses, including oil and gas development, habitat conversion for cropland and rangeland, and off-highway vehicle (OHV) use (Painter *et al.* 1999, p. 1). Due to habitat conversion and fragmentation, there are historical areas that no longer support populations of dunes sagebrush lizards (Sias and Snell 1997, p. 1; Laurencio *et al.* 2007, p. 1; Chan *et al.* 2007, p. 337). In Texas, dunes sagebrush lizards no longer occupy 86 percent of the historically occupied sites (Laurencio *et al.* 2007, p. 5). Dunes sagebrush lizards were not found at 20 percent of historically occupied sites that were surveyed during distribution studies in New Mexico (Painter *et al.* 2008, p. 1). Other threats that are also expected to contribute to habitat loss, modification, or fragmentation in the future include wind and solar energy development, climate change (discussed in *Factor E,* below), and die-off of shinnery oak due to natural events.

Oil and Gas Development

The infrastructure for oil and gas development includes roads, pads where well pumps and drilling rigs are placed, battery tanks, power lines, pipelines, and injection wells. As discussed below, increased oil and gas development in the range of the dunes sagebrush lizard, including seismic exploration, has caused direct and indirect effects to dunes sagebrush lizard habitat. Removal and fragmentation of dunes sagebrush lizard habitat has been caused by a grid of roads and pads, pipelines, and power lines that are found throughout the entire range of the dunes sagebrush lizard. Oil and gas extraction activities have destroyed and fragmented dunes sagebrush lizard habitat and have resulted in population losses, including all localities within northeastern Crane County, Texas, where historical populations have been extirpated (Laurencio *et al.* 2007, p. 9). A 2007 report from the Bureau of Land Management (BLM) (pp. 3–16) states

that there have been significant reductions of dunes sagebrush lizard population sizes in New Mexico that are associated with surface disturbance and removal of shinnery oak due to activities such as oil and gas development, herbicide treatment, and the creation of roads associated with new rights-of-way. According to the BLM's data, 65 percent of occupied or suitable shinnery oak habitat across the lizard's range in New Mexico, has been fragmented with roads and well pads (Hill 2008, pers. comm.).

Much of the dunes sagebrush lizard's current range has been developed or is planned for future oil and gas development. In Texas, over 50 percent of oil production occurs in Districts 8 and 8A (Texas oil and gas districts); these districts overlap the known geographic range of dunes sagebrush lizards (Tarver and Dasgupta 1997, p. 3670).

Currently, 70 percent of land within the New Mexico range of the dunes sagebrush lizard has been leased by private entities, BLM, or the New Mexico State Land Office (NMSLO) for oil and gas exploration and development (Winter 2010, p. 2). Seventy-one percent of the minerals within the range of the dunes sagebrush lizard are Federally owned and fall under BLM lease stipulations and the Pecos District (NM) Special Status Species Resource Management Plan Amendment (RMPA). The RMPA was developed to address sensitive species conservation concerns and to establish the minimum requirements that will be applied to all future Federal activities covered by the RMPA for both the dunes sagebrush lizard and the lesser prairie chicken (*Tympanuchus pallidicinctus*), which share some common habitat in New Mexico.

Density of Wells and Well Pads

In New Mexico, Sias and Snell (1998, p. 3) reported a negative relationship between oil well density and dunes sagebrush lizard abundance and noted an environmental sensitivity not found in other reptile species. Dunes sagebrush lizard abundance declined by 25 percent when there were 13 oil or gas well pads per section (each section has an area of approximately 260 ha (640 ac)), and the number of dunes sagebrush lizards declined by 50 percent when there were 29 pads per section (Sias and Snell 1998, p. 3). Any shinnery oak dune habitat within 600 m (1968 ft) of any well supported 31 to 52 percent fewer dunes sagebrush lizards than areas farther than 600 m (1968 ft) from a well (Sias and Snell 1998, p. 1).

The 172,900 ha (427,200 ac) of shinnery oak dune habitat that have been fragmented with roads and well pads have 5,911 oil well pads or injection wells and 529 gas wells. Each oil pad averages 2 or 3 acres, and each gas pad averages 3 or 4 acres. Currently there are approximately 9,700 ha (24,000 ac) of well pad disturbance in New Mexico, not including roads, within the area occupied by the dunes sagebrush lizard (Hill *et al.* 2008, p. 1).

The oil field with the greatest impact to dunes sagebrush lizard habitat is in the southern part of the dunes sagebrush lizard's range, where the density of roads and well pads may be contributing to further separation of the southern population from the central population of dunes sagebrush lizards (Chan *et al.* 2008, p. 9). This development covers an area of shinnery oak dunes measuring 8 km (5 mi) by 26 km (16 mi) between U.S. Highway 82 and U.S. Highway 62 in Lea and Eddy Counties. In this area there are 142 sections (36,780 ha (90,880 ac)) where the well pad density is greater than 13 wells per section. Throughout the southern part of the dunes sagebrush lizard's range, the majority of these sections of land have greater than 20 wells per section, and some have greater than 40 wells per section. The highest density of well development in this area has more than 60 wells per section with a maze of associated roads (Hill *et al.* 2008, p. 1). In a special species planning area within BLM's Pecos District, which incorporates all of the dunes sagebrush lizard's habitat on BLM land in New Mexico, approximately 100 new wells per year are to be drilled over the next 20 years (BLM 2007, p. 4–37).

An example of the impacts of well placement on the dunes sagebrush lizard can be found in two sections (approximately 520 ha (1,280 ac)) of shinnery oak dune habitat in the area of Loco Hills in the southern part of the dunes sagebrush lizard's range in Eddy County (40 km (25 mi) east of Artesia). This area once supported one of the most persistent populations of dunes sagebrush lizards in the State and was used for many years as an observation site for students and researchers studying the dunes sagebrush lizard. As of 2003, over 40 oil wells had been placed on these sections; extensive surveys conducted in this area found no dunes sagebrush lizards present (Service 2007, p. 5; Fitzgerald 2008, p. 1).

Hatchling and adult dunes sagebrush lizards have been found in shinnery oak flats between large dunes, suggesting that the area between the sand dunes is important for dispersal. Surveys by the BLM recorded dunes sagebrush lizards in the shinnery oak flats (Bird 2007, p. 2). In the past, oil and gas development has been directed into the shinnery oak flats and out of the dune complexes to lessen the impact to the dunes sagebrush lizard. However, development in the shinnery oak flats may be affecting dispersal of the dunes sagebrush lizards from one dune complex to another (Painter *et al.* 2007, p. 3). Currently there are no considerations being made for maintaining these undeveloped corridors in shinnery oak flats between dune complexes, which may be a significant threat to dunes sagebrush lizard dispersal.

Roads and Well Pads

Based on various studies in similar lizard species, it would be expected that there would be negative impacts to dunes sagebrush lizard habitat as a result of roads and pads associated with oil and gas development. These impacts include soil compaction, decreased stability of microclimates, loss of habitat, decreased habitat quality, division of the ecosystem with artificial gaps, abrupt habitat edges, conversion of habitat interior to habitat edge, and introduction of nonnative weed species (Endriss *et al.* 2007, p. 320; Delgado-Garcia *et al.* 2007, p. 2949). Negative impacts of roads and pads to the lizard populations include the subdivision of populations into smaller and more vulnerable patches; inhibited access to resources for foraging, breeding, nesting, predator avoidance, and thermoregulation; behavior modification; and direct mortality due to collisions (Jaeger *et al.* 2005, p. 329; Ingelfinger and Anderson 2004, p. 385; Delgado-Garcia *et al.* 2007, p. 2949; Ballesteros-Barrera *et al.* 2007, p. 736; Sias and Snell 1995, p. 28). When the shinnery oak dune habitat is destroyed or fragmented by roads and pads, the resources provided by the shinnery oak are subsequently reduced. In studies of other lizard species where habitat is highly fragmented, lizards are limited to small habitat patches. These studies have also found increased mortality due to collisions with vehicles and inaccessibility to habitat, mates, and prey reduce the population size and population persistence (Delgado-Garcia *et al.* 2007, p. 2949).

A common method of creating roads and pads in dune areas is to truck caliche (soil with high amounts of calcium carbonate) into the sand system. Dunes sagebrush lizards are not found in areas with compact soil, like that of caliche roads and well pads (Fitzgerald *et al.* 1997, p. 3). Shinnery oak requires permeable sand in order to

establish and grow and does not grow in areas with high amounts of calcium carbonate (Peterson and Boyd 1998, p. 6).

The vast network of roads and pads throughout the shinnery oak dune habitat alters the habitat, making it difficult for shinnery oak to persist; the trees cannot grow through compacted areas, with increased calcium carbonate, or through permanently paved areas. Well pad and road construction removes shinnery oak, and further degrades the habitat by compacting the soil. After well pads are abandoned, shinnery oak does not reestablish unless the caliche is removed (Boyd and Bidwell 2002, p. 332).

The current existence and future establishment of roads and well pads throughout the dunes sagebrush lizard's habitat is a significant threat to the species throughout its range. Impacts from roads and well pads cause the loss of basic needs including habitat for foraging, breeding, nesting, predator avoidance, and thermoregulation.

Pipelines

Every oil or gas well has an associated pipeline, and each oil or gas company has a separate right-of-way for each pipeline. Pipelines located throughout suitable and occupied dunes sagebrush lizard habitat destabilize dunes because heavy equipment is used to remove shinnery oak and bury the lines in the sand. Pipelines also expose dunes sagebrush lizards to petroleum chemical leaks and an increased likelihood of being crushed by OHV travel due to maintenance crews using vehicles along pipelines (Sias and Snell 1998, p. 3). On May 16, 2010, a pipeline burst in dunes sagebrush lizard habitat, spraying oil into the air and across the landscape (Leavitt 2010, p. 1). These spills introduce toxins and contaminants into the soil and cover surrounding vegetation.

There have been numerous recorded instances of reptiles and amphibians being trapped in pipeline, waterline, and telecommunication line trenches (Hawken 1951, p. 81; Anderson *et al.* 1952, p. 276). For example, in 2001, a 4.8-km (3.0-mi) long telecommunication line trench (similar in structure to pipeline trenches) on Albuquerque, New Mexico's West Mesa was monitored for trapped animals. During 23 days of monitoring, 298 reptiles and amphibians, including several lizard species, were removed from the trench (Painter 2008, p. 1). There were no escape ramps along the trench, so it was impossible for animals to escape.

During a distribution survey for dunes sagebrush lizards in July 2008, the New Mexico Department of Game and Fish (NMDGF) found an open pipeline ditch that went through State, private, and BLM land. The open ditch was approximately 1.2 m (4 ft) wide and 1.2 m (4 ft) deep, bisecting a dune complex known to be occupied with dunes sagebrush lizards. The large, open ditch had formed a pitfall trap where animals could not escape if they fell in. There were no dunes sagebrush lizards found in the ditch at the time of the survey, but other reptiles were found in the ditch, and surveyors were concerned that dunes sagebrush lizards could easily be trapped in the ditch (Currylow *et al.* 2008, p. 1).

Some existing pipelines located within shinnery oak dunes provide temporary dune-like areas where dunes sagebrush lizards are found. Twenty-four percent of dunes sagebrush lizards found during BLM surveys were found along pipelines adjacent to shinnery oak dunes (Bird 2006, p. 2), although it is not known how dunes sagebrush lizards utilize existing pipelines (Sias and Snell 1998, p. 5; Bird 2005, p. 1; Bird 2006, p. 1; Bird 2007, p. 1), and it is unclear whether these areas provide permanent habitat.

Pipelines are located throughout the range of the dunes sagebrush lizard, are currently being built with every well pad, and will continue to be built in the future. There are no established corridors for pipelines and each pipeline has its own right-of-way, making for new disturbed areas each time a pipeline is established. We believe pipelines pose a significant threat to the dunes sagebrush lizard in areas where oil and gas infrastructure is most dense, especially as increases in oil and gas activities expand in the central and northern parts of the range of the species. Unless they are routed around habitat, the current existence and future establishment of pipelines throughout the dunes sagebrush lizard's habitat is a significant threat to the species throughout its range.

Seismic Exploration

Seismic exploration utilizes artificially induced shock waves to search for subsurface deposits of crude oil, natural gas, and minerals, and to facilitate the location of prospective drilling sites. Shock waves are produced by vibratory mechanisms mounted on specialized trucks known as thumper trucks that weigh approximately 60 tons. Seismic waves then reflect and refract off subsurface rock formations and travel back to acoustic receivers called geophones. The time it takes for seismic energy to return aids in the estimation of the structure and stratigraphy of subsurface formations (Pendleton *et al.* 2008, p. 1). Seismic exploration is conducted prior to the development of oil and gas fields, in order to determine the below surface availability of oil or gas and refine the placement of well pads.

Seismic exploration for oil and gas is a periodic threat to the dunes sagebrush lizard and its habitat. Threats to dunes sagebrush lizard habitat occur because heavy thumper trucks can cause the destabilization of dunes by driving through dune complexes (Painter 2004, p. 4). Seismic exploration can also pose a direct threat to the dunes sagebrush lizard. Dunes sagebrush lizards are dormant and immobile during colder winter months (October through March). If seismic exploration occurs during the winter months when dunes sagebrush lizards are dormant beneath the soil surface and unable to move, dunes sagebrush lizards could be crushed. If the exploration occurs during the nesting season, eggs that are buried below the surface could also be destroyed (Painter 2004, p. 4). Seismic exploration poses an imminent threat for a short period of time while the trucks are crossing a given area. Once an area has been surveyed, it will likely not be surveyed again. Proposed seismic explorations in an area north of the Loco Hills will cover up to 650 ha (1,600 ac) of suitable and occupied dunes sagebrush lizard habitat and pose an indirect threat through further development, which will lead to habitat fragmentation and isolation (discussed above) north of the already dense oil fields in Loco Hills. There are ongoing permit applications for seismic exploration within both occupied and unoccupied suitable habitat across the range of the dunes sagebrush lizard. We believe that seismic exploration is a localized threat with moderate impacts to individual dunes sagebrush lizards, but it is usually a prelude to the future expansion of oil and gas development in an area.

Wind and Solar Energy Development

Eastern New Mexico and western Texas are highly suitable areas for wind and solar energy development. The NMSLO has leased 1,520 ha (3,757 ac) of trust land in Chaves and Roosevelt Counties to Xcel Energy for a 120-megawatt (MW) wind farm. Additionally, two new wind projects are under development on State trust lands in Chaves County, and one in Eddy County. The Service has also been contacted by a consultant for a wind energy farm to be located in Lea County, near Tatum, New Mexico. The proposed

project area is near the range of the dunes sagebrush lizard (Riley 2008).

The infrastructure for wind and solar energy would cause similar habitat fragmentation as that produced by oil and gas development. Potential direct effects to the dunes sagebrush lizard from wind energy development include physical disturbance during construction and maintenance of a project, habitat loss, and habitat fragmentation associated with the infrastructure of the project. A wind farm infrastructure typically consists of: (1) The physical disturbance around a tower; the area of a turbine workspace during construction (temporary) is usually a 46 to 61 m (150 to 200 ft) radius around the turbine and permanently a 15 m (50 ft) radius; (2) Gravel access roads linking wind turbines strings to each other and to existing roads; (3) Area for a concrete batch plant, if required; and (4) Buildings housing electrical switchgear, supervisory control and data acquisition central equipment, and maintenance facilities. Additionally, vehicle traffic to turbines over the life of the facility, expected to average 20 years, could pose a threat similar to the infrastructure of oil and gas development to the dunes sagebrush lizard. Alteration of habitat related to wind energy development could influence habitat suitability for this species; however, we are unaware of any studies at wind energy development sites that have examined these effects.

Although there is no specific information available to implicate wind or solar energy development as a threat to the dunes sagebrush lizard at this time, there is concern regarding potential effects if wind and solar development were to occur in the species' habitat. More information is necessary to determine if any effects will result from specific alternative energy projects that will be located within dunes sagebrush lizard habitat. However, the BLM's RMPA states that applications to permit either solar or wind energy on public land within the RMPA planning area will not be approved unless the applicant can demonstrate, using peer-reviewed science, that there will be no negative impacts to dunes sagebrush lizards.

Off-Highway Vehicle (OHV) Use

An OHV is any motorized vehicle capable of or designated for travel on or immediately over land, water, or other natural terrain. This could include motorcycles and off-highway motor bikes, all terrain vehicles, dune buggies, snowmobiles, most four-wheel drive automobiles, and any other civilian vehicle specifically designed for off-road travel (Ouren *et al.* 2007, p. 4). Extensive use of OHVs can cause soil compaction, reduce plant cover, and degrade habitat (Ouren *et al.* 2007, p. 4), causing the loss of basic needs including habitat for foraging, breeding, nesting, predator avoidance, and thermoregulation for lizard species (Jaeger *et al.* 2005, p. 329; Ingelfinger and Anderson 2004, p. 385; Delgado-Garcia *et al.* 2007, p. 2949; Ballesteros-Barrera *et al.* 2007, p. 736). Research in other dune systems has found that in areas where plant cover is reduced, there are greater rates of erosion that would lead to dune destabilization. Routes used by OHVs form mazes through large areas of dunes, fragmenting the habitat and reducing habitat connectivity at a landscape level (Ouren *et al.* 2007, p. 5). Studies on other lizard species have found that OHV travel causes increased mortality due to lizard collisions with the vehicles themselves (Delgado-Garcia *et al.* 2007, p. 2949).

Use of OHVs has been determined to be one of the greatest threats to the Coachella Valley fringed toed lizard, which is another dune-restricted lizard species (Painter 2004, p. 5). The presence of OHV pathways throughout dunes sagebrush lizard's habitat led researchers to believe that high levels of OHV activities were the cause for population losses in Texas (Laurencio *et al.* 2007, p. 10), but that is likely not the primary cause of extirpations in New Mexico (Painter 2004, p. 5). Nevertheless, OHV use is a factor impacting the species within parts of its geographic range. For example, on BLM land in New Mexico, established OHV areas such as the Square Lake Dune Complex and the Mescalero Sands North Dune OHV Area are adjacent to or within habitat occupied by the dunes sagebrush lizard. These OHV areas were established to concentrate OHV use to designated areas, and BLM made some dune complexes off limits to OHV use. The OHV use planned for the Square Lake Dune Complex is limited to existing roads, trails, and unvegetated dunes (BLM 2007, p. 4–45). This area is currently being used by OHVs, and BLM plans to formally designate this area for OHV use. Because the shinnery oak dunes in this area are occupied by dunes sagebrush lizards (Fitzgerald *et al.* 1997, Appendix 1), any violation of the limitations of OHV use to existing roads, trails, and unvegetated dunes is likely to negatively impact the dunes sagebrush lizards in this shinnery oak habitat.

The Mescalero Sands North Dune OHV Area is considered an open area of more than 600 acres (243 ha), where vehicles are not restricted to designated trails (BLM 2007, p. 4–45), although this OHV area is occupied by dunes sagebrush lizards (Fitzgerald *et al.* 1997, Appendix 1). Authorized OHV activities have degraded shinnery oak dunes, potentially crushed dunes sagebrush lizards, and introduced weed species within the otherwise open dune blowouts (Hill 2008b, p. 1). At this OHV area, all surveyed dunes have multiple OHV trails, exposed shinnery oak roots, and erosion, and no dunes sagebrush lizards were detected in this area (Hill 2008b, p. 1).

In areas that are not designated for OHV use, there are no signs identifying that the area is closed to OHV traffic, and law enforcement is limited. There are restrictions to OHV use on lands managed by BLM and the State of New Mexico, but there is no signage and little enforcement. As a result, dune habitat is being destroyed and modified (Hill 2008b, p. 1). Although OHV use is not known to be occurring in all portions of the range of the dunes sagebrush lizard, we believe it is a significant threat to the species where occupied dunes are located in OHV areas and extensive habitat degradation occurs. Off-highway vehicle use is not considered to be the most significant threat to the dunes sagebrush lizard, but it does contribute to a decline of habitat in areas where it is prevalent.

Shinnery Oak Removal

Shinnery oak is removed for the purpose of clearing for agriculture and for grazing. Shinnery oak is toxic to cattle when it first produces leaves in the spring, and it also competes with more palatable grasses and forbs for water and nutrients (Peterson and Boyd 1998, p. 8). Shinnery oak is also managed for the control of boll weevil (*Anthonomus grandis*), which destroys cotton crops. Boll weevils overwinter in areas where large amounts of leaf litter accumulate. Fire is used to remove leaf litter, and then tebuthiuron, an herbicide, is used to remove shinnery oak (Plains Cotton Growers 1998, pp. 2–3). Over 40,000 ha (100,000 ac) of shinnery oak in New Mexico and 400,000 ha (1,000,000 ac) of shinnery oak in Texas have been lost due to the spraying of tebuthiuron and other herbicides (Peterson and Boyd 1998, p. 2).

A 5-year study was conducted to determine the effects of tebuthiuron application on the dunes sagebrush lizard. This study documented that dunes sagebrush lizards were absent at 50 percent of the previously occupied sites where spraying had occurred

(Painter *et al.* 1999, p. 2). Shinnery oak removal results in dramatic reductions and extirpations of dunes sagebrush lizards (Snell *et al.* 1997, p. 8). For example, the extirpation of dunes sagebrush lizards was repeatedly confirmed by Snell *et al.* (1997, p. 1) from areas that were treated with herbicides to remove shinnery oak. Dunes sagebrush lizard numbers dropped 70 to 94 percent in areas that were chemically treated, compared to adjacent untreated plots. Some plots experienced 100 percent population loss in areas treated with tebuthiuron. Painter *et al.* (1999, p. 38) estimated that about 24 percent of the total dunes sagebrush lizard habitat in New Mexico had been eliminated by 1999 due to herbicide spraying.

Habitat loss and dunes sagebrush lizard declines are not linked to the actual application of tebuthiuron, but rather to the long-term effects associated with the removal of shinnery oak habitat (Snell *et al.* 1997, p. 3). Herbicide spraying removes or reduces natural shinnery oak vegetation and creates smaller habitat patches rather than naturally occurring large expanses of shinnery oak. Given the history and current practices of herbicide application within dunes sagebrush lizard habitat, much of the remaining areas are at risk. For example, if further parcels of suitable dunes sagebrush lizard habitat are treated, smaller habitat patches would be created, and we would expect the movement of dunes sagebrush lizards between local populations will be restricted. This could lead to further extirpations of dunes sagebrush lizards within patches.

On BLM lands, the RMPA states that tebuthiuron may only be sprayed in shinnery oak habitat if there is a 500-m (1,600-ft) buffer around dunes, and that no chemical treatments should occur in suitable or occupied dunes sagebrush lizard habitat (BLM 2007, p. 4–22). However, the NMSLO and private land owners continue to use tebuthiuron to remove shinnery oak for cattle grazing and agriculture. The Natural Resource Conservation Service's herbicide spraying has treated shinnery oak in at least 39 counties within shinnery oak habitat, which includes all of the counties with suitable and occupied habitat for the dunes sagebrush lizard (Peterson and Boyd 1998, pp. 4). The BLM also treats mesquite with herbicides to improve livestock forage. In order to treat encroaching mesquite, BLM aerially treats mesquite with a mix of the herbicides Remedy (triclopyr) and Reclaim (clopyralid). According to the RMPA, occupied and suitable habitat for the dunes sagebrush lizard should not be treated. These chemicals are used to treat the adjacent mesquite, but can also kill shinnery oak, depending on the concentration.

Ongoing removal of shinnery oak on State and private lands in New Mexico and Texas is an imminent threat to the dunes sagebrush lizard with long-term negative effects. Buffering an individual dune from shinnery oak spraying is not sufficient to keep the habitat intact. Because the majority of the shinnery oak plant is underground and acts to stabilize the dunes, its removal in the vicinity of the dune will cause the dune to collapse (Muhs and Holliday 2001, p. 75).

We believe that the removal of shinnery oak with herbicides such as tebuthiuron is a significant threat to the dunes sagebrush lizard throughout its range. Habitat in which shinnery oak is removed with herbicides fails to meet the basic needs of the dunes sagebrush lizard, including foraging, breeding, nesting, predator avoidance, and thermoregulation. Habitat fragmentation has caused and will continue to cause inaccessibility to habitat, mates, and prey that could reduce the population size; threaten population persistence; and potentially cause local extirpations of dunes sagebrush lizards.

Grazing

As discussed above, removal of shinnery oak to improve rangelands is a threat to the dunes sagebrush lizard; however, there may also be direct impacts of grazing on dunes sagebrush lizards. While there has been no specific research regarding the impacts of grazing on dunes sagebrush lizards, dunes sagebrush lizards have been found in areas that are moderately grazed (Painter *et al.* 1999, p. 32). In shinnery oak dune habitat, high densities of livestock can lead to overutilization and result in reduced ground cover, increased annual grasses and forbs, decreased perennial grasses, and increased erosion (Painter *et al.* 1999, p. 32). These conditions can be adverse for the dunes sagebrush lizard. Some research has shown that high levels of grazing removes grasses and forbs, compacts the soil, increases bare ground, and reduces water infiltration. These conditions could alter dune structure and decrease vegetation availability for foraging, mating, and predator avoidance (Smith *et al.* 1996, p. 1307; Castellano and Valone 2006, p. 87). While it is clear from this discussion that shinnery oak removal to improve rangeland conditions is a threat to the species, the direct impact of grazing on dunes sagebrush lizards is unknown at this time.

Other Factors Impacting Shinnery Oak

In discussions with BLM habitat specialists, the Service learned that there are many natural events that can impact the shinnery oak dune system and have results similar to spraying with herbicide. Sudden oak death, infestation by root-boring insects, and a known moth parasite can quickly defoliate and kill large stands of shinnery oak (Hill 2008a, pers. comm.). According to BLM habitat specialists, in a system that is susceptible to environmental extremes, events such as drought and late freezes could cause dramatic shifts in the available habitat. For example, in early May of 2008, thousands of acres of shinnery oak dune habitat in the Caprock Wildlife Area in east central Chaves County, New Mexico, were defoliated. After reviewing the situation, Service and BLM staff determined that the defoliation was caused by the combination of low precipitation during the winter and a late freeze that stressed the oak. By early June, the trees had leafed out and were once again providing habitat for the dunes sagebrush lizard (Hill 2008a, pers. comm.). Large habitat patches are more likely than small, fragmented sites to be resilient to natural events.

All of these factors could potentially cause the decline of shinnery oak habitat, and thus lead to the decline of dunes sagebrush lizards. The likelihood of habitat loss due to natural events is unknown and not predictable. Although these factors likely impact shinnery oak, we are unable to determine the long-term impact on shinnery oak dunes and dunes sagebrush lizards.

Summary of Factor A

Habitat specialists with limited geographic ranges, such as the dunes sagebrush lizard, are more vulnerable to habitat alterations than wide-ranging habitat generalists (Ballesteros-Barrera *et al.* 2007, p. 733). Habitat fragmentation and the overall reduction of shinnery oak dune habitat will impact survivorship, growth, and reproductive ability by increasing edge habitat and decreasing available cover. This will lead to smaller populations and will decrease connectivity between populations (Chan *et al.* 2008, p. 9). The size of the habitat patches and suitable dune complexes will influence the probability of individual habitat patches being eliminated in this dynamic system. It is important to maintain connectivity between shinnery oak dune patches in each of the geographic areas across the dunes sagebrush lizard's known range (Chan *et al.* 2008, p. 9).

Because the habitat in both New Mexico and Texas is narrow and isolated, the dunes sagebrush lizard may be vulnerable to habitat degradation and the potential for habitat and range expansion may be unlikely.

Removal of shinnery oak within occupied habitat poses a serious threat by generating or increasing a variety of stressors for the dunes sagebrush lizard, a species that depends on a very specialized dynamic system to survive. Shinnery oak stabilizes dunes in the short term, but overall the dunes are dynamic and slowly shifting across the landscape. Without shinnery oak, sands are not held in place and the entire dune community will be susceptible to wind erosion (Muhs and Holliday 1995, p. 198), thereby threatening the long-term persistence of the species. The dunes sagebrush lizard is threatened by habitat loss and fragmentation due to oil and gas development, and to shinnery oak removal for rangeland improvement and conversion to use for agriculture. Additionally, while renewable energy development, OHV use, and other impacts to shinnery oak are not considered to be major threats to the species, these activities represent additional stressors to the habitat of the species. For these reasons, we consider the cumulative habitat impacts in Factor A to be a threat to the dunes sagebrush lizard throughout its range, both now and continuing into the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The dunes sagebrush lizard is not a commercially valuable species, but could be increasingly sought by collectors due to its rarity. Areas inhabited by this species are open to public access, and populations that are thought to be small and localized could be affected and possibly extirpated if collection pressures increase. Scientific collecting is not thought to represent a significant threat to localized populations. Further, the States of New Mexico and Texas require scientific collecting and research permits for the dunes sagebrush lizard (NMDGF 1978, p. 7; TX House Bill 12, 2007, p. 1). Therefore, we do not consider overutilization to be a threat now or in the foreseeable future.

C. Disease or Predation

Disease and Parasites

There are no specific studies on the impacts of disease or parasitism on dunes sagebrush lizards, but studies have been conducted on close relatives within the genus *Sceloporus.* *Sceloporus* lizards infected with malaria have reduced volumes of red blood cells, reduced hemoglobin (the protein that carries oxygen in the blood), impaired physical stamina, reduced fat stores, reduced number of offspring, and smaller testes (Klukowski and Nelson 2001, p. 289). The incidence of infection of malaria in *Sceloporus* lizards is dependent on the lizard's age, size, genetic background, and gender (Klukowski and Nelson 2001, p. 289). Other lizards in the genus *Sceloporus* have parasitic helminthes (a type of parasitic worm) in their gut. These helminthes have not been found in high number in dunes sagebrush lizards (Goldberg *et al.* 1995, p. 190). In general, other stressors in the environment, such as habitat degradation and pollution, may weaken species' immune systems and make them more susceptible to disease (Whitfield *et al.* 2000, p. 657). Disease and parasitism are not currently known to be threats to the dunes sagebrush lizard, but may need to be investigated in areas where their population declines and losses are unexplained.

Predation

During Hill and Fitzgerald's (2007) nesting ecology study, 25 percent of radio-tracked female dunes sagebrush lizards were eaten by coachwhips (*Masticophis flagellum*). Coachwhips are large, swift, diurnal snakes that feed primarily on lizard species. Another predator, the loggerhead shrike (*Lanius ludovicianus*), is found in the Mescalero Sands habitat. Loggerhead shrikes are birds that occur in many habitats from remote deserts to suburban areas. These small predators perch on trees, shrubs, poles, fences, and utility wires, and swoop down to capture and impale prey (Rappole 2000, p. 163). Increased perches and increased edge effects could lead to increased levels of predation that would impact the dunes sagebrush lizard.

Power line grids are located throughout oil and gas developments. The BLM and the NMSLO do not have a database of the power lines within the shinnery oak habitat and range of the dunes sagebrush lizard; however, all well pad operations and power plants are connected with a grid of transmission lines throughout the dunes sagebrush lizard's habitat. The ongoing threat associated with power lines and fences is that they provide perching habitat for predaceous birds throughout the shinnery oak dunes. The total miles of fence and power lines throughout the known range of the species has not been quantified. Although the presence of power lines likely increases perches for predators, we are currently unable to determine if predation has increased above natural levels or if the predation levels are a significant threat to the dunes sagebrush lizard.

Summary of Factor C

There are likely impacts to individuals or individual populations from the impacts under Factor C, particularly predation. However, we do not know the magnitude or the effect of these impacts on the long-term survival of the dunes sagebrush lizard at this time. Thus, we do not consider Factor C to be a threat to the species throughout its range, either now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

The dunes sagebrush lizard occurs on lands managed by the BLM, NMSLO, State of Texas, and private entities. There have been considerable efforts directed towards the protection of dunes sagebrush lizard habitat, starting with a multi-stakeholder group called the southeastern strategy. This group developed the Collaborative Conservation Strategy for the dunes sagebrush lizard and the lesser prairie chicken in 2005. This strategy was then used as the foundation for BLM to develop their RMPA and for the development of the Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA). If implemented as intended, the conservation strategy, RMPA, and CCA/CCAAs could be significant contributions to the conservation of these two species.

BLM's RMPA

The BLM's RMPA addresses the threats of shinnery oak removal due to herbicide spraying, and oil and gas development. The plan provides for specific conservation requirements, lease stipulations, and the removal of 42,934 ha (106,091 ac) of dunes sagebrush lizard habitat from future oil and gas leasing. However, the plan provides for a variety of exceptions and has no schedule or planned monitoring to ensure that the protections are being provided. Future leasing would be allowed in closed areas of habitat if studies show that drilling and exploration would not impact the lesser prairie chicken or dunes sagebrush lizard, or, if at some time in the future, the lesser prairie chicken is no longer a candidate species (BLM 2007, p. 2–22). Currently, BLM is working with Texas A&M University to study the impacts of habitat fragmentation, and determine if

the measures outlined in the RMPA are effective at conserving habitat and dunes sagebrush lizard populations.

The RMPA outlines protective measures and basic guidelines for developing around dunes sagebrush lizard habitat. The RMPA provides guidance for the management of the lands with dunes sagebrush lizard habitat, but it lacks regulatory strength and is only effective when used. Future implementation will determine the overall efficacy of the plan in contributing to the conservation of the dunes sagebrush lizard.

Candidate Conservation Agreements

A candidate conservation agreement (CCA) and candidate conservation agreement with assurances (CCAA) for the dunes sagebrush lizard and the lesser prairie chicken in New Mexico were finalized on December 8, 2008. These agreements allow private land owners and operators, such as ranchers and oil and gas companies, to participate in the conservation of the dunes sagebrush lizard. The agreements provide conservation measures that limit habitat modification and protect habitat corridors between shinnery oak dune complexes. The agreements also allow for reclamation of abandoned oil pads, removal of relic power lines, and restoration of shinnery oak dunes within suitable habitat. The CCA and CCAA are "umbrella" agreements under which individual entities participate. Currently, six private landowners and four oil companies (totaling approximately 200,000 acres) are enrolled within the range of the dunes sagebrush lizard. There are no enrolled properties that have certificates of inclusion/participation for both the ranching operations and oil and gas activities on the property. If a rancher enrolls a property in the CCA/CCAA, that rancher is responsible for the activities because he or she has discretion, and would not have control if oil and gas development occurs on their conservation acres. The same property would need to also be enrolled by the oil and gas operator to provide conservation measures for operator's activities on that property. The efficacy of the agreements depends on sustained future participation by all entities with controlling interests on properties with suitable and occupied habitat for the dunes sagebrush lizard. There are hundreds of oil and gas operators in the range of the dunes sagebrush lizard, and participation throughout the majority of the dunes sagebrush lizard habitat would be necessary for the conservation of the species.

In New Mexico, an estimated 35 percent of the occupied range of the dunes sagebrush lizard is on privately owned and State-managed lands. This is a substantial percentage of land occupied by the dunes sagebrush lizard, and these lands are significant to the dunes sagebrush lizard's continued existence. There are no local or State regulatory mechanisms pertaining to the conservation of dunes sagebrush lizard habitat on private or State lands in New Mexico, nor is there NMSLO policy in place to protect sensitive species. Nearly all of the dunes sagebrush lizard habitat on New Mexico State Trust lands has been leased for oil and gas development with no stipulations on that development. The only mechanism for the preservation of dunes sagebrush lizard habitat on State Trust Lands is by having those lands enrolled in the CCAA.

State Laws

Under New Mexico's Wildlife Conservation Act, on January 24, 1995, NMDGF listed the dunes sagebrush lizard as a group 2 Endangered Species (Painter *et al.* 1999, p. 1), which affords it protection from take, but not habitat destruction (NMDGF 1978, p. 9). The dunes sagebrush lizard is not listed as endangered or threatened in the State of Texas under the Texas Parks and Wildlife Code or the Texas Administrative Code (Texas Parks and Wildlife Department 1973, p. 1).

Summary of Factor D

Current regulations under State and local laws are not adequate to protect the dunes sagebrush lizard from known threats, because provisions that protect habitat are not included in these laws. In New Mexico, BLM's RMPA covers Federal surface and mineral activities within the species' range. Additionally, the CCA/CCAA includes the entire range of the dunes sagebrush lizard in New Mexico, but does not extend into Texas. Because participation in the CCA/CCAA by both oil and gas and ranching operators is not occurring throughout the range of the dunes sagebrush lizard, the efficacy of these conservation agreements has not yet been fully implemented and determined to be effective.

In order for the agreements to benefit the dunes sagebrush lizard, oil and gas operators need to enroll throughout the lizard's range, and habitat restoration and protection needs to occur in the dunes sagebrush lizard's habitat. The CCA/CCAA funded the initial investigation into the restoration of shinnery oak dunes, but for now there are no known methods to restore the dunes sagebrush lizard's habitat, and existing habitat should be protected by enrolling in the CCA/CCAA or with conservation easements. The current efforts have not provided the protection needed to remove or lessen the significant threats posed to the dunes sagebrush lizard.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Exposure to Pollutants

Though few studies have been conducted to determine the full effects of pollutants on reptiles, there is conclusive evidence of some adverse impacts to lizard species (Whitfield *et al.* 2000, p. 657). Sias and Snell (1998) studied the effects of oil and gas wells on dunes sagebrush lizard abundance from 1995 to 1997. The results of their research showed a strong negative relationship between dunes sagebrush lizard population density and proximity to well pads. Specifically, they found a 39 percent decrease in the abundance of dunes sagebrush lizards within 0 to 80 m (0 to 262 ft) of wells. Sias and Snell (1995, p. 30) believed that oil and gas extraction resulted in a reduction in abundance of dunes sagebrush lizards as a result of: (1) Direct habitat loss due to construction of roads and well pads (as discussed above in Factor A); (2) poisoning of dunes sagebrush lizards from oil spills, hydrogen sulfide gas emissions, and exposure to chemicals and other toxins in the vicinity of oil and gas wells; (3) mortality caused by increased traffic; and (4) giving a competitor of the dunes sagebrush lizard a competitive advantage (*see* "Competition" section below). Further, exposure to oil spills can cause dunes sagebrush lizards to become entrapped. During surveys for dunes sagebrush lizards in New Mexico, side-blotched lizards (*Uta stansburiana*) were found stranded in oil seepages, coated in oil and unable to move (Sias and Snell 1996, p. 28).

During petroleum extraction, hydrogen sulfide is removed from the petroleum and released into the air where it remains for up to one day. Hydrogen sulfide is heavier than air and tends to sink to the ground where it will remain until it is neutralized (Lusk and Kraft 2006, p. 1). Hydrogen sulfide is a highly toxic gas that is the dominant reduced (unoxygenated) sulfur gas in oil fields (Tarver and Dasgupta 1997, p. 3669). Most of the sulfur that is emitted by oil and gas infrastructure ends up in the soil (Tarver and Dasgupta 1997, p. 3674). Surface soil tests in active oil fields in Texas found sulfate (an oxygenated form of sulfur) levels in the

soil to range between 20 to 200 parts per million (ppm) near active facilities, as opposed to 1 ppm in similar soils not adjacent to oil facilities (Tarver and Dasgupta 1997, p. 3674).

Measurements of hydrogen sulfide have been taken at a site near Loco Hills, New Mexico (40 km (25 mi) east of Artesia), where large populations of dunes sagebrush lizards were found historically. Dunes sagebrush lizards dig just below the soil surface during hot parts of the day and at night, and would therefore be in direct contact with the sulfates in the soil. Sulfates increase the anaerobic activities in the soil, make the soil more acidic, and could cause protein and gene damage to organisms, depending on the duration of exposure (Escher and Hermens 2002, p. 4203). Air concentrations of hydrogen sulfide as high as 33 ppm were recorded for a period of 32 minutes in the Loco Hills area (Lusk and Kraft 2008, p. 19). Active dunes sagebrush lizards are predicted to show adverse effects at concentrations greater than 14 ppm (Lusk and Kraft 2008, p. 20). Lusk and Kraft (2008) recommend the adoption of interim air quality standards for the protection of wildlife at 1 ppm, the requirement of routine monitoring of hydrogen sulfide to identify sources in areas where ambient concentrations exceed 1 ppm, and the reduction of emissions to meet these wildlife conservation goals.

The long-term impacts of oil field pollutants to dunes sagebrush lizard populations, fecundity, and survivorship are unknown. Oil fields contain a variety of organic toxic pollutants including petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), phenanthrene, fluoranthene, and benzo[a]anthracene. Two studies on the impacts of oil and gas pollution to another sand-dwelling lizard, the Nidua fringe-fingered lizard (*Acanthodactylus scutellatus*), a sand-dwelling species from the Middle East, were conducted in the oil fields in Kuwait. Tissue samples taken from both the fringe-fingered lizard and its insect prey base (ants) found the PAH concentrations in the fringe-fingered lizard and ant tissue increased with the exposure to the toxins. The levels of PAHs in the fringe-fingered lizard and ant tissues were high enough to impact the function of vital organs. Fringe-fingered lizards are not able to remove the toxins from their system quickly due to their slow metabolic rate and simple enzyme system (Al-Hashem *et al.* 2007, p. 555). Additionally, the exposure to oil field chemicals affected the behavior and foraging time for the fringe-fingered lizard by altering time of emergence and basking behavior (Abdulla *et al.* 2008, p. 589).

With much of the dunes sagebrush lizard's habitat located in small dune patches within oil and gas fields, the potential for exposure to hydrogen sulfide, PAHs, and oil spills is high. If dunes sagebrush lizards are exposed to this type of pollution, we may expect physiological dysfunction, impaired foraging abilities, increased mortality, and population declines. For this reason, we believe the exposure to pollutants from oil and gas production may be a factor affecting the survival of the species.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate system is unequivocal, based on observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (2007a, p. 5). For the next two decades, a warming of about 0.4 degrees Fahrenheit (°F) (0.2 degrees Celsius (°C)) per decade is projected (IPCC 2007a, p. 12). Temperature projections for the following years increasingly depend on specific emission scenarios (IPCC 2007a, p. 13). Various emissions scenarios suggest that average global temperatures are expected to increase by between 1.1 °F and 7.2 °F (0.6 °C and 4.0 °C) by the end of the 21st century, with the greatest warming expected over land (IPCC 2007a, p. 13). Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over-allocated water resources (IPCC 2007b, p. 14). The IPCC reports that it is very likely that hot extremes, heat waves, and heavy precipitation and flooding will increase in frequency (IPCC 2007b, p. 18).

It is anticipated that climate change will intensify the effects of other ongoing habitat impacts, including impacts of oil and gas development and shinnery oak removal (Sinervo *et al.* 2010, p. 894). The predicted changes in climate in the desert Southwest include higher temperatures and less rainfall, and changes in storm frequency and severity (Seager *et al.* 2007, p. 1183; Saunders *et al.* 2008, p. 5). Higher temperatures and lower rainfall, as predicted by various models for the southeastern part of New Mexico, could manifest as further degradation of the shinnery oak dune system (Seager *et al.* 2007, p. 1183). These increased temperatures could directly affect individuals by reducing habitat and by converting shinnery oak vegetation communities to communities with species such as yucca (*Yucca elata*), mesquite, and cacti (Family Cactacea). Predicted changes are not known for shinnery oak, but it is anticipated that large contiguous stands of shinnery oak will be necessary for the system to be resilient to climate change.

Climate change is predicted to cause a global decline in lizard populations, with an estimated 40 percent of lizard populations becoming extinct by 2080 (Huey *et al.* 2010, p. 832). In a recent study in Mexico, 12 percent of 200 lizard populations went extinct due to the magnitude of warming in the spring (Huey *et al.* 2010, p. 832). For the lizards studied, warming caused the lizards to avoid activities such as foraging or reproducing. In order to avoid becoming overheated, the lizards remained in cooler refuges. This research has shown evidence of actual extinctions of local populations linked to changes in climate in *Sceloporus* lizards (the genus of the dunes sagebrush lizard) (Sinervo *et al.* 2010, p. 894).

The severity of impacts to all plants and wildlife resulting from climate change will depend on the amount of habitat available for dispersal. The dunes sagebrush lizard is a habitat specialist, and its habitat is not expanding (Peterson 1992, p. 2). The dune system that the dunes sagebrush lizard inhabits is limited by the distribution of shinnery oak and may be vulnerable to rapid habitat changes (Muhs and Holliday 2001, p. 86). Organisms that are able to adapt to changing environments and shifts in habitat availability will likely be more apt to survive climate change (Massot *et al.* 2008, p. 466). The impacts of climate change to the shinnery oak dune system, including increased temperatures, decreased precipitation, increased sand supply, decreased vegetative cover, and increased evaporation, would all lead to increased movement of sand dunes and more unstable dunes (Muhs and Holliday 1995, p. 206). The shinnery oak dune habitat relies on the stability and underground structure of the shinnery oak. Without the shinnery oak, the dunes will be unstable and will move at a much faster pace (Muhs and Holliday 2001, p. 75). The historical mobilization of sand that forms the current shinnery oak dune system was caused by relatively minor changes in climate (Holliday 2001, p. 88).

Dunes sagebrush lizards are not found in areas that do not have shinnery oak dunes, and major shifts in habitat availability would impact the dunes sagebrush lizard (Painter *et al* 1999, p. 7). Climate change models for some

lizard species predict a complete loss of habitat by 2050 due to precipitation declines (Ballesteros-Barrera *et al.* 2007, p. 736). The limited dispersal ability of dunes sagebrush lizards means that the species as a whole could be isolated in areas with increased desertification and shinnery oak loss. The already fragmented habitat will limit the ability of the dunes sagebrush lizard to respond to climate-induced habitat changes. At this time, climate change is not considered to be the most significant threat to the dunes sagebrush lizard throughout its range; however, impacts from climate change in the future will likely exacerbate the ongoing threat of habitat loss caused by other factors, as discussed above.

Competition

The side-blotched lizard (*Uta stansburiana*) is a generalist lizard species that is found throughout the range of the dunes sagebrush lizard. Researchers studying the dunes sagebrush lizard have reported that the side-blotched lizard is a competitor for resources with the dunes sagebrush lizard (Sena 1985, p. 13) and has been observed directly competing for insect prey (Sias and Snell 1996, p. 6). In areas where there are large dune blowouts in shinnery oak dune complexes, the dominant lizard species is the dunes sagebrush lizard. As the habitat becomes marginal with smaller dune blowouts adjacent to shinnery oak flats or unsuitable habitat, there are greater numbers of side-blotched lizards and fewer dunes sagebrush lizards. In areas that have more habitat disturbance and greater edge effects, there are also more side-blotched lizards than dunes sagebrush lizards (Painter 2007, p. 2). The side-blotched lizard is the most abundant lizard found in the same habitat as the dunes sagebrush lizard. The side-blotched lizard uses more open, sandy substrate than the dunes sagebrush lizard, which uses the vegetative cover provided by shinnery oak. The side-blotched lizard also spends more time in the open sun and more time foraging (Sartotrius *et al.* 2002, pp. 1972–1975). As a generalist, the side-blotched lizard is not impacted by habitat disturbance and alteration in the way that dunes sagebrush lizard, a habitat specialist, is impacted (Sias and Snell 1996, p. 18; Painter *et al.* 2007, p. 3). Therefore, the side-blotched lizard likely outcompetes the dunes sagebrush lizard in these altered habitats. Increased temperatures, due to climate change, and changes to the vegetative community could increase the competition between dunes sagebrush lizards and side-blotched lizards.

Summary of Factor E

We do not know the magnitude or imminence of the direct or indirect impacts of competition and climate change on the status of the species at this time. However, we consider exposure to oil and gas pollutants to be a threat to the species throughout its range, both now and continuing into the foreseeable future.

Proposed Listing Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the dunes sagebrush lizard. The dunes sagebrush lizard faces immediate and significant threats due to oil and gas activities, and herbicide treatments. Habitat loss and fragmentation due to oil and gas development is a measureable factor impacting the species due to the removal of shinnery oak and creation of roads and pads, pipelines, and power lines that create habitat patches and increase the proportion of habitat edge to habitat interior. In addition, impacts that are not easily quantified such as climate change, competition, and pollution may exacerbate adverse effects caused by habitat loss. Cumulative threats to the dunes sagebrush lizard are not being adequately addressed through existing regulatory mechanisms. Oil and gas pollutants are a current and ongoing threat to the species throughout its range.

The Act defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." We find that the dunes sagebrush lizard is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the ongoing significant threats to the dunes sagebrush lizard, as described above. Therefore, on the basis of the best available scientific and commercial information, we propose to list the dunes sagebrush lizard as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The dunes sagebrush lizard is highly restricted in its range, and the threats occur throughout its range. Therefore, we assessed the status of the species throughout its entire range. The threats to the survival of the dunes sagebrush lizard occur throughout its range and are not restricted to any particular portion of that range. Accordingly, our assessment and proposed determination applies to the dunes sagebrush lizard throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery

outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal and nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the States of New Mexico and Texas would be eligible for Federal funds to implement management actions that promote the protection and recovery of the dunes sagebrush lizard. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the dunes sagebrush lizard is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (*see* **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. We believe the following actions may jeopardize this species, and therefore we would seek to conference with BLM and NRCS on these actions:

- The lease of land for oil and gas drilling,
- Applications to drill,
- Applications for infrastructure through dunes (including, but not limited to pipelines and power lines),
- OHV activities,
- Seismic exploration,
- Continued oil and gas operations (release of pollution and routine maintenance),
- Grazing leases,
- Renewable resource activities, and
- Chemical and mechanical removal of shinnery oak habitat.

If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For the dunes sagebrush lizard, Federal agency actions that may require conference or consultation or both, as described in the preceding paragraph, include the provision of Federal funds to State and private entities through Federal programs, such as the Service's Landowner Incentive Program, State Wildlife Grant Program, and Federal Aid in Wildlife Restoration program, as well as the various grants administered by the Natural Resources Conservation Service. Other types of actions that may require consultation include BLM activities, such as the lease of land for oil and gas drilling, applications to drill, grazing leases, and removal of shinnery oak habitat. Possible measures that could be implemented to conserve the dunes sagebrush lizard and its habitat are:

- Maintain 500-m (1640-ft) wide dispersal corridors in shinnery oak dunes for the dunes sagebrush lizards to disperse between habitat patches;
- Discontinue chemical spraying within occupied or suitable habitat;
- Place well pads outside of shinnery oak dunes and corridors between dune complexes;
- Manage well density to limit development in habitat;
- Minimize well pad size and carry out site reclamation;
- Develop techniques to recreate shinnery oak dunes;
- Limit OHV use in occupied habitat;
- Minimize impacts of seismic exploration by thumper trucks;
- Develop a public awareness program;
- Do not place power lines and fences through shinnery oak dune complexes;
- Develop transmission corridors for pipelines and power lines;
- Limit pollution by inspecting pipelines and equipment;
- Develop and implement plans for cleaning oil spills;
- Limit hydrogen sulfide emissions;
- Maintain wells; and
- Limit any further infrastructure that would remove the shinnery oak dunes.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered species. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. The dunes sagebrush lizard is listed as endangered by the State of New Mexico, and is currently protected under the Wildlife Conservation Act of 1978, which prohibits take of the species but has no protection for habitat (NMDGF 1978, p. 9). The Act will, therefore, offer additional protection to this species.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. We anticipate that the only permits that would be sought or issued for the dunes sagebrush lizard would be in association with research and recovery efforts, as this species is not common in the herpetocultural trade or in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the dunes sagebrush lizard; and

(3) The unauthorized release of biological control agents that attack any life stage of this species.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

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 to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition of destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. 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 even in the event of a destruction or adverse modification finding, Federal action agencies 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 only 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 (PBFs) 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 those areas 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 we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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 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, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts warrants otherwise.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

There is no documentation that the dunes sagebrush lizard is threatened by collection and, therefore, is unlikely to experience increased threats by identifying critical habitat. Further, the potential benefits of critical habitat to the dunes sagebrush lizard include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for dunes sagebrush lizard.

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and determinable." Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We are currently unable to determine which areas meet the definition of critical habitat because the location and distribution of physical and biological features that may be considered essential to the conservation of the species is not sufficiently understood at this time. Additional onsite work is needed for the purposes of delineating critical habitat boundaries and providing legal descriptions of those areas. Therefore, although we have determined that the designation of critical habitat is prudent for the dunes sagebrush lizard, we find that critical habitat for the dunes sagebrush lizard is not determinable at this time.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to list dunes sagebrush lizard as endangered, and our decision regarding critical habitat for these species.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearing on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the New Mexico Ecological Services Field Office at 505–761–4718, as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

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 Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a)(1) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, New Mexico Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the New Mexico Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for "Lizard, dunes sagebrush" in an alphabetical order under REPTILES to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Lizard, dunes sagebrush.	*Sceloporus arenicolus.*	U.S.A. (NM, TX)	Phrynosomatidae	E	.....	NA	NA
*	*	*	*	*	*		*

* * * * *

Dated: December 1, 2010.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–31140 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0024; MO 92210–0–0009–B4]

RIN 1018–AW89

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis (DEA) for the June 3, 2010, proposed designation of critical habitat for the Mississippi gopher frog (*Rana sevosa*) [= *Rana capito sevosa*] under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of the comment period and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed critical habitat designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments received on or before January 13, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R4–ES–2010–0024.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2010–0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601–321–1122); or by facsimile (601–965–4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the Mississippi gopher frog that was published in the **Federal Register** on June 3, 2010 (75 FR 31387), the DEA of the proposed designation of critical habitat for the Mississippi gopher frog, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate areas as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the Mississippi gopher frog from human activity, the degree of which can be expected to

increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

(a) The amount and distribution of Mississippi gopher frog habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection for the physical and biological features essential to Mississippi gopher frog conservation that have been identified in the proposed rule that may be needed, including managing for the potential effects of climate change; and

(d) What areas not occupied by the species at the time of listing are essential to the conservation of the species and why.

(3) Specific information on the Mississippi gopher frog and the physical and biological features essential to the conservation of the species.

(4) Any information on the biological or ecological requirements of the species.

(5) Land-use designations and current or planned activities in the subject areas and their possible impacts on the species and the proposed critical habitat.

(6) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(7) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(8) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(9) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(10) The appropriateness of the taxonomic name change of the Mississippi gopher frog from *Rana capito sevosa* to *Rana sevosa.*

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (75 FR 31387) during the initial comment period from June 3, 2010, to August 2, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. We will post all hard copy comments on *http://www.regulations.gov* as well. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0024 or by mail from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Mississippi gopher frog in this document. For more information on previous Federal actions concerning the Mississippi gopher frog, refer to the proposed designation of critical habitat published in the **Federal Register** on June 3, 2010 (75 FR 31387). For more information on the Mississippi gopher frog or its habitat, refer to the final listing rule published in the **Federal Register** on December 4, 2001 (66 FR 62993), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2010–0024) or from the Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On June 3, 2010, we published a proposed rule to designate critical habitat for the Mississippi gopher frog (75 FR 31387). We proposed to designate as critical habitat a total of 792 hectares (1,957 acres) in 11 units within Forrest, Harrison, Jackson, and Perry Counties, Mississippi. That proposal had a 30-day comment period, ending August 2, 2010. We will submit for publication in the **Federal Register** a final critical habitat designation on or before May 30, 2011.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat are required to consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on

national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will 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 (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from 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 conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Mississippi gopher frog, the benefits of critical habitat include public awareness of the presence of the Mississippi gopher frog and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Mississippi gopher frog due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Mississippi gopher frog that we published in the **Federal Register** on June 3, 2010 (75 FR 31387). The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections otherwise afforded to the gopher frog (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The "with critical habitat" scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (*i.e.,* incremental impacts).

The DEA describes economic impacts associated with designation of critical habitat for the Mississippi gopher frog based on the following categories: (1) Costs associated with economic activities, including development and forestry; (2) costs associated with military activities; and (3) costs associated with active species management. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Mississippi gopher frog over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. These incremental costs are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. For a further description of the methodology of the analysis, see Chapter 2 ("Framework for the Analysis") of the DEA.

The DEA estimates the incremental impacts of conservation activities for the Mississippi gopher frog to be $102,000 over the next 20 years ($9,610 in annualized impacts, assuming a 7 percent discount rate). All of these impacts stem from the administrative cost of addressing adverse modification of critical habitat during section 7 consultations. Parties involved in section 7 consultations include the Service, the action agency, and in some cases, a private entity involved in the project or land use activity. Incremental impacts stemming from additional gopher frog conservation measures requested by the Service during section 7 consultation are not expected in occupied areas because project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. In unoccupied areas, project modifications resulting from consultation would be considered incremental impacts of the critical habitat designation.

The DEA also discusses the potential economic benefits associated with the designation of critical habitat. However, because the Service believes that the direct benefits of the designation are best expressed in biological terms, this analysis does not quantify or monetize benefits; only a qualitative discussion of economic benefits is provided.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our June 3, 2010, proposed rule (75 FR 31387), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions), 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

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 designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Mississippi gopher frog would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as timber operations, and residential and commercial development along with the accompanying infrastructure associated with such projects including road, storm water drainage, bridge and culvert construction and maintenance. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Mississippi gopher frog is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species, due to the endangered status of the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Mississippi gopher frog. As discussed in the DEA, the Service and any Federal action agency are the only entities with direct compliance costs associated with the proposed critical habitat designation. These Federal agencies are not considered small business entities under the Regulatory Flexibility Act. As a consequence, this rule will not result in a significant impact on small entities. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Mississippi Fish and Wildlife Office, Southeast Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 6, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–31227 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 75, No. 239

Tuesday, December 14, 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

Commodity Credit Corporation

Agricultural Water Enhancement Program and Cooperative Conservation Partnership Initiative

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this request for proposals is to solicit proposals from potential partners who seek to enter into partnership agreements with the Natural Resources Conservation Service (NRCS) through either the Agricultural Water Enhancement Program (AWEP) or the Cooperative Conservation Partnership Initiative (CCPI) in order to provide assistance to producers who enroll in an eligible conservation program. The Natural Resources Conservation Service (NRCS) is responsible for both AWEP and CCPI. For fiscal year (FY) 2011, applicants are strongly encouraged to use the proposal templates available for download at: *http://www.nrcs.usda.gov/programs/AWEP/* for AWEP and *http://www.nrcs.usda.gov/programs/CCPI/* for CCPI. To request a paper version of either proposal template, partners may send a written request to Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 5239 South Building, Washington, DC 20250.

Both AWEP and CCPI were established by the Food, Conservation, and Energy Act of 2008 (2008 Act). AWEP and CCPI are voluntary conservation initiatives that enable the use of certain conservation programs, combined with resources from eligible partners who have entered into partnership agreements with NRCS, to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands. Through the FY 2011 AWEP, NRCS will make Environmental Quality Incentive Program (EQIP) funds available to eligible producers in approved AWEP project areas. Through the FY 2011 CCPI, NRCS will make EQIP, Conservation Stewardship Program (CSP), and Wildlife Habitat Incentive Program (WHIP) funds available to eligible producers in approved CCPI project areas consistent with the project proposal.

CCPI opportunities concerning the Mississippi River Basin Healthy Watersheds Initiative will be announced through a separate notice.

DATES: *Effective Date:* The notice of request is effective December 14, 2010.

Proposals submitted for both AWEP and CCPI via e-mail or U.S. Postal Service must be received on or before January 28, 2011.

ADDRESSES: Applicants are highly encouraged to submit proposals electronically to *AWEP@wdc.usda.gov* for AWEP and *CCPI@wdc.usda.gov* for CCPI. Paper proposals should be mailed to Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

Do not send submissions via registered or certified mail to the Post Office Box. Do not send the same proposal to both the e-mail and Post Office Box addresses; use only one of the two methods to submit a proposal. If submitting more than one project proposal, submit each one separately.

FOR FURTHER INFORMATION CONTACT: Gregory K. Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service; 1400 Independence Avenue SW., Room 5239 South Building, Washington, DC 20250; *Telephone:* (202) 720–1845; *Fax:* (202) 720–4265; *E-mail: AWEP@wdc.usda.gov* for AWEP or *CCPI@wdc.usda.gov* for CCPI.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Part A—The Agricultural Water Enhancement Program

Legislative Authority

The Agricultural Water Enhancement Program (AWEP) was authorized as part of the Environmental Quality Incentives Program (EQIP), 16 U.S.C. 3839aa–9, section 2510 of the Food, Conservation, and Energy Act of 2008 (2008 Act), Public Law 110–246. The Cooperative Conservation Partnership Initiative (CCPI) was authorized by section 2707 of that same law. The Secretary of Agriculture delegated the authority for the administration of EQIP and CCPI to the Chief of the Natural Resources Conservation Service (NRCS), who is Vice President of the Commodity Credit Corporation (CCC). EQIP is funded under the authorities of the CCC and administered by NRCS.

Overview of the Agricultural Water Enhancement Program

The AWEP is a voluntary program that enables the use of EQIP, combined with resources from eligible partners who have entered into partnership agreements with NRCS, to provide financial and technical assistance to eligible producers to implement agricultural water enhancement activities on agricultural land for the purposes of conserving surface and ground water and improving water quality. By entering into partnership agreements with eligible entities, NRCS aims to conserve ground and surface water or improve water quality, or both, through a regional approach. The functions of AWEP can best be described in two parts: AWEP partnerships and AWEP program participation.

AWEP Partnerships

Under AWEP, eligible potential partners may submit proposals addressing the criteria that are outlined in this request for proposals. Partners who may enter into partnership agreements with NRCS include federally recognized Indian tribes, State and local units of government, agricultural or silvicultural associations, and other groups of producers such as an irrigation association, agricultural land trust, or other nongovernmental organization that has experience working with agricultural producers. Individual agricultural producers are

not an eligible partner entity and may not submit AWEP proposals.

Submitted proposals will be evaluated through a competitive review process. NRCS will use the proposal ranking score, along with other review commentary, to select proposals for funding. After selection, the partners will enter into a partnership agreement with NRCS. The partnership agreement will not obligate funds, but will address:

1. The role of the partner;
2. The role of NRCS;
3. Agricultural water enhancement activities anticipated to be addressed and conservation practices to be implemented;
4. The responsibilities of the partner related to the monitoring as identified in the proposal and evaluation of project performance;
5. The frequency and duration of the monitoring and evaluation of project performance;
6. The content and format of the final project performance report that is required as a condition of the agreement;
7. The budget, including other funding sources (if applicable), for financial and technical assistance;
8. The specified project schedule; and
9. Other requirements deemed necessary by NRCS to achieve the purposes of AWEP.

AWEP is not a grant program, and all Federal funding offered through this authority will be paid directly to agricultural producers through individual contract agreements.

AWEP Program Participation

Once NRCS approves and announces the selected partner projects, eligible agricultural producers located within the approved project areas may apply directly to NRCS for funding through EQIP. The AWEP program uses the funds, policies, and process of EQIP to deliver assistance to eligible producers to implement approved conservation practices. Producers interested in applying must meet the eligibility requirements of EQIP. Individual applications from eligible producers will be evaluated and ranked to ensure that producer applications selected for funding are most likely to achieve project objectives. Once applications are selected, the producers may enter into a contract with NRCS.

Availability of Funding

Effective upon publication of this notice, NRCS announces the availability of up to $5 million in AWEP financial assistance during fiscal year (FY) 2011.

Proposal Information

Proposal Format

It is highly recommended that the proposal be written using the proposal template format, including budget and schedule templates, to ensure that all required components are addressed. Consult the NRCS national AWEP Web site for an example of an acceptable AWEP proposal document at: *http://www.nrcs.usda.gov/programs/AWEP/.* Do not submit other documents not requested or letters of endorsement.

Required Information

The proposal must include the following:

1. Proposal Cover Sheet and Summary:
   a. Project Title.
   b. Project director/manager name, telephone number, and mailing and e-mail addresses.
   c. Name of lead partner entity submitting proposal and other collaborating partners.
   d. Short summary of project including:
      i. Project start and end dates (not to exceed a period of 5 years);
      ii. Project objectives and resource concerns to be addressed, and specifically what water conservation resource issues and water quality resource issues the project will address; and
      iii. Location of project, specifying if the location is within an AWEP national priority area (Eastern Snake Plains Aquifer, Everglades, Ogallala Aquifer, Puget Sound, Red River, Sacramento River Basin, and Upper Mississippi River Basin).

Note: Additional information, maps, and a list of States and counties located in AWEP priority areas are available at: *http://www.nrcs.usda.gov/programs/awep/.*

   e. Amount of AWEP financial assistance being requested.
2. Partner Background and Experience:
   a. Demonstrate:
      i. The commitment and experience of the partner to accomplish the long-term conservation of surface and ground water or water quality improvement and related historical activities that show this experience;
      ii. The ability and history of the partner to coordinate water quality and quantity efforts among agricultural producers;
      iii. The ability to monitor and evaluate project effects on natural resources; and
      iv. That the partner has the capacity to deliver a final project performance report.
   b. A description of how the partners and entities will collaborate to achieve the project objectives. Include:
      i. The roles, responsibilities, and capabilities of the partner(s); and
      ii. The financial and technical commitments of each of the partners and how they will be leveraged by EQIP assistance. If partners who do not submit this proposal intend to commit resources, a letter or other documentation from these partners confirming a commitment of resources is required. Partners need to clearly state, by project objective, how they intend to leverage Federal funds along with partner resources to address water quantity or water quality resource issues. The funding and time contribution by agricultural producers to implement agreed-to conservation practices in program contracts may not be considered any part of a match from the potential partner for purposes of AWEP.
3. Project Objectives and Natural Resource Concerns:
   a. Identify and provide details about the project objectives. Objectives should be specific, measurable, achievable, and results-oriented.
   b. For each objective, identify the actions to be completed to achieve the objective and address the identified natural resource concern using AWEP assistance or the actions being addressed using alternate non-Federal resources or fund sources.
   c. Identify the total number of acres that need conservation treatment along with the kinds of conservation practices and activities needed to treat priority resource concerns in the project area. Identify specific priorities within the project area that need to be addressed first.
   d. A description of the agricultural water quality or water conservation issues to be addressed by the partnership agreement. Provide information about the extent and kinds of water quality issues to be addressed such as pollutants, designated priority areas, groundwater overdraft, and surface water deficiencies.
   e. The proposed agricultural water enhancement activities that may be implemented through partner efforts alone and those to be implemented using AWEP financial support.
4. Project Description:
   a. Attach a map to the application showing the proposed project area. Describe the location and size of the proposed project area. Identify whether the project is located in a water conservation priority area.
   b. A list and description of the NRCS practices and partner-sponsored

activities expected to be implemented to address the identified agricultural water enhancement objectives of the project. The description could include activities such as types of water conservation plans, assessments, or modeling; specific efforts to encourage producers to convert irrigated land to less water-intensive operations or dryland farming; the percentage of the project area expected to be converted to dryland farming; and types of irrigation system improvements.

i. Describe the general sequence of implementation of the project.

ii. For each conservation practice, estimate the extent (feet, acres, number, etc.) the partner expects producers to implement each fiscal year during the life of the project and the amount of financial assistance requested to support implementation of each practice through producer contracts.

iii. From the estimated amount of financial assistance needed to implement the identified conservation practices, include the total amount of financial assistance funds requested for each fiscal year of the project to be made available for producer contracts.

iv. Describe whether the project will address regulatory compliance and any other outcomes the partner expects to complete during the project period.

Note: Information about NRCS practices is found in the Field Office Technical Guide found at: *http://www.nrcs.usda.gov/technical/efotg/* and descriptions of practices at: *http://www.nrcs.usda.gov/technical/standards/.*

c. Include the total acres that need conservation treatment and the priority conservation practices and activities that are needed to treat significant resource concerns in the project area. Identify specific priorities within the project area that need to be addressed first.

d. Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' AWEP applications in the project area. Proposals may include specific ranking criteria so that NRCS can evaluate applications based upon the environmental objectives of the AWEP project. Additional guidance and examples may be obtained from the NRCS State office where the project will be located.

e. A description of the resources (financial or technical assistance) requested annually from AWEP for producer contracts and the non-Federal resources provided by the partner that will be leveraged by the Federal contribution. If resources other than funding are being offered by the partner, describe the kind of resources and services that will be made available to producers to help implement conservation practices and activities. The funding and time contribution by agricultural producers to implement agreed-to conservation practices in the program contracts may not be considered as part of a match from the potential partner. All funding requests and information regarding partner resources may be included in the form of a budget narrative.

5. Participant Information:

a. An estimate of the number of eligible agricultural producers the partner expects to participate in the project compared with the estimated total number of producers in the project area. Include additional information such as:

i. How will the partner encourage participation to guarantee success of the project?

ii. Does the project include any tribal, socially disadvantaged, beginning, or limited resource farmers or ranchers?

iii. Are there groups of producers who may submit joint program applications to address resource issues of common interest and need?

6. Proposal Implementation Plan and Schedule:

a. Potential partners should submit project action plans and schedules, not to exceed 5 years, detailing activities, including timeframes related to project milestones and monitoring and evaluation activities that will likely be documented in the partnership agreement. A project action plan should describe how often the potential partner plans to monitor and evaluate the project, how it plans to quantify the results or performance of the project for the final project performance report, and the practices the partner expects to be implemented during the project timeframe and general sequence of project implementation.

Evaluation Criteria

The agency will evaluate the proposals using a competitive process. A higher priority may be given to proposals that:

1. Include high percentages of agricultural land and producers in a region or other appropriate area;

2. Result in high levels of applied agricultural water quality and water conservation activities;

3. Significantly enhance agricultural activity;

4. Allow for monitoring and evaluation by the partner;

5. Assist agricultural producers in meeting a regulatory requirement that reduces the economic scope of the producer's operation;

6. Achieve the project's land and water treatment objectives within 5 years or less;

7. Are from States with water quantity concerns where the proposal will:

a. Include conservation practices that support the conversion of agricultural land from irrigated farming to dryland farming;

b. Leverage Federal funds provided under the program with funds provided by partners;

c. Assist producers in States with high priority water quantity concerns, as determined by the agency. The high priority areas are located in the following regions: Eastern Snake Plain Aquifer, Everglades, Ogallala Aquifer, Puget Sound, Red River, Sacramento River Basin, and Upper Mississippi River Basin.

d. Include other factors and criteria as approved by the agency which help identify those proposals which best achieve the purposes of AWEP.

Part B—The Cooperative Conservation Partnership Initiative

Legislative Authority

The Cooperative Conservation Partnership Initiative (CCPI) was authorized by section 2707 of the Food, Conservation, and Energy Act of 2008 (2008 Act). The CCPI was established by amending section 1243 of the Food Security Act of 1985 [16 U.S.C. 3843]. The Secretary of Agriculture has delegated the authority to administer CCPI to the Chief of the Natural Resources Conservation Service (NRCS), who is Vice President of the Commodity Credit Corporation (CCC).

Overview of the Cooperative Conservation Partnership Initiative

The CCPI is a voluntary conservation initiative that enables the use of certain conservation programs, combined with resources from eligible partners, to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands in order to enhance conservation outcomes and achieve resource conservation objectives. The functions of CCPI can best be described in two parts: CCPI partnerships and CCPI program participation.

CCPI Partnerships

Under CCPI, eligible potential partners may submit proposals addressing the criteria that are outlined in this request for proposals. Partners who may enter into partnership agreements with NRCS include federally

recognized Indian tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Individual agricultural producers are not an eligible partner entity and may not submit CCPI proposals.

Submitted proposals will be evaluated in a competitive review process. NRCS will use the proposal ranking score along with other review commentary to select proposals for funding. After selection, the partners will enter into a partnership agreement with NRCS. The partnership agreement will not obligate funds, but will address:

1. The role of the partner;
2. The role of NRCS;
3. The responsibilities of the partner as it relates to the monitoring and evaluation;
4. The frequency and duration of monitoring and evaluation to be completed by the partner;
5. The format and frequency of reports (semi-annual, annual, and final) required as a condition of the partnership agreement;
6. Budget which includes other funding sources (if applicable) for financial and technical assistance;
7. The specified project schedule and timeframe; and
8. Other requirements deemed necessary by NRCS to further the purposes of the CCPI project.

Where flexibility is needed to meet project objectives, the partner may request that program adjustments be allowed, provided such policy adjustments are within the scope of the applicable programs' statutory and regulatory program authorities. An example of a program adjustment may be to expedite the applicable program ranking process in a situation where a partner has identified the producers approved to participate in the project. Another example of a program adjustment may include using a single area-wide plan of operations rather than individual plan of operations. An example of program authority that cannot be waived under the provision of CCPI flexibility includes program payment limits, maximum practice payment percentages, and participant eligibility requirements. Questions regarding proposed requests for CCPI flexibility may be directed to *CCPI@wdc.usda.gov.*

CCPI is not a grant program, and all Federal funds made available through this request for proposals will be paid directly to producers through program contract agreements. No technical assistance funding may be provided to a partner through the CCPI partner agreement. However, if requested by a partner, the State Conservationist may consider development of a separate contribution agreement with a qualified partner to provide funding for delivery of technical services to producers participating in an approved CCPI project.

CCPI Program Participation

Once the agency approves and announces the selected partner projects, eligible agricultural producers located within the approved project areas may apply directly to NRCS for funding through one or more of the following programs: Environmental Quality Incentives Program (EQIP), Conservation Stewardship Program (CSP), or Wildlife Habitat Incentive Program (WHIP). CCPI uses the funds, policies, and processes of these programs to deliver assistance to eligible producers to implement approved conservation practices, enhancements, and activities. Producers interested in applying must meet the eligibility requirements of the program for which they are applying. Individual applications from eligible producers will be evaluated and ranked to ensure that producer applications selected for funding are most likely to achieve project objectives. Once applications are selected, producers may enter into a contract or cost-share agreement with NRCS.

Participants may enter into multiple program contracts through CCPI if more than one program is needed to accomplish the project objectives.

During fiscal year (FY) 2011, an objective of CCPI is to deliver EQIP, CSP, and WHIP assistance to producers to achieve high-priority conservation objectives in geographic areas defined by the partner. Depending upon the program available in the project area, the assistance provided enables eligible producers to implement conservation practices and enhancements, including the development and adoption of innovative conservation practices and management approaches.

Availability of Funding

Effective on the publication date of this notice, NRCS announces the availability of up to $16 million in EQIP and $1.8 million in WHIP financial assistance; and 229 thousand acres in CSP for CCPI during FY 2011 for competition.

Proposal Information

Proposal Format

It is highly recommended that the proposal be written using the proposal template format, including budget and schedule templates, to ensure that all required components are addressed. Consult the NRCS national CCPI Web site for an example of an acceptable CCPI proposal document at: *http://www.nrcs.usda.gov/programs/CCPI/.* Do not submit other documents not requested or letters of endorsement.

Required Information

The proposal must include the following:

1. Proposal Cover Sheet and Summary:
   a. Project Title.
   b. Project director/manager name, telephone number, and mailing and e-mail addresses.
   c. Name and contact information for lead partner entity submitting proposal and other collaborating partners.
   d. Short summary of project including:
      i. Project start and end dates (not to exceed a period of 5 years);
      ii. Location of project;
      iii. Project objectives and resource concerns to be addressed; and
      iv. Amount of CCPI financial assistance being requested by program.
2. Partner Background and Experience:
   a. A description of the partner or partners' history of working with agricultural producers to address conservation priorities.
   b. A description of how the partner(s) will collaborate to achieve the objectives of the agreement. Include:
      i. The roles, responsibilities, and capabilities of the partner(s); and
      ii. The financial or technical commitments of each of the partners and how they will be leveraged by the Federal contribution through EQIP, WHIP, or CSP. If partners who do not submit this proposal intend to commit resources, a letter or other documentation from these partners confirming a commitment of resources is required. Partners need to clearly state, by project objective, how they intend to leverage Federal funds along with partner resources. The funding and time contribution by agricultural producers to implement agreed-to conservation practices in program contracts may not be considered any part of a match from the potential partner for purposes of CCPI.
3. Project Objectives and Natural Resource Concerns:
   a. Identify and provide detail about the project objectives. Objectives should

be specific, measureable, achievable, and results-oriented.

i. Identify and provide details about the natural resource concern(s) to be addressed in this project. Include in this description how the proposal objectives will address the listed resource concerns.

Note: A complete list of NRCS approved natural resource concerns may be found on the CCPI Web site at: *http://www.nrcs.usda.gov/programs/ccpi/.*

4. Project Description:

a. A detailed description of the geographic area covered by the proposal including:

i. Types of lands to be treated; and

ii. The location and size of the proposed project area.

b. A detailed map showing the project area. Include on the map:

i. Outlined areas which need conservation treatments;

ii. What conservation treatments are needed in what areas; and

iii. The order of priority for the different areas to be treated.

c. A description of the project timeline. Include:

i. Duration of the project, not to exceed 5 years in length;

ii. Project implementation schedule that details when different objectives and conservation practices will be completed;

iii. When partner and Federal resources will be used within the timeframe of the project. Include the total amount of financial assistance funds requested for each fiscal year of the project to be made available for producer contracts and cost-share agreements (for multi-State projects, provide the funds or acres by State as appropriate). The proposal must request NRCS program funds for obligation in producer contracts during FY 2011 (October 1, 2010 to September 30, 2011). Proposals which request funding starting after FY 2011 (September 30, 2011) will not be evaluated or considered during this funding cycle; and

iv. When the final project report will be submitted.

d. A description of the plan for monitoring, evaluating, and reporting on progress made toward achieving the objectives of the agreement.

e. Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' applications for EQIP, CSP, and WHIP in the project area. Potential partners should collaborate with NRCS to develop meaningful criteria that NRCS can use to evaluate and rank producers' program applications. This will ensure that applications which will best accomplish the project's objectives will be selected.

f. An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that may participate in the project along with an estimate of the total number of producers located in the project area. Provide details such as how the partner will encourage producer participation; whether the project includes any tribal producers, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or limited resource farmers or ranchers; and whether there are groups of producers who may submit joint applications to address resource issues of common interest and need.

g. A listing and description of the conservation practices, conservation activity plans, enhancements, and partner activities to be implemented during the project timeframe and the general sequence of implementation of the project. Also address technical assistance efforts that will be made by the partner. Describe any activities that are innovative or include outcome-based performance measures implemented by the partner. Information about approved NRCS practices is found in the Field Office Technical Guide at: *http://www.nrcs.usda.gov/technical/efotg/*. Information on eligible enhancements can be found at the CSP Web site at: *http://www.nrcs.usda.gov/programs/new_csp/csp.html*. For each conservation practice, estimate the amount of practice extent (feet, acres, number, etc.) the partner expects producers to implement and the amount of financial assistance requested to support implementation of each practice through producer contracts.

h. Indicate whether the project will address regulatory compliance and any other outcomes the partner expects to complete during the project period.

i. A detailed description of any requested policy adjustments, by program, with an explanation of why the adjustment is needed in order to achieve the objectives of the project.

j. A description of how the partner will provide for outreach to beginning farmers or ranchers, limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, and Indian tribes.

k. A description of how the proposal's objectives may provide additional benefits to address renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration, if applicable.

Evaluation Criteria

The agency will evaluate proposals using a national competitive process. A higher priority may be given to proposals that:

1. Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the proposed project area;

2. Significantly leverage non-Federal financial and technical resources and coordinate with other local, State, or Federal efforts;

3. Deliver high percentages of applied conservation practices to address water quality, water conservation, or State, regional, or national conservation initiatives;

4. Provide innovation in approved conservation practices, conservation methods, and delivery including outcome-based performance measures and methods;

5. Complete the application of the conservation practices and activities on all of the covered program contracts or cost-share agreements in 5 years or less;

6. Assist the participants in meeting local, State, and Federal regulatory requirements;

7. Provide for monitoring and evaluation of conservation practices, enhancements, and activities;

8. Provide for matching financial funds or technical assistance to assist participants with the implementation of their EQIP and CSP contracts and WHIP cost-share agreements;

9. Further the Nation's efforts with renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration;

10. Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the proposed project area; and

11. Identify other factors and criteria which best achieve the purposes of CCPI.

Part C—General AWEP and CCPI Proposal Information

State Conservationist Letter of Review

Once a project proposal is received, the agency will provide a copy to the appropriate State Conservationist(s) for evaluation and ranking. If the project is multi-State in scope, the proposal will be evaluated at the national level, and the State Conservationist(s) will submit a letter of review to address:

1. Potential duplication of efforts with other projects or existing programs;

2. Adherence to, and consistency with, program regulation including requirements related to land and producer eligibility and use of approved NRCS resource concerns and conservation practices, enhancements, and other program requirements;

3. Expected benefits for project implementation in their State(s);

4. Other issues or concerns the State Conservationist is aware of that should be considered by the agency; and

5. A general recommendation for support or denial of project approval.

Proposal Submission, Review, and Notification

Potential partners are highly encouraged to submit proposals, using the approved proposal template, to the e-mail address or Post Office Box provided in the "**ADDRESSES**" section of this notice. The proposal must address, in sufficient detail, all the criteria outlined in the "Proposal Information" section of this notice to allow agency reviewers to understand the partner's priority resource concerns, objectives, and expected outcomes.

State Conservationists are expected to provide, once requested, guidance to potential partners regarding resource concerns that may be addressed in the proposed project area, local working group and State Technical Committee natural resource priorities, approved conservation practices and activities, and other program requirements the partner should consider when developing a proposal. NRCS may not assist in writing or submission of any proposal.

AWEP and CCPI proposals submitted to NRCS become the property of the agency for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted for review and ranking, there will be no further opportunity to change or re-submit the proposal. Incomplete proposals or those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. Partner proposals may be withdrawn by written notice to the Director, Financial Assistance Programs Division at any time prior to selection (*see* "**ADDRESSES**" section in this notice).

NRCS will review and evaluate the proposals based on the criteria set forth in the respective "Proposal Information" sections of this notice for both AWEP and CCPI. Positive consideration will be given to proposals that thoroughly address the issues outlined in the respective "Evaluation Criteria" sections of this notice for AWEP and CCPI.

Partners whose proposals have been selected will receive a letter of official notification. Upon notification of selection, the partner should contact the appropriate State Conservationist to develop the required partnership agreement and other project implementation requirements. Potential partners should note that, depending upon available funding and agency priorities, NRCS may offer a reduced amount of program financial assistance from what was requested in the proposal. Partner submissions of proposals that were not selected will also be notified.

Waiver Authority

To assist in the implementation of AWEP projects, the NRCS Chief may waive the applicability of the Adjusted Gross Income Limitation in producer program contracts, on a case-by-case basis in accordance with 7 CFR 1400.500(d)(2). Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local designated conservationist.

Signed this 7th day of December, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. 2010–31279 Filed 12–13–10; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County, CO; Beaver Creek Mountain Improvements

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The White River National Forest is preparing an Environmental Impact Statement (EIS) to consider and disclose the anticipated environmental effects of implementing projects from Beaver Creek Resort's 2010 Master Development Plan (MIDP). These projects are designed to enhance and sustain Beaver Creek's ability to provide a world class venue for Alpine ski events—a key goal of the MDP.

DATES: Comments concerning the scope of the analysis must be received by January 28, 2011. The draft environmental impact statement is expected to be available for public review in August 2011 and the final environmental impact statement is expected in the winter of 2011.

ADDRESSES: Send written comments to: Scott Fitzwilliams, Forest Supervisor, c/o Don Dressier, Winter Sports Administrator, White River National Forest, PO Box 190, Minturn, CO 81645; FAX (970) 945–9343 or by e-mail to: *wrnf_scoping_comments@fs.fed.us.* Include "Beaver Creek Mountain Improvements" in the subject line. The scoping notice and map can be reviewed/downloaded at: *http://www.fs.usda.gov/whiteriver* under "Land & Resources Management" and "Projects."

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Don Dressier, Winter Sports Administrator, Eagle/Holy Cross Ranger District, 24747 U.S. Highway 24, PO Box 190, Minturn, Colorado 81645. Mr. Dressier can be reached by phone at (970) 827–5157 or by e-mail at *drdressler@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The project primarily focuses on the actions necessary for Beaver Creek to host Alpine ski racing events. However, some elements of the Proposed Action are also designed to enable the resort to respond to on-going infrastructural and guest service needs that are not specifically related to Alpine ski racing. These projects were identified in Beaver Creek's MDP, and are proposed to address the following resort goals and objectives:

—Update mountain facilities and infrastructure in order to provide the highest quality guest experience possible;

—Update mountain facilities and infrastructure related to ski racing to continue to provide world class venues for Alpine events; and

—Update guest services across the resort to respond to the needs and demands of Beaver Creek's market.

Beaver Creek has earned the opportunity to host the upcoming 2015 World Alpine Championships. In order for Beaver Creek to continue to host international Alpine race events (including, but not limited to the 2015 World Alpine Championships) and provide the highest quality experience for the large number of attendees and

spectators, a number of infrastructure projects and improvements are necessary. Beaver Creek and Vail Mountain hosted the 1989 and 1999 World Alpine Ski Championships, and Beaver Creek has maintained continued involvement in the World Cup race circuit. Currently, the only men's World Cup race venue used annually in the United States is located at Beaver Creek. Hosting the 2015 International Skiing Federation (FIS) World Alpine Ski Championships is a unique opportunity to increase the awareness and participation in the sports of skiing and snowboarding; however, the FIS requires separate venues for men's and women's Alpine events, which Beaver Creek currently does not offer.

The project's Purpose and Need falls into four general categories: Trails (Terrain and Snowmaking), Racecourse Finish Area, Red Tail Camp Restaurant, and Infrastructure.

Proposed Action: All proposed projects are within Beaver Creek's existing special use permit (SUP) boundary, which is administered by the White National Forest. The proposed action includes:

—A new women's downhill course that would be served by the Birds of Prey Express chairlift. The women's downhill course would require vegetation removal and grading, as well as replacement/installation of snowmaking infrastructure.

—A new women's giant slalom course on Grouse Mountain. The women's giant slalom course would require trail widening and upgrading existing snowmaking infrastructure.

—Trail widening and re-grading along the existing men's Birds of Prey downhill course.

—A new access trail between the Centennial and Goshawk trails that would enable event spectators to reach the middle portion of the men's and women's downhill courses. An existing utility corridor is also proposed to be widened near the Dally catwalk to improve skier/rider circulation.

—Approximately 10.5 acres of re-grading in the Red Tail Camp area (the finish area for the existing men's downhill course as well as the proposed women's downhill and giant slalom courses). This includes realigning and culverting a segment of Westfall Creek, relocating existing utility lines, and expanding the existing TV compound to accommodate current and future media needs.

—Relocating and expanding the existing Red Tail Camp facility, and increasing indoor/outdoor seating. This is within the 10.5 acres of area proposed to be re-graded.

—Installing a 24x36' storage facility west of the top terminal of the Birds of Prey Express chairlift.

—Constructing a new 150,000-gallon water tank and pump station on the edge of the Paint Brush trail.

—Installing/upgrading water and sewer lines in the Red Tail Camp vicinity.

Responsible Official: The responsible official is Scott Fitzwilliams, Forest Supervisor for the White River National Forest.

Nature of Decision to be Made: Based on the analysis that will be documented in the forthcoming EIS, the responsible official will decide whether or not to implement, in whole or in part, the proposed action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process: This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the Draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 6, 2010.

Scott G. Fitzwilliams,

Forest Supervisor, WRNF.

[FR Doc. 2010–31235 Filed 12–13–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Report of Requests for Restrictive Trade Practice or Boycott.

OMB Control Number: 0694–0012.

Form Number(s): N/A.

Type of Request: Regular submission.

Burden Hours: 1,171.

Number of Respondents: 892.

Average Hours per Response: 1 hour to 1 hour and 30 minutes.

Needs and Uses: This information is used to monitor requests for participation in foreign boycotts against countries friendly to the U.S. The information is analyzed to note changing trends and to decide upon appropriate action to be taken to carry out the United States' policy of discouraging its citizens from participating in foreign restrictive trade practices and boycotts directed against friendly countries.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, via e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or Fax number (202) 395–5167.

Dated: December 8, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–31278 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: Voluntary Self-Disclosure of Antiboycott Violations.

OMB Control Number: 0694–0132.

Form Number(s): N/A.

Type of Request: Regular submission.

Burden Hours: 7,230.

Number of Respondents: 15.

Average Hours per Response: 10 to 600.

Needs and Uses: This collection of information supports enforcement of the Antiboycott provisions for the Export Administration Regulations (EAR) by providing a method for industry to voluntarily self-disclose Antiboycott violations.

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, via e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or Fax to (202) 395–5167.

Dated: December 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–31293 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–2371 or (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the countervailing duty order on certain hot-rolled flat-rolled carbon-quality steel products from Brazil for the period January 1, 2008, through December 31, 2008. *See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Preliminary Results of Countervailing Duty Administrative Review,* 75 FR 64700 (October 20, 2010). This review covers Usinas Siderurgicas de Minas Gerais S.A. (USIMINAS) and its subsidiary, Companhia Siderurgica Paulista (COSIPA), producers/exporters of the subject merchandise to the United States.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1), the Department shall issue final results in an administrative review of a countervailing duty order within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the time limit, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120-day period up to 180 days.

The final results of this countervailing duty administrative review are currently due February 17, 2011. Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department had to request additional information from USIMINAS/COSIPA and the Government of Brazil after the preliminary results. Consequently, the Department needs additional time to analyze this information and to consider comments filed by the parties. In accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the final results from 120 days to 180 days; the final results will now be due no later than April 18, 2011.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 7, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–31367 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Final Results of the First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Matthew Renkey, 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) 482–0219 or (202) 482–2312 respectively.

Background

On September 15, 2010, the Department of Commerce ("Department") published in the **Federal Register** the *Preliminary Results* of the antidumping duty order on certain steel nails ("steel nails") from the People's Republic of China ("PRC").[1] Subsequent

[1] *See Certain Steel Nails From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of the*

to the publication of the *Preliminary Results,* the Department extended the deadlines for submission of surrogate values, rebuttal comments and case briefs.[2] The period of review ("POR") is January 23, 2008, through July 31, 2009. The final results are currently due no later than January 13, 2011.

Extension of Time Limit For the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act"), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department finds that it is not practicable to complete the final results within this time limit because the Department is in the process of conducting the verification of a mandatory respondent and needs additional time to complete this verification and issue its final determination. In addition, the extension of the briefing schedule for surrogate values and company-specific issues in this proceeding necessitates additional time for the Department to make its final determination. As a result, the Department finds that it is not practicable to complete verification, to review the surrogate value data, and to analyze the case brief comments within the scheduled time limit. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time for the completion of the final results of this review to March 14, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 2010.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–31366 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping Duty Administrative Review, 75 FR 56070 (September 15, 2010) ("*Preliminary Results*").

[2] *See* Letter from Emeka Chukwudebe, Case Analyst, Office 9, to Interested Parties: Extension Briefing Schedule for 1st AR Antidumping Administrative Reviews of Certain Steel Nails from the People's Republic of China ("PRC") (October 5, 2010). *See also* Memorandum For: All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, dated October 6, 2010. *See also* Memorandum For: All Interested Parties, from Matthew Renkey, Case Analyst, Import Administration, dated October 21, 2010.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 10, 2010, the Department of Commerce (the Department) published its preliminary results in the antidumping duty administrative review of purified carboxymethylcellulose (CMC) from the Netherlands. *See Purified Carboxymethylcellulose From the Netherlands; Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 48310 (August 10, 2010) (*Preliminary Results*). The merchandise covered by the order is purified CMC, as described in the "Scope of the Order" section of this notice. The period of review (POR) is July 1, 2008, through June 30, 2009. We afforded interested parties an opportunity to comment on the *Preliminary Results.* We received comments from interested parties on October 22, 2010, and, in light of these comments, have made changes to our margin calculations. Thus, the final results differ from those published in the Department's *Preliminary Results.* The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of the Review."

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Edythe Artman, Olga Carter, 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) 482–3931, (202) 482–8221, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2010, the Department published the preliminary results of the administrative review of the antidumping duty order on purified CMC from the Netherlands. *See Preliminary Results* at 48310. The respondents under review are Akzo Nobel Functional Chemicals B.V. (ANFC) and CP Kelco B.V. (CP Kelco). The petitioner in this proceeding is Aqualon Company, a unit of Hercules Inc. We invited interested parties to comment on the *Preliminary Results* following the release of all verification reports. *See Preliminary Results* at 48318.

On September 29, 2010, the Department released the home-market sales verification report for ANFC and, on October 13, 2010, we released the U.S. sales verification report for this company. We did not verify the responses of CP Kelco in the current review.

On October 22, 2010, ANFC submitted a case brief and CP Kelco submitted a letter in lieu of a case brief. The petitioner did not file any comments on the preliminary results of review and no party requested a hearing concerning the review.

Scope of the Order

The merchandise covered by the order is all purified 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 the 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.

Analysis of Comments Received

All issues raised in ANFC's case brief and CP Kelco's letter in lieu of a case brief are addressed in the "Issues and Decision Memorandum for the Final Results of the 2008/2009 Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands," from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Acting Deputy Assistant Secretary for Import Administration, dated December 8, 2010 (Issues and Decision Memorandum), and hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. A copy of the Issues and Decision

Memorandum will be placed on the official file of this review, which is located in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received from ANFC, we have made changes to its margin calculations for the final results. The Department changed the assignment of product characteristics to the variable "CMCHAR" from U.S. product characteristics to home-market product characteristics. This change is consistent with our model-matching methodology and will ensure that sales in the U.S. market are compared to home-market sales of the identical or similar models. We also have changed the calculation of movement expenses so that warehousing expenses are only included in domestic movement expenses (*i.e.,* they have been removed from the calculation of international movement expenses). Finally, we have reviewed ANFC's comments with respect to the inventory carrying costs incurred in the United States and agree that no such costs were incurred on "Channel-1" sales—those sales in which the product was shipped directly from the production facility or warehouse in the Netherlands to the U.S. customer. Thus, we have modified our recalculation of inventory carrying costs incurred in the United States in the margin calculation program to exclude Channel-1 sales. For a more detailed discussion of the changes made to ANFC's calculations, *see* "Memorandum to the File: Final Results of Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands: Analysis of the Sales Responses Submitted by Akzo Nobel Functional Chemicals B.V.," from Olga Carter, International Trade Compliance Analyst, to the File, dated December 8, 2010. A public version of this memorandum is on file in the CRU.

In addition, we made changes to the programs used to calculate ANFC's margin based on our own review of the record following the issuance of the *Preliminary Results.* First, in light of a finding discovered at ANFC's home-market sales verification, we have corrected the entry date of one U.S. sale. Specifically, in our margin-calculation program, we have entered the verified date of entry for this sale (and, as described below, are recalculating the inventory carrying costs for this sale, as we are for all sales). Second, subsequent to the issuance of the *Preliminary Results,* we noticed that a minor correction relating to one sale was not reflected in ANFC's most-recently submitted U.S. sales database.[1] Consequently, for this sale, we entered the verified date of entry and amount of U.S. duties incurred on the sale in the margin-calculation program. Lastly, we noticed an oversight in our preliminary margin calculations in that, having made an adjustment to the manufacturing costs of all products, we failed to recalculate the inventory carrying costs incurred in the Netherlands on both home-market and U.S. sales.[2] *See* the memorandum on "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Akzo Nobel Functional Chemicals B.V.," from Frederick W. Mines, Accountant, to Peter S. Scholl, Lead Accountant, dated August 2, 2010. Thus, we have corrected this oversight for the final results by modifying the comparison-market and margin-calculation programs to recalculate the inventory carrying costs that ANFC incurred in the Netherlands.

With respect to CP Kelco, we reviewed the company's comment that language in our margin-calculation program, used to recalculate U.S. indirect selling expenses incurred in the home market, resulted in an inadvertent mathematical error. As suggested by the respondent, we have modified the programming language so that the gross unit price of a sale is now added to any billing adjustments of the sale before the selling-expense factor is applied to the sum of these two amounts. This change is detailed in the "CP Kelco B.V.—Analysis Memorandum for the Final Results of the 2008/2009 Antidumping Duty Administrative Review of Purified Carboxymethylcellulose from the Netherlands," from Edythe Artman, International Trade Compliance Analyst, to the File, dated December 8, 2010. A public version of this memorandum is on file in the CRU.

Final Results of the Review

We determine the following percentage weighted-average margins to exist for the period July 1, 2008, through June 30, 2009:

Manufacturer/Exporter	Weighted-average margin (percentage)
ANFC	9.06
CP Kelco B.V.	2.64

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department normally calculates an assessment rate for each importer of the subject merchandise covered by the review. In this review, we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review as described below.

With respect to export-price sales (*i.e.,* sales directly to the unaffiliated purchaser in the United States) for these final results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's POR entries.

For constructed-export-price sales (*e.g.,* sales through ANFC's U.S. affiliate to the unaffiliated purchaser in the United States), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's POR entries. *See* 19 CFR 351.212(b).

The calculated per-unit values or *ad valorem* rates, as appropriate, will be assessed uniformly on all entries made by the respective importers during the POR. Where the assessment rate is above *de minimis,* we will instruct CBP

[1] This database and the most-recently submitted home-market sales database reflected all other minor corrections and revisions requested by the Department at verification and were used to calculate CP Kelco's preliminary dumping margin.

[2] The adjustment to manufacturing costs, upon which inventory carrying costs are based, would also make it necessary to recalculate the inventory carrying costs incurred in the United States except that we already inserted the programming language for this recalculation in ANFC's margin-calculation program for the preliminary results. We made this earlier change based on our finding that these costs should be calculated by using the U.S. interest rate. *See* "Analysis of Data Submitted by Akzo Nobel Functional Chemicals B.V. (ANFC) and Akzo Nobel Functional Chemicals LLC (AN–US) in the Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order on Purified Carboxymethylcellulose (CMC) from the Netherlands," from Olga Carter and Edythe Artman, International Trade Compliance Analysts, to the File, dated August 2, 2010, at 10.

to assess duties on all entries of subject merchandise by that importer.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by reviewed companies for which these companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of purified CMC from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash-deposit rates for ANFC and CP Kelco will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, 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 or any previous review or in the less-than-fair-value (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) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 14.57 percent, which is the all-others rate established by the Department in the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005). These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a 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(a)(3). Timely, written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 8, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I—Comments in the Issues and Decision Memorandum

Clerical Errors

Comment 1: Physical Characteristic Codes of Comparison-Market Sales.

Comment 2: Double-counting of Warehousing Expenses Incurred in the Country of Manufacture.

Comment 3: Inventory Carrying Costs Incurred in the United States on Certain Sales.

Comment 4: Calculation of U.S. Indirect Selling Expenses Incurred in the Country of Manufacture.

[FR Doc. 2010–31369 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on lightweight thermal paper from Germany. For the period November 20, 2008, through October 31, 2009, we have preliminarily determined that Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, "Koehler") did not make sales of subject merchandise at less than normal value ("NV") (*i.e.,* sales were made at *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to liquidate appropriate entries without regard to antidumping duties. *See* "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3692 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the period of review ("POR") November 20, 2008, through October 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 56573 (November 2, 2009).

On November 30, 2009, we received a timely request from Appleton Papers, Inc. ("petitioner") for the Department to conduct an administrative review of Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH and Mitsubishi International Corporation (collectively, "Mitsubishi"), and Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, "Koehler"). We also received a request from Koehler for the Department to conduct an administrative review of Koehler.

On December 23, 2009, the Department published the notice of initiation of this antidumping duty administrative review covering the period November 20, 2008, through October 31, 2009, naming Mitsubishi and Koehler as respondents. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

Part, 74 FR 68229 (December 23, 2009) ("*Initiation Notice*"). On December 23, 2009, the Department also issued initial questionnaires covering Sections A, B, C, and E to Mitsubishi and Koehler with a due date of January 29, 2010.

On January 26, 2010, petitioner, the sole party that requested a review of Mitsubishi timely withdrew its request for a review of Mitsubishi. Accordingly, the Department rescinded the administrative review with respect to Mitsubishi. *See Lightweight Thermal Paper from Germany: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 11135 (March 10, 2010).

On January 29, 2010, Koehler submitted its response to Section A of the Department's initial questionnaire. On February 16, 2010, Koehler submitted its response to Sections B and C of the Department's initial questionnaire. On March 8, 2010, petitioner requested that the Department conduct an investigation of sales below cost of production by Koehler (March 8th Cost Allegation). On March 19, 2010, the Department issued questions to petitioner to obtain additional information regarding its March 8th Cost Allegation. On March 23, 2010, petitioner responded to the Department's March 19, 2010, questionnaire regarding the sales below cost allegation it filed with respect to Koehler, and on March 25, 2010, Koehler commented on petitioner's March 23, 2010, response. In the letter of March 23, 2010, Koehler asserted that the basis for petitioner's March 8th Cost Allegation is unrepresentative of Koehler's costs and should be rejected. On April 6, 2010, the Department requested additional information from petitioner regarding its allegation of below cost sales made by Koehler, and petitioner responded on April 8, 2010. On April 16, 2010, Koehler commented on petitioner's April 8, 2010, response to the Department's questions regarding its March 8th Cost Allegation.

On April 16, 2010, the Department found that petitioner had provided a reasonable basis to believe or suspect that Koehler is selling lightweight thermal paper ("LTWP") at prices below its cost of production, and initiated a sales below cost investigation on April 20, 2010. *See* Memorandum to Melissa Skinner, Director, Office 3 from the Team titled "Petitioner's Allegation of Sales Below the cost of Production for Papierfabrik August Koehler AG," ("Sales Below Cost Memo") dated April 16, 2010.

On April 19, 2010, petitioner submitted factual information from the investigation for the record of the instant administrative review. On April 21, 2010, Koehler requested that it be allowed to report its costs based on its fiscal year 2009 costs instead of the POR, and the Department responded on the same date with a letter to Koehler requesting additional information. On April 23, 2010, Koehler submitted its reply to the Department's April 21, 2010, letter seeking certain additional cost information. On April 28, 2010, and on May 7, 2010, petitioner submitted letters objecting to Koehler's request to shift its cost reporting period, on the basis that weighted-average POR costs would be distorted if Koehler's request to report its costs based on its fiscal year was granted. On April 29, 2010, the Department requested additional cost information from Koehler regarding Koehler's request to shift the cost reporting period. On May 6, 2010, Koehler submitted its reply to the Department's April 21, 2010, letter seeking certain additional cost information. On May 10, 2010, the Department denied Koehler's request to shift its cost reporting period in this administrative review.

On May 25, 2010, Koehler submitted its response to Section D of the Department's initial questionnaire which was issued on April 20, 2010. On June 11, 2010, petitioner submitted deficiency comments concerning Koehler's supplemental sales and initial cost responses. On June 17, 2010, Koehler submitted a letter in response to the petitioner's letter of June 11, 2010.

On July 16, 2010, the Department published a notice extending the time period for issuing the preliminary results of the administrative review from August 2, 2010, to December 7, 2010. *See Lightweight Thermal Paper from Germany: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 41439 (July 16, 2010).

The Department issued several supplemental questionnaires to Koehler and received timely responses to its requests for additional information.

On November 5, 2010, petitioner submitted "pre-preliminary results" comments to reiterate certain comments that it previously made in this review. Specifically, the petitioner argues that the Department should disregard Koehler's home market sales of the 48 grams per square meter (g/m ^{2}) product, alleging that such sales established a fictitious market and were made outside the ordinary course of trade. The petitioner argues that if the Department does not exclude Koehler's sales of KT 48 F20 thermal paper from its margin calculations, then it should disallow certain rebates relating to those sales.

Period of Review

The POR is November 20, 2008, through October 31, 2009.

Scope of the Order

The scope of this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m ^{2}) (with a tolerance of ± 4.0 g/m ^{2}) or less; irrespective of dimensions; [1] with or without a base coat [2] on one or both sides; with thermal active coating(s) [3] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; [4] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, and 4823.40.00.[5] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended ("the Act"), all products produced by Koehler covered by the description in the "Scope of the Order" section above and sold in Germany during the POR are considered to be foreign like products for purposes of determining appropriate product

[1] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[2] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[3] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[4] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[5] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP).

comparisons to U.S. sales. We have relied on 12 criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Form, (2) thermal active coating, (3) top coating, (4) basis weight, (5) maximum optical density units, (6) static sensitivity, (7) dynamic sensitivity, (8) color coating, (9) printing, (10) width, (11) length, and (12) core material. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

For purposes of these preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing ("VCOM") between each U.S. model and the most similar home market model selected for comparison.

Comparisons to Normal Value

To determine whether sales of LWTP from Germany were made in the United States at less than NV, we compared the export price ("EP") or constructed export price ("CEP") to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Allegation of a Fictitious Market

In petitioner's letter dated March 5, 2010, petitioner argued that the Department should scrutinize Koehler's pricing in the German market. Petitioner asserts that there is evidence in the pricing trends for certain products which indicate that Koehler has artificially manipulated prices for certain sales or created a "fictitious market" within the meaning of section 773(a)(2) of the Act. Citing *Stainless Steel Bar from India,*[6] and *Gray Portland Cement and Clinker From Mexico,*[7] the petitioner states that the Department investigates whether there might be a "fictitious market" where there is evidence of "different movements in prices at which forms of the foreign like product are sold," and where such movements tend to reduce normal value for the like product matching to the respondent's U.S. sales.[8]

Petitioner states that heavier basis weight paper is more costly to produce, and thus, commands a higher price, than lighter basis weight paper on a per square meter basis because of the additional material required to produce the same area. However, petitioner states that, when priced on a per kilogram basis, heavier basis weight paper is generally less expensive than lighter basis weight paper. The petitioner asserts that Koehler's reporting of its sales prices in the home market does not follow this relationship and contends that Koehler's explanation based on the relative demand of the products does not explain the alleged distortions in Koehler's home market prices.[9] The petitioner alleges that there is a significant difference in price movements between Koehler's home market sales of certain products.[10] The petitioner asserts that Koehler has manipulated its sales in such a way that causes artificial price comparisons with Koehler's U.S. sales.

Koehler refutes petitioner's assertions that Koehler has artificially manipulated prices for certain sales or created a fictitious market. Koehler claims that it has been marketing KT 48 F20 in commercial quantities in the German and U.S. markets since February 2007, and that such sales are normal market transactions. Koehler states that the KT 48 F20 lowers transportation costs by 15 percent, because a reel of KT 48 F20 provides 15 percent more length than a reel of KT 55 F20. Koehler explains that there are relatively more sales of KT 48 F20 in the United States than in Germany because it is lighter and longer than KT 55 F20, which translates to fewer reels needed and a reduction in the cost of transportation. Koehler states that shipping costs are not as significant in Germany because all German destinations are much closer compared to U.S. destinations. Therefore, German companies tend to purchase less KT 48 F20 than U.S. companies. Koehler also points out what it claims to be other additional benefits for U.S. companies that purchase KT 48 F20, such as less waste paper and time lost due to changing reels that do not have the length of KT 48 F20.[11]

Koehler states that data for the POR, plus sales data from the period of investigation ("POI"), show a consistent pricing pattern in Germany in which KT 55 F20 sells at a higher price than KT 48 F20. Koehler contends that petitioner's assertion relating pricing to grams per square meter of merchandise ignores the role of market demand in pricing, and further contends that there is no one-to-one relationship between grams per square meter and price. Furthermore, Koehler states that it needs to offer competitive prices in the home market to attract customers to this new product.

In accordance with section 773(a)(2) of the Act, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

In *Gray Portland Cement and Clinker From Mexico,* we stated that "the existence of a fictitious market is not necessarily established merely on the basis of price movements without regard to the reasons that may have caused those price movements. The presence of commercial factors other than the existence of an antidumping duty order is relevant in determining whether a fictitious market exists." *See Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 25803, 25804 (April 28, 1993). Accordingly, the Department will examine not only whether there are price movements, but also whether there are commercial or market factors that explain these price movements. A review of the record of this case shows that the International Trade Commission ("ITC") examined U.S. market conditions in its report issued for its Preliminary Determination and noted a shift from the 55 g/m² product to the 48 g/m² product. Based on the analysis performed by the ITC, it stated that "the entire increase in subject import volume

[6] *See Stainless Steel Bar from India; Preliminary Results of New Shipper Review,* 64 FR 46350, 46352 (August 25, 1999) (citing *Tubeless Steel Disc Wheels from Brazil; Final Results of Antidumping Duty Administrative Review,* 56 FR 14085 (April 1, 1991)).

[7] *See Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 25803, 25804 (April 28, 1993).

[8] *See* petitioner's comments, dated March 5, 2010, at pages 7–8.

[9] *See* petitioner's comments, dated November 5, 2010, at pages 5–7.

[10] *See* petitioner's comments, dated March 5, 2010, at page 8.

[11] *See* Koehler's March 16, 2010 letter, at pages 3- 5; *see also* Koehler's Section A–C Supplemental Questionnaire response, dated April 15, 2010, at pages 8–10 and Exhibit S–8.

from Germany from 2005 to interim 2007 was attributable to increased shipments of the 48 gram product. At the same time, subject imports from Germany of the traditional 55 gram product have declined since 2005." *See* ITC Preliminary Determination Report: Certain Lightweight Thermal Paper from China and Germany, Investigation Nos. 701–TA–451 and 731–TA–1126–1127 ("Preliminary Determination") at 48–49, Publication 3964, November 2007. *See* also Preliminary Results Calculations in the 08/09 Administrative Review of Lightweight Thermal Paper from Germany at Appendix 3 ("Preliminary Results Calculation Memo").

Similarly, the ITC's Final Determination Report analysis of the trends in the basis weight of thermal paper sales stated that: "{a}ccording to Appleton, paper markets have, in general, been gravitating toward lighter basis weight products, and in recent years, certain LW thermal paper weighing 48 g/m² has been introduced into the U.S. market at a discount to the 55 g/m² product, which makes it appealing to some converters. However, Appleton contends that there has not been a big push by end users for lighter basis weights and that market acceptance of the 48 g/m² product has been limited because of certain disadvantages (*e.g.,* thinner paper more prone to breaking during converting, smaller converted rolls, and the need to inventory more types of packaging). On the other hand, Koehler, which introduced its 48 g/m² certain LW thermal paper to the U.S. market in 2005, sees an advantage in the thinner paper in that it can be used to make a longer finished roll with the same diameter meaning less time spent by the end user changing rolls. Koehler also notes that the product has a freight advantage for converters because they can ship 10 percent more footage at the same shipping weight, and the firm expects sales of the 48 g/m² product to continue growing." *See ITC Report: Certain Lightweight Thermal Paper from China and Germany,* Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Final) at I–8. Publication 4043, November 2008. *See also* Preliminary Results Calculations Memo.

The Department's review of the marketing materials (*i.e.,* product brochures) submitted by Koehler combined with the ITC discussion of the 48 g/m² product in the context of the underlying investigation provides evidence that this is a relatively new product with expected growth in the United States. *See* Koehler's Section A–C Supplemental Questionnaire response, dated April 15, 2010, at pages 8–10 and Exhibit S–8. Koehler's arguments about the effect of lower shipping costs, and the factual information on the record, are consistent with the ITC analysis of this product. This product's sales growth appears to be more significant in the United States than in Germany because freight cost for shipping the subject merchandise is comparatively more important in the U.S. market than in Germany, as the United States is a larger country and the distances to deliver to the United States are much more significant than in Germany.

In addition, we find that petitioner's allegation that there are different price trends for certain product(s) is inaccurate. Specifically, we disagree with the petitioner's analysis because it examined only net prices and was predicated on a prior version of Koehler's home market sales database, which has been corrected by Koehler to account for all of Koehler's rebates during the reporting period covered by this review. Koehler reported that, in the first version of the home market sales database that it submitted in this review, it inadvertently excluded certain quarterly rebates which apply to the period immediately prior to the POR for KT 48 F20. *See* Koehler's Section A–C Supplemental Questionnaire response, dated April 15, 2010, at pages 16–17. Once these rebates were accounted for, the Department's analysis of this data shows the general price trend for the products at issue is consistent over time, based on the revised rebate amounts and corresponding gross and net prices for the pre-POR and POR time periods. Therefore, the Department preliminary finds that Koehler's pricing of sales of certain products in Germany does not result in a fictitious market. Due to the proprietary nature of this issue, *see* Preliminary Results Calculations Memo.

Allegation of Sales Made Outside the Ordinary Course of Trade

The petitioner argues that the Department should disregard Koehler's home market sales of the KT 48 F20 product, alleging that such sales were made outside the ordinary course of trade. The petitioner asserts that Koehler's home market sales of the KT 48 F20 product comprise a relatively small portion of its home market sales and were made pursuant to unusual terms of sale based on the post-sale adjustments discussed below.

Koehler rebuts these arguments, claiming that it has been marketing KT 48 F20 in commercial quantities in the German and U.S. markets since February 2007, and that such sales are normal market transactions. Koehler reports sales of KT 48 F20 during the investigation and this POR to multiple customers. Koehler states that the 48 g/m² product is still a relatively new product and faces relatively lower demand in the home market, as compared to its U.S. sales of 48 g/m² and its home market sales of other products. In regard to its sales terms, Koehler states that it bases its pricing and rebates on its customer-specific sales negotiations and the commercial demand of its products relative to its other products.[12]

The Department considers sales to be outside the ordinary course of trade when, "based on an evaluation of all of the circumstances particular to the sales in question," they "have characteristics that are extraordinary for the market in question." *See* 19 CFR 351.102(b)(35). Although there is no exhaustive list of such characteristics, {e}xamples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. *See* 19 CFR 351.102(b)(35); *see also* section 771(15) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 at 834 (1994) ("SAA").

We have examined the terms of sale for the products in question and the sales trends of the products in question. Koehler reported sales of KT 48 F20 to a number of customers in both the POI and the POR.[13] Furthermore, we have evaluated all of the circumstances particular to the sales in question and do not find that such sales have characteristics that are extraordinary for the market in question. Based on our examination of the record, we find that there is no evidence on the record to demonstrate that Koehler's sales of KT 48 F20 are based on transactions involving off-quality merchandise, merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an

[12] *See* Koehler's Section A–C Supplemental Questionnaire response, dated April 15, 2010, at pages 14–17.

[13] *See* Koehler's March 16, 2010 letter, at page 1.

affiliated party at a non-arm's length price.

In summary, the record of this review does not support a finding of sales outside the ordinary course of trade. Petitioner has not provided sufficient evidence to demonstrate that Koehler's sales of KT 48 F20 are outside the ordinary course of trade.

Allegation That Koehler's Home Market Rebates Are Not Bona Fide Adjustments

The petitioner argues that if the Department does not exclude Koehler's sales of KT 48 F20 thermal paper from its margin calculations on the basis that such sales were made outside the ordinary course of trade, then it should disallow certain rebates relating to those sales. Petitioner contends that the terms were not agreed to by the customers until after the respective sales occurred, and thus, the rebates are not within normal commercial considerations. Citing the *Thai Pineapple Final Results,*[14] petitioner states that the Department's practice is to closely examine the circumstances surrounding the adjustment to determine whether it was a bona fide adjustment made in the ordinary course of business.

The petitioner argues that Koehler has significantly increased the rebates to a particular customer in the home market during the POR. The petitioner asserts that Koehler has manipulated its sales prices by applying rebates to certain product(s). In its letter dated March 5, 2010, the petitioner provided an analysis of certain products sold by Koehler in the home market using net prices for several months prior to the POR for comparison to the months during the POR. Based on this analysis, the petitoner asserts that Koehler artificially manipulated its home market pricing by applying higher rebates during the POR for the product(s) identified by petitioner, as compared to the months prior to the POR. The petitioner alleges that Koehler has applied a pricing scheme using post-sale adjustments and argues that these are not bona fide rebate adjustments where the customer knows the rebate amount at the time of sale.

Koehler reports customer-specific rebates which may apply to all products or be product-specific. Koehler paid rebates on a periodic basis (either monthly, quarterly, or annually). The rebate terms were all agreed to on a percentage of gross unit price basis and differ by customer and by product. Koehler states that there are generally no written rebate agreements covering sales of subject merchandise during the POR. Koehler reports that it had these rebate agreements in place for several years and although there were initially written agreements with customers, the rebate practices had become routine enough by the POR that the parties did not bother with formalized written rebate agreements.[15] Rather, the rebate percentage is simply specified on the relevant customer-specific price lists.

Koehler rebuts petitioner's allegation that its home market prices were artificially manipulated, stating that its home market pricing and rebate percentages cannot be examined in isolation; rather, the sales prices are based on customer-specific price negotiations in which the starting prices may differ by customer and product based on commercial demand considerations. Koehler acknowledges that, in its reporting for certain sales, the customer may not know the exact percentage of the rebate that will be received until after the sale date. Koehler states that regardless of whether this adjustment may be referred to as a post-sale billing adjustment or a rebate, it must be accounted for as a reduction to normal value in the Department's margin calculations.

The Department's practice is to reduce the gross selling price by the amount of the rebate when the seller establishes the terms and conditions under which the rebate will be granted at or before the time of sale. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 13815, 13822–23 (March 28, 1996). Consistent with this practice, we have disallowed certain rebates that are instituted retroactively since such rebates could be designed to reduce the comparison market price for the purpose of reducing or eliminating dumping margins. *See id.* In the instant case, although certain customers may not always know the precise rebate amount at the time of the sale, the customer-specific price lists indicate the rebate percentages and the customers expect to receive rebates based on their existing, and in some cases, long-standing relationship with Koehler and their prior written rebate agreements.

We find that the fact pattern in this case is dissimilar to the fact pattern in cases such as *Thai Pineapple Final Results.*[16] In *Thai Pineapple Final Results,* the Department was concerned as to why post-sale price increases were made by the respondent, Vita, for only U.S. sales and not comparison market sales. The Department stated that in the *Thai Pineapple Preliminary Results,*[17] it rejected the claimed post-sale price increases because (1) the record did not support Vita's rationale for the price increases; (2) Vita either could not supply an agreement providing for the price increases or supplied an agreement where virtually none of the terms of the agreement were followed; and, (3) the price increases appeared to be unique given there was no evidence that Vita made post-sale price adjustments to sales to any other markets or any other customers.[18]

In the *Thai Pineapple Final Results,* the Department stated "the circumstances surrounding the U.S. customers' payment of the post-sale price increases do not appear to be consistent with commercial realities and call into question the nature of these payments. As noted in the Preliminary Results, if these are, in fact, payments on the claimed post-sale price adjustments, it would mean that these customers were willing to pay significant charges imposed after the sale, even though, in the case of one U.S. customer, there was: (1) No agreement requiring the company to pay such amounts; (2) no understanding as to how these additional charges would be calculated; and (3) no limits placed on the amount of the additional charges. Similarly, another U.S. customer reportedly paid the post-sale price increases even though: (1) The purported agreement covering these additional charges was not followed; and (2) the price increases appear to be inconsistent with Vita's cost increases. Thus, regardless of how Vita labeled the payments, the payments do not demonstrate that Vita is entitled to the claimed post-sale price adjustments."[19]

In contrast, in the instant review, Koehler has reported rebates in both the U.S. and comparison market during the POI and POR and has provided rebate agreements covering sales dating back to 2002 and 2003. Koehler has explained

[14] *See Canned Pineapple from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 70948 (December 7, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (*Thai Pineapple Final Results*).

[15] *See* Koehler's April 15, 2010, Supplemental Questionnaire Response at Exhibits S–11 through S–13.

[16] *See Canned Pineapple from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 70948 (December 7, 2006) (*Thai Pineapple Final Results*), and accompanying Issues and Decision Memorandum at Comment 1.

[17] *See Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 44256 (August 4, 2006) (*Thai Pineapple Preliminary Results*).

[18] *Id.*

[19] *See Thai Pineapple Final Results.*

that the customers subject to the rebate programs are aware of the general rebate terms and expect the rebate, which is negotiated by Koehler on a product and customer-specific basis.

As referenced above, the petitioner's allegation that there are different movements in prices between certain products in the home market is inaccurate, and the petitioner's analysis was based on an incorrect prior version of Koehler's home market sales database which did not account for all of Koehler's rebates. Furthermore, as Koehler indicated in its June 11, 2010 letter, and as the Department's analysis confirms, there is not a significant difference in the rebate percentages applied to home market sales of KT 48 F20 during the investigation, as compared to the POR.

We have analyzed Koehler's home market rebates for two products KT 48 F20 and KT 55 F 20 using data from the POI and the POR. *See* Preliminary Results Calculations Memo. These data clearly show a consistent pattern. Regarding the nature of the sales documentation and whether these are "post-sale adjustments" as alleged by petitioner, we find that Koehler has a long-standing practice of allowing rebates. Koehler provided documentation to demonstrate that there was an original formal written rebate program in effect during 2002 and 2003.[20] Koehler then began documenting the rebate percentages on individually negotiated customer specific price lists which are updated periodically by Koehler. *See, e.g.,* Koehler's Section A–C Supplemental Questionnaire response, dated April 15, 2010, at Exhibit S–14. In some instances, the rebate percentages were adjusted after certain shipments were made. However, it is clear the Koehler and its customers had a long-standing understanding that rebates would be applied. Therefore, based on the evidence on the record of this review, we preliminarily find Koehler's rebates to be bona fide, and we will allow the rebates as reported in Koehler's sales databases.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was first sold by the producer or exporter outside the United States directly to the unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the first sale to the unaffiliated purchaser in the United States of the subject merchandise. *See* section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we adjusted prices to reflect billing adjustments, rebates, and early payment discounts, and commissions.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including U.S. warehouse expense, inland freight, inland insurance, brokerage & handling, international freight, marine insurance, freight rebate revenue, and U.S. customs duties.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and other direct selling expenses). These expenses also include certain indirect selling expenses incurred by affiliated U.S. distributors. *See* Preliminary Results Calculations Memo. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Koehler's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(i) of the Act, because Koehler had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Arm's-Length Test

Because Koehler reported that its sales of the foreign like product were made to unaffiliated customers, the arm's-length test is not applicable.

C. Cost of Production Analysis

The Department did not disregard any sales below the cost of production ("COP") in the underlying investigation.[21] As a result, the Department did not initially issue a Section D questionnaire with the Section A–C questionnaire sent to Koehler on December 23, 2009. The petitioner subsequently submitted a sales below cost allegation and the Department initiated a "sales-below-cost" investigation because the Department determined that the petitioner provided a reasonable basis to believe or suspect that Koehler is selling lightweight thermal paper in Germany at prices below the COP. *See* Sales Below Cost Memo.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated Koehler's COP based on the sum of its costs of materials and conversion for the foreign like product, plus amounts for general and administrative ("G&A") expenses and interest expenses (*see* the *Test of Comparison Market Sales Prices* section below for the treatment of home market selling expenses). The Department relied on the COP data submitted by Koehler and its Section D supplemental questionnaire responses for the COP calculation. Based on the review of record evidence, Koehler did not appear to experience significant changes in the cost of manufacturing during the period of review. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Sales Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges,

[20] *See* Koehler's April 15, 2010, Supplemental Questionnaire Response at Exhibits S–11 through S–13.

[21] *See Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value* 73 FR 57326 (October 2, 2008); *see also* Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Koehler," dated September 25, 2008 ("Final Cost Memorandum"); *see also* Memorandum to The File, titled "Final Analysis Memorandum for Sales—Koehler," dated September 25, 2008 ("Final Sales Memo").

discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses which were excluded from COP for comparison purposes.

3. Results of the COP Test

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. *See* section 773(b)(2) of the Act. We compared the COPs of the models represented by control numbers to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Koehler's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of Koehler's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we only disregarded below-cost sales that amounted to 20 percent or more of Koehler's sales of a given product. All other sales that were below cost but did not meet the 20-percent threshold were included in our calculation of normal value. *See* Preliminary Results Calculations Memo.

Our preliminary findings show that we did not find that more than 20 percent of Koehler's sales were at prices less than the COP. Therefore, we used all of Koehler's remaining home market sales as the basis for determining NV.

D. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Germany. The Department excluded certain sales transactions reported as samples by Koehler. We adjusted the starting price for billing adjustments, early payment discounts, rebates, warehouse expenses, and inland freight where appropriate, pursuant to section 773(a)(6) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale ("COS") pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense, warranty directly linked to sales transactions, royalties, and other direct selling expenses) and adding U.S. direct selling expenses (credit, commissions, warranty directly linked to sales transactions, and other direct selling expenses), where appropriate. *See* 19 CFR 351.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the VCOM for the foreign like product and subject merchandise, using weighted-average costs. *See* 19 CFR 351.411(b).

E. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP sales. In identifying LOTs for EP and comparison market sales (*i.e.,* NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314 (Federal Circuit 2001).

Consistent with 19 CFR 351.412, to determine whether comparison market sales were at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732–33 (November 19, 1997).

Koehler reported its sales in the home market and the U.S. market at the same single LOT. In the home market, Koehler reported that its sales were made through two channels of distribution: (1) Direct sales and (2) consignment sales. In the U.S. market, Koehler reported that its sales were made through three channels of distribution: (1) Market direct-shipment sales through its U.S. affiliated distributor, Koehler America, Inc. (*i.e.,* CEP sales), (2) warehouse sales made through Koehler America, Inc. (*i.e.,* CEP sales), (3) and direct sales from Koehler AG to the customer (*i.e.,* EP sales).

Based on our analysis, we found that Koehler's sales to the U.S. and home market were made at the same LOT, and as a result, no LOT adjustment was warranted. Furthermore, our analysis shows that Koehler's home market sales were not made at a more advanced LOT than Koehler's U.S. sales. Accordingly, we have not made a CEP offset to NV. *See* 773(a)(7)(B) of the Act.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see our analysis contained in the Preliminary Results Sales Calculation Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage margin exists for the following respondents for the period November 20, 2008, through October 31, 2010.

Manufacturer/exporter	Weighted-average margin (percent)
Papierfabrik August Koehler AG.	0.03 (*de minimis*).

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs

no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

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 the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (*e.g.* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, *see id.*

Cash Deposit Requirements

To calculate the cash deposit rate for Koehler, we divided its total dumping margin by the total net value of its sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lightweight thermal paper from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for companies subject to this review will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* no cash deposit will be required; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results for a review in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 6.50 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 7, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–31370 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe ("CWP") from the Republic of Korea ("Korea"). The period of review ("POR") is November 1, 2008, through October 31, 2009. This review covers multiple exporters/producers, three of which are being individually reviewed as mandatory respondents. We preliminarily determine the mandatory respondents made sales of the subject merchandise at prices below normal value ("NV"). We have assigned the remaining respondents the weighted-average of the margins calculated for the mandatory respondents. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP")

to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* December 14, 2010.

FOR FURTHER INFORMATION CONTACT: Alexander Montoro, Matthew Jordan, or Joshua Morris, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0238, (202) 482–1540, or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, the Department published an antidumping duty order on CWP from Korea. *See Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992) ("*CWP Order*").

On November 30, 2009, SeAH Steel Corporation ("SeAH") timely requested an administrative review of the antidumping duty order on CWP from Korea for the period November 1, 2008, through October 31, 2009. Also on November 30, 2009, Wheatland Tube Company ("Wheatland") and United States Steel Corporation ("U.S. Steel"), manufacturers of the domestic like product, also timely requested a review. U.S. Steel requested the Department conduct an administrative review of the following producers/exporters of subject merchandise: SeAH; Hyundai HYSCO; Husteel Co., Ltd. ("Husteel"); Nexteel Co., Ltd. ("Nexteel"); Kumkang Industrial Co., Ltd. ("Kumkang"); and A–JU Besteel Co., Ltd. Wheatland requested the Department conduct an administrative review of SeAH. On December 23, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on CWP from Korea. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 68229 (December 23, 2009) ("*Initiation Notice*").

On January 26, 2010, SeAH withdrew its request for review. On March 23, 2010, Wheatland withdrew its request for a review of SeAH.

In our initiation notice, we indicated that we would select mandatory respondents for review based upon CBP data, and that we would limit the respondents selected for individual review in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation Notice,* 74 FR at 68229. On January 6, 2010, we received comments on the issue of respondent selection from Kumkang.

On February 18, 2010, after considering the resources available to the Department, we determined that it was not practicable to examine all producers/exporters of subject merchandise for which a review was requested. As a result, we selected the two largest producers/exporters of CWP from Korea during the POR for individual review in this segment of this proceeding, pursuant to section 777A(c)(2)(B) of the Act. These mandatory respondents were Nexteel and SeAH. *See* Memorandum from Yasmin Nair and Matthew Jordan, International Trade Compliance Analysts, AD/CVD Operations, Office 1, to Susan H. Kuhbach, Director, AD/CVD Operations, Office 1, "Respondent Selection: Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea," dated February 18, 2010.

On January 14, 2010, Wheatland submitted a request for a duty absorption determination for a number of producers or exporters subject to this review, including SeAH, Husteel, and Nexteel. The Court of Appeals for the Federal Circuit found that the Department lacks authority to conduct two-and four-year duty absorption inquiries for transitional orders (orders in effect before January 1, 1995). *See FAG Italia S.p.A.* v. *United States,* 291 F.3d 806, 819 (Fed. Cir. 2002). Since the order for this case is from 1992, we have not conducted a duty absorption inquiry in this proceeding.

On January 15, 2010, and January 22, 2010, Hyundai HYSCO submitted letters to the Department stating it had no exports, sales, or entries of subject merchandise to the United States during the POR.

On February 19, 2010, we issued the antidumping questionnaire to Nexteel and SeAH. On March 9, 2010, Husteel requested the Department to reconsider its decision to limit the review to two mandatory respondents or, in the alternate, to treat Husteel as a voluntary respondent. On March 25, 2010, we received a section A questionnaire response from Husteel ("Husteel A QR"). On March 26, 2010, we received a section A questionnaire response from SeAH ("SeAH A QR"). On March 29, 2010, we received a section A questionnaire response from Nexteel ("Nexteel A QR").

On March 29, 2010, we selected Husteel as a third mandatory respondent. *See* March 29, 2010 letter from Susan Kuhbach, Director, Office of AD/CVD Operations 1, to Husteel Co., Ltd., "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Request for Selection as Mandatory Respondent; Request for Voluntary Respondent Treatment." *See also* Memorandum from Matthew Jordan, International Trade Compliance Analyst, Office 1, AD/CVD Operations, to the File, "Selection of Husteel Co., Ltd., as Third Mandatory Respondent," dated March 30, 2010.

We received a response to sections B, C, and D of the questionnaire from SeAH on April 12, 2010. We received a response to sections B, C, and D of the questionnaire from Husteel on April 21, 2010. We received a response to sections B and C of the questionnaire from Nexteel on April 27, 2010 ("Nexteel B&C QR").

On June 17, 2010, the Department issued a supplemental questionnaire regarding section D of the initial questionnaire to Husteel and received a response on July 22, 2010. On July 7, 2010, the Department issued a supplemental questionnaire regarding section D of the initial questionnaire to SeAH and received a response on August 4, 2010.

On September 27, 2010, we issued supplemental questionnaires for sections A, B, and C to Nexteel, Husteel, and SeAH. We received a response from SeAH on October 26, 2010, and responses from Nexteel and Husteel on November 2, 2010 ("Husteel November Supplemental Response").

On October 11, 2010, the Department issued a second supplemental questionnaire for section D to SeAH. We received a response from SeAH on October 21, 2010.

On November 5, 2010, the Department issued second supplemental questionnaires for sections A, B, and C to Husteel and SeAH. The Department received responses from SeAH and Husteel on November 12, 2010.

On November 12, 2010, the Department issued a third supplemental questionnaire for sections A, B, and C to SeAH. The Department received a response from SeAH on November 19, 2010.

On July 13, 2010, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than December 7, 2010, in accordance with section

751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review,* 75 FR 39917 (July 13, 2010).

Hyundai HYSCO

On January 15, 2010, Hyundai HYSCO submitted a letter indicating that it made no sales to the United States during the POR. We have not received any comments on Hyundai HYSCO's submission. In response to the Department's inquiry to CBP, CBP data showed entries for consumption of subject merchandise from Hyundai HYSCO may have entered U.S. customs territory during the POR. *See* Memorandum from Joseph Shuler, International Trade Compliance Analyst, to the File, "Customs Documentation in the Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea," dated November 18, 2010.

On November 18, 2010, we asked Hyundai HYSCO to explain the apparent discrepancy between its no shipment claim and the CBP information.

Hyundai HYSCO responded on November 30, 2010, re-affirming that it did not export or sell subject merchandise to the United States during the POR, and that it did not know or have reason to know that such merchandise would be exported to the United States during the POR.

The Department has concluded that there is no evidence on the record that, at the time of sale, Hyundai HYSCO had knowledge that these entries were destined for the United States, nor is there evidence that Hyundai HYSCO had knowledge that any of these entries of subject merchandise entered the United States during the POR. *See* Memorandum to File, from Matthew Jordan, International Trade Compliance Analyst, through Nancy Decker, Program Manager, AD/CVD Operations Office 1, "Antidumping Duty Administrative Review on Circular Welded Non-Alloy Steel Pipe from the Republic of Korea with respect to Hyundai HYSCO," dated December 7, 2010.

With regard to Hyundai HYSCO's claim of no shipments, our practice since implementation of the 1997 regulations concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27393 (May 19, 1997), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review,* 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 95 (January 3, 2006).

In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) ("*Assessment Policy Notice*").

Based on Hyundai HYSCO's certification of no shipments and evidence on the record, we preliminarily determine that Hyundai HYSCO had no shipments of subject merchandise to the United States during the POR.

Because "as entered" liquidation instructions do not alleviate the concerns which the *Assessment Policy Notice* clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Hyundai HYSCO and exported by other parties at the all-others rate should we continue to find at the time of our final results that Hyundai HYSCO had no shipments of subject merchandise from Korea. *See, e.g., Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review,* 73 FR 77610, 77612 (December 19, 2008); *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010). In addition, the Department finds that it is more consistent with the *Assessment Policy Notice* clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Hyundai HYSCO and issue appropriate instructions to CBP based on the final results of the review. *See* the Assessment Rates section of this notice below.

Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this review.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico and Venezuela,* 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Date of Sale

The Department normally will use the date of invoice, as recorded in the

producer's or exporter's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if the Department is satisfied that a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i).

(A) SeAH

For its home market sales, SeAH has reported the date the billing document is created in its accounting system as the date of sale. This is the date when the final price and quantity are set and is, in most cases, the same as the date of the shipping invoice.

For its U.S. sales, SeAH reported the date of shipment from Korea as the date of sale because all U.S. sales are produced to order and the quantity ordered is subject to change between order and shipment. In addition, the shipment date from Korea always precedes the date of the invoice to the unaffiliated U.S. customer, because SeAH's U.S. affiliate, Pusan Pipe America Inc. ("PPA"), does not invoice the unaffiliated U.S. customer until shortly after the subject merchandise enters into the United States. Because quantity is not finalized until shipment and because the shipment date always precedes the invoice date to the U.S. customer, we are relying on the date of shipment from Korea as the U.S. date of sale.

(B) Husteel

For its home market sales, Husteel issues the shipment invoice at the time of shipment and considers the shipment date as the date of sale.

For its U.S. sales through Husteel USA, Husteel reported the date of sale as the earlier of the commercial invoice date or the shipment date from Korea, in accordance with the Department's regulatory presumption that the invoice date is the date of sale. Therefore, we are relying on the earlier of the commercial invoice date or the shipment date as the date of sale.

(C) Nexteel

Nexteel reported that negotiations regarding price and quantity can continue throughout the entire sales process. For both home market and U.S. sales, price is not fixed until Nexteel issues its tax and commercial invoice, which can occur after shipment date. *See* Nexteel A QR at A–20; *see also* Nexteel B&C QR at B–14 and A–9. Per the Department's practice that the date of sale may not be after shipment from factory, Nexteel reported the earlier of shipment date or invoice date as the date of sale. Therefore, we are relying on the earlier of the shipment date or the commercial invoice date as the date of sale.

Comparisons to Normal Value

To determine whether SeAH and Husteel's sales of CWP from Korea to the United States were made at less than NV, we compared constructed export price ("CEP") to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice below. To determine whether Nexteel's sales of CWP from Korea to the United States were made at less than NV, we compared export price ("EP") to NV, as described in the "Export Price and "Normal Value" sections of this notice below.

Pursuant to section 777A(d)(2) of the Act, we compared the EP and CEP of individual U.S. transactions to monthly weighted-average NVs of the foreign-like product, where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

We are using a quarterly costing approach for SeAH and Husteel, as described in the "Normal Value" section below and, therefore, we have not made price-to-price comparisons for these companies outside of a quarter to lessen the distortive effect of comparing non-contemporaneous sales prices during a period of significantly changing costs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by SeAH, Husteel, and Nexteel that are covered by the description contained in the "Scope of the Order" section above and were sold in the home market during the POR to be the foreign like product for purposes of determining appropriate product comparisons to U.S. sales.

We have relied on five criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: (1) Grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; and (5) end-finish. For SeAH, we used actual pipe size in millimeters instead of nominal pipe size, because SeAH works with actual outside diameter in the ordinary course of business, and its unit of measure for nominal pipe size varies by transaction. For Husteel, we used outside diameter for certain transactions instead of nominal pipe size because for certain specifications, a nominal pipe size is not available. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Consistent with the most recently completed administrative review, for Nexteel and SeAH, we reclassified certain of the reported grades of certain pipes for product comparison purposes. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review,* 75 FR 34980 (June 21, 2010) ("*CWP from Korea 2007–2008*"), and accompanying Issues and Decision Memorandum at Comment 5. *See also* Memorandum from Joshua Morris, International Trade Compliance Analyst, to the File, "Preliminary Results Calculation Memorandum," dated December 7, 2010 ("SeAH Preliminary Sales Calculation Memo"); and Memorandum from Matthew Jordan and Yasmin Nair, International Trade Compliance Analysts, to the File, "Preliminary Results Calculation Memorandum for Nexteel Co., Ltd.," dated December 7, 2010 ("Nexteel Preliminary Sales Calculation Memo").

Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales or, when NV is based on constructed value ("CV"), the LOT of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(ii). *See also Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314 (Fed. Cir. 2001).

Where it is not possible to make comparisons at the same LOT, the statute permits the Department to account for the different levels. *See* section 773(a)(7)(A) of the Act. Specifically, if the comparison market sales are made at multiple LOTs, and the difference in LOTs affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an upward or downward LOT adjustment in accordance with section 773(a)(7)(A) of the Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico,* 73 FR 5515, 5522 (January 30, 2008) ("*LWR*

Pipe from Mexico"). Alternatively, for CEP sales, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision) and *LWR Pipe from Mexico,* 73 FR at 5522.

To determine whether sales are made at different LOTs, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See, e.g., Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand,* 73 FR 24565 (May 5, 2008); and *LWR Pipe from Mexico,* unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico,* 73 FR 35649 (June 24, 2008). In particular, we analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties,* 62 FR at 27371. If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

(A) SeAH

SeAH reported two channels of distribution in the comparison market, Korea: (1) Direct sales to unaffiliated end-users and distributors; and (2) sales to affiliated companies. In the U.S. market, SeAH reported one LOT and one channel of distribution for the CEP sales made through its affiliated company in the United States, PPA. SeAH stated that its U.S. sales were made at a different, less advanced LOT than its comparison market sales. SeAH is not seeking a LOT adjustment, however, because it had no comparison market sales that were at the same LOT as the U.S. CEP sales. Instead, it claims that a CEP offset is warranted. *See* SeAH A QR 21–22.

In evaluating SeAH's claim, we examined its activities in each channel of distribution relating to four different types of selling functions: Sales process and marketing support; freight and delivery; inventory maintenance and warehousing; and warranty and technical services. Based on our analysis, we preliminarily determine that SeAH's selling activities in the comparison market did not vary significantly by channel of distribution. *See* SeAH's Section A Questionnaire Response at Exhibit A–16. Therefore, we preliminary determine that SeAH sold at one LOT in the comparison market. We further determine preliminarily that SeAH sold at one LOT in the U.S. market.

We then compared the selling functions performed by SeAH for its U.S. sales to the selling functions performed for the single LOT in the comparison market. Record evidence indicates that SeAH undertakes significant activities in the comparison market related to the sales process and marketing support, as well as warehousing and warranty services that it does not undertake for its U.S. CEP sales. *See* SeAH Preliminary Sales Calculation Memo and SeAH A QR at Exhibit A–16. These differences in selling functions indicate that SeAH's comparison market sales are made at a more advanced stage of distribution than its CEP sales. Consequently, we preliminarily determine that SeAH's comparison market and CEP sales are at different LOTs.

(B) Husteel

Husteel reported one channel of distribution in its home market: Sales to unaffiliated customers that include distributors and end-users. In the U.S. market, Husteel reported one channel of distribution: Sales to unaffiliated customers made through its affiliated company in the United States, Husteel USA. Husteel stated that its U.S. sales were made at a different, less advanced LOT than its comparison market sales. Husteel is not seeking a LOT adjustment, however, because it had no comparison market sales that were at the same LOT as the U.S. CEP sales. Instead, it claims that a CEP offset is warranted. *See* Husteel A QR at A–15.

In evaluating Husteel's claim, we examined its activities in each channel of distribution relating to four different types of selling functions: Sales process and marketing support; freight and delivery; inventory maintenance and warehousing; and warranty and technical services. Based on our analysis, we preliminarily determine that Husteel's selling activities in the comparison market did not vary significantly by channel of distribution. *See* Husteel November Supplemental Response at Exhibit A–22. Therefore, we preliminary determine that Husteel sold at one LOT in the comparison market. We further determine preliminarily that Husteel sold at one LOT in the U.S. market.

We then compared the selling functions performed by Husteel for its U.S. sales to the selling functions performed for the single LOT in the comparison market. Record evidence indicates that Husteel undertakes significant activities in the comparison market related to the sales process and market research, procurement and sourcing services, as well as personnel training that it does not undertake for its U.S. CEP sales. *See* Memorandum from Alexander Montoro, International Trade Compliance Analyst, to the File, Re: Preliminary Results Calculation Memorandum, dated December 7, 2010 ("Husteel Preliminary Sales Calculation Memo") and Husteel November Supplemental Response at Exhibit A–22. These differences in selling functions performed for comparison market and CEP transactions indicate that Husteel's comparison market sales are made at a more advanced stage of distribution than its CEP sales. Consequently, we preliminarily determine that Husteel's comparison market and CEP sales are at different LOTs.

(C) Nexteel

Nexteel reported one channel of distribution in the home market: Direct sales to unaffiliated end-users and distributors. In the U.S. market, Nexteel reported one LOT and two channels of distribution. *See* Nexteel Preliminary Sales Calculation Memo. Nexteel stated that its U.S. sales were made at the same LOT as its comparison market sales and is, therefore, not seeking a LOT adjustment. *See* Nexteel A QR at 11; *see also* Nexteel B&C QR at B–22 and A–16.

As discussed above, the Department will make a LOT adjustment in these circumstances when the information exists to do so. We have found different LOTs between the comparison market and the CEP sales for SeAH and Husteel. However, since there is only one LOT in the comparison market for both SeAH and Husteel, there is no basis upon which to determine whether there is a pattern of consistent price differences

between LOTs in the comparison market upon which to base a LOT adjustment to the CEP sales. Further, we do not have the information that would allow us to examine the price patterns of SeAH's and Husteel's sales of other similar products, and there is no other record evidence upon which a LOT adjustment could be based. Therefore, we have not made a LOT adjustment for either SeAH or Husteel.

Instead, in accordance with section 773(a)(7)(B) of the Act, we preliminarily determine that a CEP offset is appropriate for SeAH and Husteel to reflect that their comparison market sales are at a more advanced stage than the LOT of their respective CEP sales. We based the amount of the CEP offset on comparison market indirect selling expenses and limited the deduction to the amount of the indirect selling expenses deducted from CEP under section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV–CEP comparisons. For a detailed discussion, *see* SeAH Preliminary Sales Calculation Memo; *see also* Husteel Preliminary Sales Calculation Memo.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

(A) SeAH

For purposes of this review, SeAH classified all of its export sales of CWP to the United States as CEP sales. During the POR, SeAH made sales in the United States through its U.S. affiliate, PPA, which then resold the merchandise to unaffiliated customers in the United States. The Department calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States, net of early payment discounts and other discounts. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including imputed credit expenses, warranty expenses, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We used the expenses reported by SeAH in connection with its U.S. sales, with the exception of an adjustment to the indirect selling expense calculation. *See* SeAH Preliminary Sales Calculation Memo.

(B) Husteel

For purposes of this review, Husteel classified all of its export sales of CWP to the United States as CEP sales. During the POR, Husteel made sales in the United States through its U.S. affiliate, Husteel USA, which then resold the merchandise to unaffiliated customers in the United States. The Department calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We used the expenses reported by Husteel in connection with its U.S. sales. *See* Husteel Preliminary Sales Calculation Memo.

Export Price

(C) Nexteel

Nexteel reported that it made U.S. sales only on an EP basis. For sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or manufacturer outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. We calculated EP because the merchandise was sold by Nexteel to an unaffiliated purchaser for exportation to the United States prior to importation and CEP methodology was not otherwise warranted. Nexteel reported sales to the United States based upon three different types of sales terms: Free-on board; cost and freight; and cost, insurance and freight. The Department calculated EP based on these reported prices to unaffiliated purchasers in the United States. Where appropriate, the Department made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: Foreign inland freight; foreign brokerage and handling; international freight; and marine insurance.

Normal Value

(A) Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POR. *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, we recognize that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing ("COM") recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or CV during the same shorter averaging periods. *See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010) ("*SSSS from Mexico*"), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) ("*SSPC from Belgium*"), and accompanying Issues and Decision Memorandum at Comment 4.

1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a

departure from our standard annual-cost approach. *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. In the instant case, record evidence shows that Husteel and SeAH experienced significant changes (*i.e.,* changes that exceeded 25 percent) between the high and low quarterly COM during the POR for the selected highest sales volume CWP products. This change in COM is attributable primarily to the price volatility for hot-rolled carbon steel coil used in the manufacture of CWP. We found that prices for hot-rolled carbon steel coil changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by Husteel and SeAH. *See* Memorandum from James Balog to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Husteel Co., Ltd. ("Husteel Preliminary Cost Calculation Memo") dated December 7, 2010, and Memorandum from Kristin Case to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—SeAH Steel Corporation," ("SeAH Preliminary Cost Calculation Memo") dated December 7, 2010.

2. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. *See, e.g., SSSS from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a clear pattern that changes in selling prices reasonably correlate to changes in unit costs. *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, for SeAH and Husteel, we compared weighted-average quarterly prices to the corresponding quarterly COM for the five control numbers with the highest volume of sales in the comparison market and the United States. Our comparison reveals that sales and costs for a majority of the sample CONNUMs showed reasonable correlation. After reviewing this information and determining that changes in selling prices reasonably correlate to changes in unit costs, we preliminarily determine that there is linkage between Husteel's and SeAH's costs and sales prices during the POR. *See* Husteel Preliminary Cost Calculation Memo. *See also* SeAH Preliminary Cost Calculation Memo. *See, e.g., SSSS from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach leads to more appropriate comparisons in our antidumping duty calculations for Husteel and SeAH.

(B) Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the comparison market, Korea, to serve as a viable basis for calculating NV, we compared Husteel's, Nexteel's, and SeAH's home market sales volumes of the foreign like product to their U.S. sales volumes of the subject merchandise, in accordance with section 773(a)(1) of the Act. For each company, the aggregate home market sales volumes of the foreign like product were greater than five percent of their aggregate U.S. sales volumes of the subject merchandise. Therefore, we determine that the home market was viable for comparison purposes for Husteel, Nexteel, and SeAH.

(C) Affiliated Party Transactions and Arm's-Length Test

Husteel reported that it did not sell any subject merchandise to affiliated parties during the POR.

SeAH and Nexteel reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.,* sales at "arm's length." *See* 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party were excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69194 (November 15, 2002).

(D) Cost of Production Analysis

SeAH

The Department disregarded sales made below the COP in the last completed review in which SeAH participated. *See CWP from Korea 2007–2008.* Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that SeAH made sales of the subject merchandise in its comparison market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by SeAH.

Husteel

The Department disregarded sales made below the COP in the last completed review in which Husteel participated. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 69 FR 32492 (June 10, 2004). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Husteel made sales of the subject merchandise in its comparison market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Husteel.

Nexteel

No COP investigation was conducted for Nexteel.

1. Calculation of Cost of Production

Before making any comparisons to NV, we conducted a COP analysis of SeAH and Husteel, pursuant to section 773(b) of the Act, to determine whether SeAH's and Husteel's comparison market sales were made at prices below the COP, by quarter. We compared sales

of the foreign like product in the home market with model-specific COP figures. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses, financial expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment.

SeAH

We relied on home market sales and COP information provided by SeAH in its questionnaire responses, except where noted below:

During the POR, SeAH purchased carbon steel hot-rolled coil inputs from a home market affiliated company, Pohang Iron and Steel Company ("POSCO"). Carbon steel hot-rolled coil is considered a major input to the production of CWP. Section 773(f)(3) of the Act (the major input rule) states:

> If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

Paragraph 2 of section 773(f) of the Act (transactions disregarded) states:

> A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

In accordance with the major input rule, and as stated in the *Stainless Steel Sheet and Strip in Coils From Mexico: Preliminary Results of Antidumping Duty Administrative Review,* 73 FR at 45714 (August 8, 2008), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review,* 74 FR 6365 (February 9, 2009), it is the Department's normal practice to use all three elements of the major input rule (*i.e.,* transfer price, COP, and market price) where available. In accordance with section 773(f)(3) of the Act (the major input rule), we evaluated transactions between SeAH and its affiliate using the transfer price, COP, and market price of carbon steel hot-rolled coil. For the preliminary results, we adjusted SeAH's reported costs to reflect the highest of these three values for SeAH's purchases of hot-rolled coil from POSCO. Because we have determined that shorter cost periods are appropriate for the COP analysis, we have applied the major input rule analysis and calculated the related adjustments on a quarterly basis.

We adjusted the cost of goods sold denominator used in the general and administrative expense ratio to reflect our major input adjustment. We also adjusted the cost of goods sold denominator used in the financial expense ratio to reflect our major input adjustment. *See* SeAH Preliminary Cost Calculation Memo.

We did not include local home market sales that were paid on a local letter of credit basis, as SeAH knew these sales were destined for export. *See* SeAH Preliminary Cost Calculation Memo.

Husteel

In our sales-below-cost analysis, we relied on home market sales and COP information provided by Husteel in its questionnaire responses, except that we adjusted the general and administrative expense ratio to exclude the offset for commission income. *See* Husteel Preliminary Cost Calculation Memo.

1. Test of Comparison Market Sales Prices

In determining whether to disregard SeAH's and Husteel's home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses. *See* SeAH Preliminary Sales Calculation Memo; *see also* Husteel Preliminary Sales Calculation Memo.

As discussed above, we have relied on a quarterly costing approach in this review. Similar to that used by the Department in cases of high-inflation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia,* 64 FR 73164 (December 29, 1999), and accompanying Issues and Decision Memorandum at Comment 1), this methodology restates the quarterly costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this alternative cost calculation method meets the requirements of section 773(b)(2)(D) of the Act.

2. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the indexed weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost tests for Husteel and SeAH revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. Therefore, we retained all such sales in our analysis and included them in determining NV. Our cost test for SeAH and Husteel also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV. *See* SeAH Preliminary Sales Calculation Memo; *see also* Husteel Preliminary Sales Calculation Memo.

(E) Constructed Value

In accordance with section 773(e) of the Act, we calculated CV for SeAH and

Husteel based on the sum of their respective material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

(F) Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers in Korea. For Nexteel and Husteel, we adjusted these prices for early payment discounts. We adjusted the starting price for all respondents, less any discounts, by deducting foreign inland freight and warehousing (Nexteel only), pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (for imputed credit expenses), under section 773(a)(6)(c)(iii) of the Act and 19 CFR 315.410.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

(G) Price-to-CV Comparison

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

Currency Conversion

Pursuant to 19 CFR 351.415 and section 773A of the Act, we made currency conversions based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. *See* Import Administration website at: *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of the Review

We preliminarily determine that a weighted-average dumping margin exists for the respondents for the period November 1, 2008, through October 31, 2009. Respondents other than mandatory respondents will receive the weighted-average of the margins calculated for those companies selected for individual review (*i.e.,* mandatory respondents), excluding *de minimis* margins or margins based entirely on adverse facts available.

Manufacturer/Exporter	Weighted-average margin percent
SeAH Steel Corporation	6.24
Husteel Co., Ltd	2.15
Nexteel Co., Ltd	12.30
Hyundai HYSCO	*
Kumkang Industrial Co., Ltd	8.88
A–JU Besteel Co., Ltd	8.88

* No shipments or sales subject to this review. The firm has an individual rate from the last segment of the proceeding in which the firm had shipments or sales.

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule. Issues raised in the hearing will be limited to those raised in the case briefs.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. *See* 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For SeAH and Husteel, we will calculate 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, as reported by SeAH and Husteel. *See* 19 CFR 351.212(b)(1).

Nexteel reported the importer of record for certain of its U.S. sales. Pursuant to 19 CFR 351.212(b)(1), for all sales where Nexteel reported the importer of record, Nexteel submitted the reported entered value of the U.S. sales and the Department has calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. For certain U.S. sales Nexteel did not report the importer or the entered value. For purposes of calculating importer-specific assessment rates, we considered Nexteel's U.S. customer to be the importer of record when the importer was unknown, and we calculated entered value as U.S. price net of international movement expenses.

The Department has calculated importer-specific per-unit duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies that were not selected for individual review, we calculated an assessment rate based on the weighted-average of the cash deposit rates calculated for companies selected for individual review, where those rates were not *de minimis* or based on adverse facts available, in accordance with Department practice.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its "automatic assessment" regulation on May 6, 2003, in its *Assessment Policy Notice.* This clarification will apply to entries of subject merchandise during the POR produced by SeAH, Husteel, Nexteel, and Hyundai HYSCO for which these companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.80 percent, the "all others" rate established in the LTFV investigation. *See CWP Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–31368 Filed 12–13–10; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Grant Application (424–NSSC)—reference OMB Control Number 3045–0035, with an expiration date of May 31, 2011. The Corporation proposes to renew the Senior Corps Grant Application with one modification:

The Corporation will ask applicants to include an Executive Summary at the beginning of Part III: Project Narratives.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 14, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Senior Corps, Attention: Mr. Zach Rhein, Program Officer, Room 9408A; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3475, Attention: Mr. Zach Rhein, Program Officer.

(4) Electronically through www.regulations.gov. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Zach Rhein by e-mail at *zrhein@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *(e.g.,* permitting electronic submissions of responses).

Background

The Senior Corps Grant Application is completed by applicant organizations interested in sponsoring a Senior Corps program. The application is completed electronically using the Corporation's web-based grants management system, eGrants.

Current Action

The Corporation seeks to renew the current application with one modification. The Corporation will ask applicants to include an Executive Summary to improve the efficiency and effectiveness of the peer review process.

The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on May 31, 2011.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective sponsors of National Senior Service Corps Grants.

Total Respondents: 1,350.

Frequency: Annually, with exceptions.

Average Time per Response: Estimated at 16.5 hours each for 180 first-time respondents; 15 hours each for 900 continuation sponsors; 5 hours each for 270 revisions.

Estimated Total Burden Hours: 17,820 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $6,497.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 8, 2010.

Angela Roberts,

Associate Director, Senior Corps.

[FR Doc. 2010–31297 Filed 12–13–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Missile Defense Advisory Committee

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Missile Defense Advisory Committee will take place.

DATES: Wednesday, January 19, 2011, from 8 a.m. to 6 p.m. and Thursday, January 20, 2011, from 8 a.m. to 5 p.m. Security clearance and visit requests are required for access.

ADDRESSES: 7100 Defense Pentagon, Washington, DC 20301–7100.

FOR FURTHER INFORMATION CONTACT: Mr. David Bagnati, Designated Federal Officer at *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* At this meeting, the Committee will receive classified information in support of the Fiscal Year 2011 United States Ballistic Missile Defense Cooperation Study.

Agenda: Topics tentatively scheduled for classified discussion include, but are not limited to briefings on Technical Ballistic Missile Defense Cooperation; Joint Missile Defense Immersion and Collaboration; Ballistic Missile Defense Situational Awareness Capability; Analysis on Integration of Ballistic Missile Defense Capabilities; Military-to-Military Engagement; Missile Defense Advisory Committee Executive Session; and Missile Defense Advisory Committee outbrief to the Director, Missile Defense Agency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. David Bagnati, *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated above and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

Dated: December 8, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–31245 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Missile Defense Advisory Committee

AGENCY: Department of Defense; Missile Defense Agency (MDA).

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Missile Defense Advisory Committee will take place.

DATES: Monday, December 13, 2010, from 8 a.m. to 6 p.m. Security clearance and visit requests are required for access.

ADDRESSES: 7100 Defense Pentagon, Washington, DC 20301–7100.

FOR FURTHER INFORMATION CONTACT: Mr. David Bagnati, Designated Federal Officer at *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* At this meeting, the Committee will receive classified information in support of the Fiscal Year 2011 United States Ballistic Missile Defense Cooperation Study.

Agenda: Topics tentatively scheduled for classified discussion include, but are not limited to classified briefings on the Threat; Summary of Past Missile Defense Agency Engagements and Outcomes; Program Budget Review-13 Requirements Driven Strategy; Proposed Cooperative Projects; Perceived Issues and Impediments to Cooperation; Missile Defense Advisory Committee Executive Session; and Missile Defense Advisory Committee outbrief to the Director, Missile Defense Agency.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 the Missile Defense Agency has determined that the meeting shall be closed to the public. The Director, Missile Defense Agency, in consultation with the Missile Defense Agency Office of General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. David Bagnati, *MDAC@mda.mil,* phone/voice mail 703–695–6438, or mail at 7100 Defense Pentagon, Washington, DC 20301–7100.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Missile Defense Advisory Committee about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Missile Defense Advisory Committee.

All written statements shall be submitted to the Designated Federal Officer for the Missile Defense Advisory Committee, in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word or MS PowerPoint), and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer is as stated above and can also be obtained from the GSA's Federal Advisory Committee Act Database—*https://www.fido.gov/facadatabase/public.asp*.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed at least three calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Missile Defense Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Missile Defense Advisory Committee Chairperson and ensure they are provided to all members of the Missile Defense Advisory Committee before the meeting that is the subject of this notice.

President Obama, during the November 2010 NATO Meeting in Portugal, announced a new Strategic Concept that focuses the Alliance on ballistic missiles. The timing of the President's announcement was such that the Department of Defense could not include studies pertinent to the initiative in the October 20, 2010 Missile Defense Advisory Committee's FY11 Study's terms of reference. Due to the timing of the President's initiative and subsequent decision to include this matter on the Committee's FY11 Study's terms of reference and December 13th meeting agenda, the Department of Defense was unable to process the **Federal Register** notice for the Missile Defense Advisory Committee's December 13, 2010 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: December 8, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–31246 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0160]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on January 13, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) 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, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense

Pentagon, Washington DC 20301–1155, or Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 2, 2010 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS D03

SYSTEM NAME:

Washington Headquarters Services (WHS) Enterprise Safety Applications Management System (ESAMS).

SYSTEM LOCATION:

Commander Navy Installations Command Transitional Hosting Center, 1968 Gilbert St. Norfolk, VA 23511–3318.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD Military and civilian personnel employed through Washington Headquarters Services (WHS) or one of the WHS–Serviced Organizations (Office of the Secretary of Defense, Joint Chiefs of Staff, Defense Advanced Research Projects Agency, Defense Threat Reduction Agency, Missile Defense Organization, Pentagon Force Protection Agency, Defense Prisoners of War/Missing Personnel Office, Uniformed Services University of the Health Sciences, National Defense University, DoD Inspector General, Office of Economics Adjustment, Defense Legal Services Agency, Defense Technology Security Administration, Defense Test Resource Management Center, Defense Security Cooperation Agency (DSCA) Headquarters, and the Defense Media Activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

For all employees: name, Social Security Number (SSN), e-mail address, supervisor's name, supervisor's e-mail address, unit identification code (UIC), directorate, division, gender, training/certifications received, test scores.

For employees requiring duty physicals and/or whose duties require longitudinal monitoring and assessment: Occupational medical stressors, date of last physical and non-diagnostic information concerning health readiness/restrictive duty, respirator usage and fit test results, annual audiogram results, chemical and/or environmental exposures, and occupational injuries/illnesses.

For employees on whom an accident investigation or report is submitted: Name, Social Security Number (SSN), job title, agency/directorate/division, office location, case number, incident location, injury detail, Occupational Safety and Health Administration (OSHA) recordable incident/illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses; 29 CFR part 1910, Occupational Safety and Health Standards; 10 U.S.C. 113, Secretary of Defense; E.O. 12196, Occupational Safety and Health Programs for Federal Employees, as amended; DoD Instruction 6055.1, DoD Safety and Occupational Health (SOH) Program; DoD Instruction 6055.5, Occupational and Environmental Health (OEH); DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; DoD Instruction 6055.12, DoD Hearing Conservation Program (HCP); and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To ensure all individuals receive required health and safety, fire, and emergency management training courses necessary to perform assigned duties and comply with Federal law and DoD regulations.

To document and manage longitudinal requirements of physicals, respiratory and audiology tracking over the course of an employee's employment with Washington Headquarters Services.

To provide an initial documentation of workplace incidents and accidents.

Used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Occupational Safety and Health Administration (OSHA) during the course of an on-site inspection.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number (SSN).

SAFEGUARDS:

Access is role based with limited access to personally identifiable information. Access requires Common Access Card (CAC) on initial log-on but allows CAC access or password logon (if established) after initial use. The servers are located in a building that is locked during non-duty hours on a military installation with guards monitoring installation access 24 hours a day, 7 days a week.

RETENTION AND DISPOSAL:

Employee training records are closed on an annual basis and disposed of when 5 years old.

Longitudinal Requirements are closed on an annual basis and disposed of when 5 years old.

Personnel Injury Files are closed on an annual basis and disposed of when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety and Environmental Management Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Safety and Environmental Management Branch, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The request should contain individual's full name, Social Security Number (SSN), address, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to access the information about themselves contained

in this system of records not accessible through system interfaces should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Center, 1155 Defense Pentagon, Washington DC 20301–1155.

The request should contain the name and number of this system of records notice, the individual's full name, Social Security Number (SSN), address, and must be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, personnel files, non-diagnostic extracts from medical records that address medical readiness/restrictions, and office files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31244 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0163]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: Defense Threat Reduction Agency is amending a system of records notice 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 January 13, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) 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, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201, or Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments 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: December 8, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 013

SYSTEM NAME:

Assignment and Correspondence Tracking System (December 15, 2008, 73 FR 76008.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Defense Threat Reduction Agency (DTRA), Office of the Chief of Staff, ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "By individual's name."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Destroy or delete when 2 years old, or 2 years after the date of the latest entry, whichever is applicable."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Office of Chief of Staff/Director-Chief of Staff-Secretary of the Director's Staff (DIR–COS–SDS), Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to Defense Threat Reduction Agency, Office of the Chief of Staff, ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system of records should address written inquires to the Defense Threat Reduction Agency, Office of the Chief of Staff, ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number."

* * * * *

HDTRA 013

SYSTEM NAME:

Assignment and Correspondence Tracking System.

SYSTEM LOCATION:

Headquarters, Defense Threat Reduction Agency (DTRA), Office of the Chief of Staff, ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigning, responding to, or subjects of, correspondence and assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain an individual's name, Social Security Number (SSN) within supporting documents, physical and electronic, home and duty addresses, and phone numbers, security clearance data, military or civilian rank/grade, and correspondence or supporting documents.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Establish an electronic system to improve the ability of DTRA to control assignments, correspondence, document actions taken, and locate records for reference purposes. The system is used to initiate, manage, and track assignments coming from outside DTRA as well as those generated within DTRA at the Director, Deputy Director, Chief of Staff, or Enterprise to Enterprise level.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the U.S Government, contractors, other Governmental agencies, and private sector entities in the performance of their duties as they relate to clarifying issues arising from assignments and correspondence under the Assignment and Correspondence Tracking System.

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense's compilation of system of records notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Paper files are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Electronic media are maintained via an internal Local Area Network (LAN) with workstations and laptops of authorized personnel protected with passwords.

RETENTION AND DISPOSAL:

Destroy or delete when 2 years old, or 2 years after the date of the latest entry, whichever is applicable.

SYSTEM MANAGER:

Office of Chief of Staff/Director-Chief of Staff-Secretary of the Director's Staff (DIR–COS–SDS), Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Defense Threat Reduction Agency, Office of the Chief of Staff, ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves contained in this system of records should address written inquires to the Defense Threat Reduction Agency, Office of the Chief of Staff: ATTN: Secretary of the Director's Staff, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for contesting record content are published in 32 CFR part 318, or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual records subjects, DoD databases, correspondence emanating from external sources, and internal DTRA actions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31248 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of Section 601(c) of Title VI of Public Law 108–183, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Veterans' Advisory Board on Dose Reconstruction (hereafter referred to as the Board).

The Board is a non-discretionary Federal advisory committee established to provide review and oversight of the Radiation Dose Reconstruction program and make such recommendation on modifications in the mission, procedures and administration of the Radiation Dose Reconstruction Program as it considers appropriate as a result of the audits conducted under the authority of Section 601(c)(3)(A) of Title VI of Public Law 108–183. The Board shall:

a. Conduct periodic, random audits of dose reconstructions under the Radiation Dose Reconstruction program and Decisions by the Department of Veterans Affairs on Claims for service connection of radiogenic diseases;

b. Assist the Department of Veterans Affairs and the Defense Threat Reduction Agency in communicating to veterans information on the mission, procedures, and evidentiary requirements of the Radiation Dose Reconstruction Program;

c. Carry out such other activities with respect to the review and oversight of the Radiation Dose Reconstruction Program as the Secretary of Defense and Secretary of Veterans Affairs shall jointly specify;

d. Make recommendation on modifications to the mission and procedures of the Dose Reconstruction program as the Board considers appropriate as a result of the audits conducted pursuant to (a) above;

e. Any additional actions the Secretary of Defense and the Secretary of Veterans Affairs jointly determine are required to ensure that the quality assurance and quality control mechanisms of the Radiation Dose Reconstruction Program are adequate and sufficient for purpose of the program; and

f. Any additional actions the Secretary of Defense and the Secretary of Veterans Affairs jointly determine are required to ensure that the mechanisms of the Radiation Dose Reconstruction Program for communication and interaction with veterans are adequate and sufficient for the program.

The Under Secretary of Defense (Acquisition, Technology and Logistics), as well as the Department of Veterans Affairs may act upon the Board's advice and recommendations.

The Council, pursuant to Section 601(c)(2) of Title VI of Public Law 108–183, shall be comprised of:

a. At least one expert in historical dose reconstruction of the type conducted under the Radiation Dose Reconstruction Program;

b. At least one expert in radiation health matters;

c. At least one expert in risk communications matters;

d. A representative of the Defense Threat Reduction Agency and a representative of the Department of Veterans Affairs, and

e. At least three veterans, including at least one veteran who is a member of an atomic veterans group.

Board members shall be jointly appointed by the Secretary of Defense and Secretary of Veterans Affairs, and the appointments must be renewed on an annual basis. Board members, who are not full-time or permanent part-time Federal officers or employees shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and serve as special government employees, whose appointments must be renewed on an annual basis.

With the exception of travel and per diem for official travel, Board members shall serve without compensation.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed on an annual basis.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's chairperson. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance for the full duration of all Board and subcommittee meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Veterans' Advisory Board on Dose Reconstruction membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Veterans' Advisory Board on Dose Reconstruction.

All written statements shall be submitted to the Designated Federal Officer for the Veterans' Advisory Board on Dose Reconstruction, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Veterans' Advisory Board on Dose Reconstruction Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Veterans' Advisory Board on Dose Reconstruction. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 8, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–31247 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2010–0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is to alter a system 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 January 13, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) 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, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 2, 2010, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' February 20, 1996, 61 FR 6427.

Dated: December 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0350–1a TRADOC

SYSTEM NAME:

Resident Individual Training Management System (RITMS) (July 25, 2008, 73 FR 43413).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number (SSN), course data to include scheduling, testing, academic, graduation, personnel and attrition data."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–1, Individual Military Education and Training; Army Regulation 612–201, Initial Entry/Prior Service Trainee Support; Army Regulation 350–1, Army Training and Leader Development; and E.O. 9397 (SSN), as amended."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine if whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, SSN, and military status or other information verifiable from the record itself and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, SSN, and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0350–1a TRADOC

SYSTEM NAME:

Resident Individual Training Management System (RITMS)

SYSTEM LOCATION:

Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander, U.S. Army Training Center, 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), course data to include scheduling, testing, academic, graduation, personnel and attrition data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–1, Individual Military Education and Training; Army Regulation 612–201, Initial Entry/Prior Service Trainee Support; Army Regulation 350–1, Army Training and Leader Development; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper printouts and electronic storage media.

RETRIEVABILITY:

Retrieved by SSN and course/class number.

SAFEGUARDS:

Access to system is restricted to authorized personnel only with sign-on and password authorization.

RETENTION AND DISPOSAL:

Records are maintained for 40 years then destroyed by erasing from electron media and shreading of paper records. However, records on extension courses are maintained for 3 years in current file area, transferred to the records holding area for 2 years then finally retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Training Support Center, Privacy Act Officer, 667 Monroe Avenue, Fort Eustis, VA 26604.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, SSN, and military status or other information verifiable from the record itself and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 3308 Wilson Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, SSN, and military status or other information verifiable from the record itself.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, personnel and training systems, and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31243 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0044]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. § 552a), as amended.

DATES: The changes will be effective on January 13, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) 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, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) 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. Robin Patterson, HEAD, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or Ms. Robin Patterson (202) 685–6546.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. § 552a), as amended, has been published in the **Federal Register** and is available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: December 8, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05350–1

SYSTEM NAME:

Navy Drug and Alcohol Program System (August 4, 2006, 71 FR 44267).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Primary location: Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

Decentralized locations: Navy Alcohol Rehabilitation Centers, Navy Alcohol Rehabilitation Departments in Naval Hospitals, Counseling and Assistance Centers, Personal Responsibility and Values Education and Training Program (Prevent) Offices, Navy Drug Screening Laboratories, and local activities to which an individual is assigned. Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Documentation containing full name, Social Security Number (SSN), rate/rank, military status, demographic data, screening and assessment information, progress notes, medical and laboratory data, results of active and reserve member's urinalysis testing, narrative summaries of treatment, aftercare plans, and other information pertaining to a member's participation in substance abuse education, counseling, and rehabilitation programs."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Personal and Family Readiness (N135),

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000 or to the Naval activity providing treatment. Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

Requests should contain full name, Social Security Number (SSN), rank/rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

The letter should contain full name, Social Security Number (SSN), rank/rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

* * * * *

N05350–1

SYSTEM NAME:

Navy Drug and Alcohol Program System.

SYSTEM LOCATION:

Primary location: Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

Decentralized locations: Navy Alcohol Rehabilitation Centers, Navy Alcohol Rehabilitation Departments in Naval Hospitals, Counseling and Assistance Centers, Personal Responsibility and Values Education and Training Program (Prevent) Offices, Navy Drug Screening Laboratories, and local activities to which an individual is assigned. Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy personnel (officers and enlisted) who have been identified as drug or alcohol abusers and who are subsequently screened or referred for remedial education, outpatient counseling, or residential rehabilitation; counselors, counselor interns, and counselor applicants; Navy personnel who attend the Prevent Program for preventive education; dependents and civilian employees, where authorized, who participate in preventive and remedial education programs, outpatient counseling, and residential rehabilitation; and officer, enlisted, and civilian staff members of facilities providing drug and alcohol education, screening, counseling, rehabilitation, and drug testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation containing full name, Social Security Number (SSN), rate/rank, military status, demographic data, screening and assessment information, progress notes, medical and laboratory data, results of active and reserve member's urinalysis testing, narrative summaries of treatment, aftercare plans, and other information pertaining to a member's participation in substance abuse education, counseling, and rehabilitation programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1090, Identifying and treating drug and alcohol dependence; 10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 290dd–2, Confidentiality of records; and E.O. 9397 (SSN) as amended.

PURPOSE(S):

To train, educate, identify, screen, counsel, rehabilitate, and monitor the progress of individuals in drug and alcohol abuse programs.

Information is used to screen and evaluate the certified counselors, counselor interns, and counselor applicants throughout the course of their duties.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with the provisions of 42 U.S.C. 290dd–2, the Navy's 'Blanket Routine Uses' do not apply to this system of records.

Specifically, records of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be client/patient, maintained in connection with the performance of any alcohol or drug abuse, education, training, treatment, rehabilitation, or research which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records, except to the individual to whom the record pertains.

The content of any record may be disclosed in accordance with prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for purposes as may be allowed under such prescribed regulations.

INFORMATION FROM RECORDS MAY BE RELEASED WITHOUT THE MEMBER'S CONSENT IN THE FOLLOWING SITUATIONS:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose patient identities in any manner.

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good case therefore. In accessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosures.

The above prohibitions do not apply to any interchange of records within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans or between such components and the Armed Forces.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on computer disks (both hard drive and floppy), magnetic tapes, and drums.

Manual records may be stored in paper file folders, computer printouts, microfiche, or microfilm.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained.

Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Manual records are maintained for two years or three years and then retired to the nearest Federal Records Center. Automated records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000 or to the naval activity providing treatment.

Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

Requests should contain full name, Social Security Number (SSN), rank/rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000 or to the naval activity providing treatment. Addresses are contained in a directory which is available from the Director, Personal and Family Readiness (N135), Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6000.

The letter should contain full name, Social Security Number (SSN), rank/rate, military status, and signature of the requester. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DOD/DON officials; notes and documents from Service Jackets and Medical Records; and general correspondence concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31249 Filed 12–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 13, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 8, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Improving Literacy through School Libraries.

OMB Control Number: 1810–0667.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 70.

Total Estimated Annual Burden Hours: 280.

Abstract: This information is required by Program Statue under Title I of the Elementary and Secondary Education Act (ESEA), as amended under Part B, Subpart 4 section 1251 (h) (1). Each respondent will report on "* * * how the funding was used and the extent to which the availability of, the access to, and the use of up-to-date school library media resources in the elementary and secondary schools served by the local educational agency was increased." The final report makes a specific request for easily retrieved information on each approved activity, personnel description, and outcomes that can't be derived from any other information collection.

Additionally, under section (j)(1) NATIONAL ACTIVITIES the statute requires an independent evaluation of the activities supported by funds and their impact on improved reading skills not later than three (3) years after the date of enactment for ESEA, as amended and biennially thereafter. This information collection is one of three sources of data for the congressional mandated program evaluation.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4412. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–31312 Filed 12–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 13, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 8, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title of Collection: Annual Performance Reports for Title III and Title V Programs.

OMB Control Number: 1840–0766.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 891.

Total Estimated Annual Burden Hours: 17,460.

Abstract: Titles III and V programs authorized by the Higher Education Act of 1965 (HEA), as amended, provide discretionary and formula grants to approximately 40 percent of eligible institutions of higher education and organizations (Minority Science and Engineering Improvement Program-Title III, E only) to support improvements in educational quality, institutional management and fiscal stability. The office of Institutional Development and Undergraduate Education Services (IDUES) is authorized to award one year planning grants and five-year development grants and collect key data, analyze, report, and evaluate grantee and Program performance and outcomes. Grantees submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project and first year grantees submit an interim (six month) report as well.

Requests for copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4348. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–31314 Filed 12–13–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

ACTION: Public meeting of the Technical Guidelines Development Committee.

SUMMARY: The Technical Guidelines Development Committee (TGDC) will meet in open session on Thursday, January 13, 2011 and Friday, January 14, 2011 at the National Institute of Standards and Technology (NIST) in Gaithersburg, Maryland.

DATES: The meeting will be held on Thursday, January 13, 2011, from 8:30 a.m. until 4:30 p.m., Eastern Time, and Friday, January 14, 2011 from 8:30 a.m. to 4:30 p.m., Eastern Time.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900. Members of the public wishing to attend the meeting must notify Mary Lou Norris or Angela Ellis by c.o.b. Thursday, January 6, 2011, per instructions under the

SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: Nelson Hastings, NIST Voting Program, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–5237.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the TGDC will meet Thursday, January 13, 2011 from 8:30 a.m. to 4:30 p.m., Eastern time, and Friday, January 14, 2011 from 8:30 a.m. to 4:30 p.m., Eastern time. Topics that will be discussed at the meeting include UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act), Auditability, and Usability and Accessibility issues. The full meeting agenda will be posted in advance at *http://vote.nist.gov.* All sessions of this meeting will be open to the public. A live Webcast of this meeting will be available at *http://vote.nist.gov.*

The TGDC was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. Details regarding the TGDC's activities are available at *http://vote.nist.gov.*

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by c.o.b. Thursday, January 6, 2011, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Mary Lou Norris or Angela Ellis, and they will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mary Lou Norris' e-mail address is *marylou.norris@nist.gov,* and her phone number is (301) 975–2002. Angela Ellis' e-mail address is *angela.ellis@nist.gov,* and her phone number is (301) 975–3881.

If you are in need of a disability accommodation, such as the need for Sign Language Interpretation, please contact Nelson Hastings by c.o.b. Thursday, January 6, 2011.

Members of the public who wish to speak at this meeting may send a request to participate to Nelson Hastings by c.o.b. Thursday, January 6, 2011. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On January 13, 2011, approximately 30 minutes will be reserved for public comments at the end of the open session. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than 3 to 5 minutes each. Participants who are chosen will receive confirmation from the contact listed above that they were selected by 12 p.m. Eastern time on Tuesday, January 11, 2011.

The general public, including those who are not selected to speak, may submit written comments, which will be distributed to TGDC members so long as they are received no later than 12 p.m. Eastern time on Tuesday, January 11, 2011. All comments will also be posted on *http://vote.nist.gov.*

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–31476 Filed 12–10–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Hawai'i Interisland Renewable Energy Program: Wind (DOE/EIS–0459)

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare a Programmatic Environmental Impact Statement (EIS).

SUMMARY: DOE announces its intention to prepare a Programmatic EIS with the State of Hawai'i as joint lead agencies pursuant to the National Environmental Policy Act (NEPA) of 1969 and the Hawai'i Environmental Policy Act. The Hawai'i Interisland Renewable Energy Program: Wind Programmatic Environmental Impact Statement (hereinafter referred to as the Hawai'i Wind EIS or the EIS) will assess the foreseeable environmental impacts which may arise from wind energy development under the Hawai'i Interisland Renewable Energy Program (HIREP). Hawai'i proposes to facilitate the development of wind-generated electric energy and the required improvements to the existing electric transmission infrastructure in Hawai'i. This EIS is the first phase of a programmatic environmental review of developing and increasing renewable energy technologies in Hawai'i.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register**. Comments on the scope of the EIS should be submitted by March 1, 2011. Comments e-mailed or postmarked after that date will be considered to the extent practicable. DOE and Hawai'i will hold public scoping meetings in the first quarter of 2011. Dates will be announced in the **Federal Register**, on the DOE NEPA Web site at *http://www.nepa.energy.gov,* on the EIS Web site at *http://www.hirep-wind.com,* and in local media at least 15 days before each meeting.

ADDRESSES: DOE and Hawai'i will announce locations of scoping meetings as indicated in **DATES**. Send comments on the scope of the Hawai'i Wind EIS or a request to be added to the EIS distribution list:

- By e-mail to *comments@hirep-wind.com.*
- By submitting electronic comments on the EIS Web page at *http://www.hirep-wind.com.*
- By facsimile (fax) to 808–586–2536, Attention Allen G. Kam.
- By mail to Allen G. Kam, Esq., AICP, HIREP EIS Manager, State of Hawai'i, Department of Business, Economic Development and Tourism, Renewable Energy Branch, State Energy Office, P.O. Box 2359, Honolulu, HI 96804.

Information on the HIREP: Wind Phase is available at the EIS Web site at *http://www.hirep-wind.com.* This Notice of Intent, and the draft and final EIS when issued, also will be posted on the DOE NEPA Web site at *http://www.nepa.energy.gov.* These documents and additional materials relating to this EIS will be available at:

- Hawai'i State Library, 478 South King Street, Honolulu HI 96813.
- Lāna'i Public and School Library, 555 Fraser Ave, Lāna'i City, HI 96763.
- Wailuku Public Library, 251 High Street, Wailuku, HI 96793.
- Moloka'i Public Library, 15 Alamalama, Kaunakakai, HI 96748.
- Edwin H. Mo'okini Library, University of Hawai'i–Hilo, 200 West Kāwili Street, Hilo, HI 96720–4091.
- Kailua-Kona Public Library, 75–138 Hualālai Road, Kailua-Kona, HI 96740–1704.
- Līhu'e Public Library, 4344 Hardy Street, Līhu'e, HI 96766.
- DOE Freedom of Information Act Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: For information on DOE's proposed action, contact Anthony J. Como, DOE NEPA Document Manager, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585; or at *anthony.como@hq.doe.gov.* For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or at 800–472–2756 or *askNEPA@hq.doe.gov.*

For information on the Hawai'i Interisland Renewable Energy Program, contact Mr. Allen G. Kam, Esq., AICP, HIREP EIS Manager, State of Hawai'i, Department of Business, Economic Development and Tourism, Renewable Energy Branch, State Energy Office, P.O. Box 2359, Honolulu, HI 96804; or at 808–587–9023 or *hirep@dbedt.hawaii.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

Section 355 of the Energy Policy Act of 2005 (EPAct) requires the Secretary of Energy to assess the economic implications of the dependence of the State of Hawai'i on oil as a principal source of energy, including the technical and economic feasibility of increasing the contribution of renewable energy resources for the generation of electricity on an island by island basis. Such an assessment is to include, among other factors, siting and facility configuration, the effects on utility system reliability, and environmental considerations. In furtherance of the provisions of section 355 of EPAct, DOE and Hawai'i executed a Memorandum of Understanding (MOU) in January 2008 that established the Hawai'i Clean Energy Initiative (HCEI) and a long-term partnership between DOE and Hawai'i to implement the initiative. HCEI has a goal of providing 70 percent of the state's primary energy from clean energy sources by 2030 by replacing 40 percent of fossil fuel use with renewable energy and reducing energy consumption by 30 percent through energy efficiency measures. Of the alternative renewable energy sources available in Hawai'i—including wind, geothermal, solar, biomass, ocean thermal energy conversion, and wave—wind power has been identified as the most commercially available and economically viable option at the present time. The island of O'ahu, with 80 percent of the state's population, is the island with the greatest energy demand; however, the island does not contain sufficient renewable energy potential to meet the HCEI's goals. The islands of Maui, Lāna'i, and Moloka'i have the most abundant and viable wind resources of those islands closest to O'ahu. The analysis provided in the O'ahu Wind Integration and Transmission Study (November 2010) (additional information at *http://www.nrel.gov/wind/systemsintegration/owits.html*), prepared by DOE's National Renewable Energy Laboratory, concluded that bringing 400 megawatts (MW) of wind-generated power to O'ahu via undersea cable (*i.e.,* the Hawai'i Interisland Wind Program) is technically feasible and should be considered an important part in reaching the HCEI's goals. Subsequent environmental reviews may address non-wind renewable technologies.

2. Environmental Review Process

The Hawai'i Wind EIS will be prepared pursuant to NEPA, as amended, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), the DOE NEPA implementing procedures (10 CFR part 1021), and the Hawai'i Environmental Policy Act (Hawai'i Revised Statutes (HRS) chapter 343). The EIS will assess the potential environmental impacts from the development of wind generation facilities, the transmission required to deliver the wind-generated energy to O'ahu, and the required improvements to the existing electric transmission infrastructure on O'ahu. Because the proposed actions and alternatives may involve activities in floodplains and wetlands, the draft EIS may include a floodplain and wetland assessment prepared in accordance with 10 CFR part 1022, Compliance with Floodplain and Wetland Environmental Review Requirements. The proposed actions and alternatives will involve undersea transmission cables that will transect federal Outer Continental Shelf waters, where the Department of the Interior's Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) has exclusive authority over right-of-way grants for undersea renewable energy transmission cables.

DOE and Hawai'i invite agencies, Native Hawaiian and other organizations, and members of the public to participate in developing the scope of the EIS—that is, the proposed actions, the range of reasonable alternatives and environmental impacts and other issues to be considered—by submitting written comments and by participating in public scoping meetings that DOE and Hawai'i will conduct jointly. DOE and Hawai'i also invite those agencies with jurisdiction by law or special expertise to be cooperating agencies in EIS preparation.

3. DOE Purpose and Need for Agency Action and Proposed Action

DOE's purpose and need for agency action is to meet its obligations under section 355 of EPAct and the 2008 MOU with Hawai'i to transform the way in which renewable energy and efficiency resources are planned and used in the State. DOE's proposed action is to work with and support Hawai'i in the implementation of the HCEI.

4. Hawai'i's Purpose and Need for State Action and Proposed Action

Hawai'i's purpose and need for action is to determine how to use its wind energy resources to meet the 2030 goals set forth in the HCEI. Hawai'i's proposed action is to facilitate renewable energy development that will be required for the State of Hawai'i to meet the HCEI renewable energy goals, including the development of wind resources on the islands of Maui, Lāna'i, and/or Moloka'i and the required improvements to the existing electric transmission infrastructure, including undersea cables to transmit renewable energy generation to O'ahu.

5. Alternatives

Alternatives to be analyzed in this EIS include the proposed action, which would provide for the implementation of an oversight program to develop up to 400 MW of wind energy on the Maui County islands of Maui, Lāna'i, and/or Moloka'i and transmission of that energy to O'ahu. A range of wind development projects could be pursued under the proposed action, and include varying power capacities and configurations among the islands, undersea cable corridors and routes, and locational criteria for landing sites (see *www.hirep-wind.com* for additional information including conceptual maps). The EIS will address scenarios under the proposed action that consider a programmatic approach to all wind energy deriving from a single island in Maui County (i.e., Maui, Lāna'i, or Moloka'i) and all wind energy deriving from a combination of generation on two or more islands in Maui County, along with associated programmatic approaches to cable corridors and routes and landing site locations. The EIS will also analyze a no-action alternative.

6. Preliminary Identification of Environmental Issues

The EIS will evaluate the full range of potential environmental, social, cultural, and economic impacts associated with a proposed wind energy program encompassing the islands of Maui, Lāna'i and Moloka'i and use areas on O'ahu. The EIS also will include a

cultural impact assessment prepared in accordance with Hawai'i law, specifically Act 50, SLH 2000.

Impacts will be analyzed across a number of resource areas, including:

- Air quality (including climate change and greenhouse gas emissions).
- Water resources and drainage.
- Coastal zone resources.
- Geography, geology, and soils.
- Land and submerged land use.
- Threatened and endangered species, special status species, and related sensitive resources such as the Hawaiian Islands Humpback Whale National Marine Sanctuary.
- Land transportation.
- Marine transportation and commerce.
- Airspace utilization.
- Public health and safety.
- Noise.
- Natural hazards.
- Hazardous materials.
- Accidents and intentional destructive acts.
- Cultural and historical resources.
- Recreational resources.
- Visual resources.
- Socioeconomic impacts, community services and infrastructure.
- Environmental justice considerations (disproportionately high and adverse impacts to minority and low income populations).
- Cumulative impacts (past, present, and reasonably foreseeable future actions).
- Irreversible and irretrievable commitments of resources.

The programmatic analysis will identify best management practices, outline regulatory procedures, address mitigation of environmental impacts and support the development of general guidance for major components of an interisland undersea cable energy grid for the transmission of wind energy.

7. Public Participation: Scoping, EIS Distribution, Schedule

As indicated in the **DATES** section, public scoping meetings will be conducted in early 2011. Each scoping meeting will be structured in two parts: first an informal "workshop" discussion period that will not be recorded, then a formal commenting session, which will be transcribed by a court stenographer. The meetings will provide interested parties the opportunity to view exhibits on the HIREP: Wind, ask questions, and submit comments orally or in writing. Representatives from DOE, Hawai'i, and any cooperating agencies will be available to answer questions and provide additional information to participants. Individuals who submit comments during the scoping process will receive paper or electronic copies of the draft EIS, according to their preference. Persons who do not wish to submit comments or suggestions at this time, but would like to receive a copy of the draft EIS when it is issued should submit a request as provided in the **ADDRESSES** section and include their preference for a paper or electronic copy.

In preparing the draft EIS, DOE and Hawai'i will consider comments received during the scoping period. The agencies plan to issue the draft EIS by October 2011. After the agencies issue the draft EIS, the U.S. Environmental Protection Agency will publish a notice of availability of the draft EIS in the **Federal Register**, which will begin a minimum 45-day public comment period. In addition to and concurrent with this NOI publication in the **Federal Register**, the State of Hawai'i is preparing a state-level environmental review notice. That notice along with this NOI will be published in the State of Hawai'i Environmental Notice consistent with all state requirements.

The agencies will announce how to comment on the draft EIS and will hold public hearings during the public comment period, but no sooner than 15 days after the notice of availability is published. In preparing the final EIS, the agencies will respond to comments received on the draft EIS. The agencies plan to issue the final EIS by April 2012. No sooner than 60 days after the Environmental Protection Agency publishes a Notice of Availability of the final EIS, DOE and Hawai'i will each issue its Record of Decision regarding their actions considered in the EIS.

Issued in Washington, DC, on December 8, 2010.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–31310 Filed 12–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–42–000]

Dominion Transmission, Inc; Notice of Application

December 7, 2010.

Take notice that on November 23, 2010, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP11–42–000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 the Commission's Rules and Regulations for all the necessary authorizations required to refunctionalize its existing Line No. TL–404, a 26-mile, 24- and 30-inch pipeline which extends from DTI's Hastings Extraction Plant in Wetzel County, WV to its terminus in Monroe County, OH, from a transmission function to a gathering function. The details of the request are more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Brad A. Knisley, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, or telephone (804) 777–4412, or facsimile (804) 771–4804 or e-mail *Brad.A.Knisley@dom.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party

to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the "e-Filing" link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: December 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–31257 Filed 12–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13825–000; 13827–000]

FFP Missouri 16, LLC, Solia 9 Hydroelectric, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 7, 2010.

On August 6, 2010, FFP Missouri 16, LLC (FFP) and Solia 9 Hydroelectric, LLC filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Mississippi River Lock and Dam #15 structure, located on the Mississippi River near Rock Island, Illinois. 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.

FFP's Mississippi Lock and Dam #15 Project (Project No. 13825–000) would consist of: (1) Four modular generation units placed in nine of the existing gate bays of the Corps' lock and dam structure. These 36 units would contain compact bulb turbines with individual unit capacities of 835 KW each and have a combined capacity of 30 MW; (2) a separate 50-foot x 60-foot control building; (3) a new 30 MVa substation located on the north side of the river; (4) a new 5,500-foot-long transmission line extending to an interconnection point with the existing Mid American Energy substation on the southern edge of Rock Island; and (5) appurtenant facilities. The proposed operating voltage would be 115-kilovolt (kV). FFP is also exploring an alternative that would involve construction of a new 260-foot-long x 210-foot-wide x 70-foot-high conventional concrete powerhouse and intake in the northern two roller gate bays. The new proposed powerhouse would contain four horizontal bulb turbines rated at 7.5 MW each. Each design would have a total energy generation of 200 gigawatt-hours per year. The project would utilize Corps designated flows from the Mississippi Lock and Dam #15 structure and operate as directed by the Corps.

Applicant Contact: Mr. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; Telephone: (978) 283–2822.

Solia 9 Hydroelectric's proposed Lock and Dam #15 Hydropower Project (Project No. 13827–000) would consist of: (1) One 245-foot-long x 160-foot-wide x 60-foot-high concrete powerhouse. The proposed powerhouse would contain 6 turbine generator units with individual unit capacities of 5.2 MW each and have a combined capacity of 31 MW; (2) a new 26,400-foot-long 34 to 230-kV transmission line extending from the switchyard near the proposed powerhouse to an existing nearby distribution line; and (3) appurtenant facilities. The proposed project design would have a total energy generation of 172 gigawatt-hours per year. The project would operate run-of-river and utilize flows released from the dam.

Applicant Contact: Mr. Douglas Spaulding, P.E., Nelson Energy, LLC, 8441 Wayzata Blvd., #101, Golden Valley, MN 55426; Telephone: (952) 544–8133.

FERC Contact: Tyrone A. Williams, *tyrone.williams@ferc.gov* or (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. 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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly recommends electronic filing, documents may also be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

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–13795) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–31258 Filed 12–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

December 9, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 16, 2010, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note** —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All

public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

965TH—MEETING, REGULAR MEETING

[December 16, 2010 10 a.m.]

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD11–5–000	Annual Report of Natural Gas Transactions.
		ELECTRIC
E–1	ER10–1791–000.	Midwest Independent Transmission System Operator, Inc.
E–2	EC10–68–000.	FirstEnergy Corp. and Allegheny Energy, Inc.
E–3	ER11–1830–000.	California Independent System Operator Corporation.
E–4	ER11–1923–00.	Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc. and Entergy Texas, Inc.
E–5	ER10–1401–000.	California Independent System Operator Corporation.
	ER10–2191–000.	
	EL10–76–000	Green Energy Express LLC and 21st Century Transmission Holdings, LLC.
E–6	EL10–51–000	Grasslands Renewable Energy LLC.
E–7	RM09–09–000.	Version One Regional Reliability Standards for Facilities Design, Connections, and Maintenance; Protection and Control; and Voltage and Reactive.
E–8	RM09–14–000.	Version One Regional Reliability Standard for Transmission Operations.
E–9	OMITTED	
E–10	RM10–5–000	Interpretation of Protection System Reliability Standard.
E–11	RM06–16–010.	Mandatory Reliability Standards for the Bulk Power System.
	RM06–16–011.	
E–12	RM10–8–000	Electric Reliability Organization Interpretations of Interconnection Reliability Operations and Coordination and Transmission Operations Reliability Standards.
E–13	RM06–22–012.	Mandatory Reliability Standards for Critical Infrastructure Protection.
E–14	EL00–66–015	Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation.
E–15	ER11–1918–000.	ISO New England Inc.
E–16	ER10–2477–000.	ISO New England Inc.
E–17	OMITTED	
E–18	EC10–67–000.	BHE Holdings Inc. and Maine & Maritimes Corporation.
E–19	NJ09–1–001	United States Department of Energy—Bonneville Power Administration.
E–20	NP10–160–000.	North American Electric Reliability Corporation.
E–21	ER11–1947–000.	ISO New England Inc.
		GAS
G–1	RM10–25–000.	Five-Year Review of Oil Pipeline Pricing Index.
G–2	RM11–4–000	Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies.
G–3	RM09–2–001	Contract Reporting Requirements of Intrastate Natural Gas Companies.
G–4	RP07–340–007.	Columbia Gas Transmission Corporation.
G–5	RP08–295–002.	Columbia Gas Transmission Corporation.
		HYDRO
H–1	P–2342–005 P–2342–011.	PacifiCorp.

965TH—MEETING, REGULAR MEETING—Continued

[December 16, 2010 10 a.m.]

Item No.	Docket No.	Company
		CERTIFICATES
C–1	CP10–457–000. CP10–458–000.	National Fuel Gas Supply Corporation.
C–2	CP10–488–000.	Columbia Gas Transmission, LLC and Millennium Pipeline Company, LLC.
C–3	CP10–471–000.	Texas Eastern Transmission, LP.

Kimberly D. Bose,

Secretary.

A free Webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–31420 Filed 12–10–10; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–1016; FRL–9238–7]

Agency Information Collection Activities; Proposed Collection; Comment Response; National Refrigerant Recycling and Emission Reduction Program; EPA ICR No. 1626.11, OMB Control No. 2060–0256

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before *February 14, 2011.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1016.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–1016. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Julius Banks; Stratospheric Protection Division, Office of Air and Radiation, Office of Atmospheric Programs; Mail Code 6205J; Environmental Protection Agency; 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9870; fax number: (202) 343–2338; e-mail address: *banks.julius@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–1016, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are those that recover, recycle, reclaim, sell, or distribute in interstate commerce ozone-depleting refrigerants that contain chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs); and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC refrigerants. In addition, the owners or operators of appliances containing more than 50 pounds of CFC or HCFC refrigerants are regulated.

ICR numbers: EPA ICR No. 1626.11, OMB Control No. 2060–0256.

ICR status: This ICR is currently scheduled to expire on April 30, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA has developed regulations under the Clean Air Act Amendments of 1990 (the Act) establishing standards and requirements regarding the use and disposal of class I and class II ozone-depleting substances used as refrigerants during the service, maintenance, repair, or disposal of refrigeration and air-conditioning equipment. Section 608(c) of the Act states that effective July 1, 1992 it is unlawful for any person in the course of maintaining, servicing, repairing, or disposing of refrigeration or air-conditioning equipment to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in the equipment in a manner which permits the substance to enter the environment.

In 1993, EPA promulgated regulations under section 608 of the Act for the recycling of ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. These regulations were published on May 14, 1993 (58 FR 28660) and codified in 40 CFR subpart F (§ 82.150 *et seq.*).

The regulations require persons servicing refrigeration and air-conditioning equipment to observe certain service practices that reduce emissions of ozone depleting refrigerants. The regulations also establish certification programs for technicians, recycling and recovery equipment, and off-site refrigerant reclaimers. In addition, EPA requires that ozone depleting refrigerants contained "in bulk" in appliances be removed prior to disposal of the appliances and that all refrigeration and air-conditioning equipment, except for small appliances and room air conditioners, be provided with a servicing aperture that facilitates recovery of the refrigerant. Moreover, the Agency requires that substantial refrigerant leaks in equipment be repaired when they are discovered. These regulations significantly reduce emissions of ozone depleting refrigerants, and therefore aid U.S. and global efforts to minimize damage to the ozone layer and the environment as a whole.

To facilitate compliance with and enforcement of section 608 requirements, EPA requires reporting and recordkeeping requirements of technicians; technician certification programs; equipment testing organizations; refrigerant wholesalers and purchasers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners; and other establishments that perform refrigerant removal, service, or disposal. The recordkeeping requirements and periodic submission of reports, to EPA's Office of Air and Radiation, Office of Atmospheric Programs, occur on an annual, biannual, one time, or occasional basis depending on the nature of the reporting entity and the length of time that the entity has been in service. Specific reporting and recordkeeping requirements were published in 58 FR 28660 and codified under 40 CFR part 82, subpart F (i.e., § 82.166). These reporting and recordkeeping requirements also allow EPA to evaluate the effectiveness of the refrigerant regulations, and help the Agency determine if we are meeting the obligations of the Unites States, under the 1987 Montreal Protocol, to reduce use and emissions of ozone-depleting substances to the lowest achievable level.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average: 8 hours for the 2 EPA-approved refrigerant recovery/recycling equipment testing organizations; 2,250 hours for an estimated 2,250 owners of refrigerant recovery/recycling equipment (including air-conditioning and refrigeration service establishments) that will change ownership or enter the market; 375 hours for an estimated 375 appliance disposal establishments that change ownership or enter the market; 97,500 hours for the maintenance of copies of signed statements by an estimated 7,500 disposal establishments; 20 hours for certification of an estimated 4 refrigerant reclaimers that change ownership or enter the market; 245 hours for refrigerant reclaimer annual reporting from an estimated 49 respondents; 306 hours for refrigerant reclaimer transactional recordkeeping from an estimated 49 respondents; 2,250,000 hours for an estimated 10,000 refrigerant wholesalers to maintain records of refrigerant sales transactions; 25 hours for an estimated 5 technician certification programs applying for first-time approval; 455 hours for an estimated 91 technician certification programs to maintain records; 182 hours for an estimated 91 technician certification programs to submit biannual reports on their pass/fail rates and the next year's testing schedule; 5,010 hours for an estimated 30,000 technicians acquiring certification for the first time; 5,010 hours for an estimated 300,000 previously certified technicians to maintain their certification cards; 512 hours for an estimated 20,500 technicians servicing appliances with charge sizes greater than 50 pounds of refrigerant to provide service invoices to their customers; 512 hours for an estimated 20,500 owners/operators of appliances with charge sizes greater than 50 pounds of refrigerant to maintain service invoices; 10 hours for an estimated 20 owners of industrial process refrigeration equipment (appliances) who request a 30-day extension to the 30-day leak repair requirement or the retrofit requirement; 0.5 hours (30 minutes) for an estimated 1 owner of industrial process refrigeration equipment (appliances) who requests an extension to the 1-year timeframe to implement retrofit/retirement plans; 0.05 hours (3 minutes) for an estimated 2 owners of industrial process refrigeration appliances who maintain information on purged/destroyed refrigerant that they wish to exclude from their leak rate calculations; 40,000 hours for an estimated 5,000 owners/operators of appliances with refrigerant charges greater than 50 pounds to create and maintain a plan to retire/replace or retrofit comfort cooling, commercial refrigeration, and industrial process refrigeration appliances; 2,501 hours for an estimated 100,025 owners/operators of industrial process refrigeration appliances with refrigerant charge sizes greater than 50 pounds to maintain records on the results of initial and follow-up verification tests and 5,000 hours for an estimated 200,000 appliance owners/operators who choose to determine the appliance's full charge using a range of possible values.

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

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 663,669.

Frequency of response: Reporting requirements under this rulemaking are primarily required on an annual basis, with the exception of technician testing organizations that are required to rep ort biannually. The frequency of recordkeeping requirements under this rulemaking vary depending upon the actions of the respondent but are generally required on a transactional basis.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,404,913 hours.

Estimated total annual costs: $96,364,851. This includes an estimated burden cost of $96,364,851 and an estimated cost of $0 for capital investment costs.

Are there changes in the estimates from the last approval?

There is no increase of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This is due to the fact that there have been no changes in any program requirement, no changes in EPA's estimates of the time required to submit reports and maintain records, and no changes in EPA's estimates of the overall number of respondents. However, due to a correction of miscalculated estimates in the ICR currently approved by OMB, there is a change in the estimated total number of potential respondents from that identified in the ICR currently approved by OMB. There is also an increase of $8,345,044 in the estimated total annual cost as a result of changes in EPA's estimates of labor rates.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: December 8, 2010.

Brian J. McLean,

Office of Atmospheric Program, Office of Air and Radiation.

[FR Doc. 2010–31334 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0359; FRL–9238–3; EPA ICR Number 1053.10; OMB Control Number 2060–0023]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Electric Utility Steam Generating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 13, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0359, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010, (75 FR 30813) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0359, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that the EPA policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Electric Utility Steam Generating Units (Renewal).

ICR Numbers: EPA ICR Number 1053.10, OMB Control Number 2060–0023.

ICR Status: This ICR is scheduled to expire on January 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart Da. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 96 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of electric utility steam generating units.

Estimated Number of Respondents: 677.

Frequency of Response: Initially, quarterly and semiannually.

Estimated Total Annual Hour Burden: 160,839.

Estimated Total Annual Cost: $27,445,813, which includes $15,090,813 in labor costs, $2,200,000 in capital/startup costs, and $10,155,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There are no changes in either the labor hours or in the capital/startup and operation and maintenance costs in this ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent.

The increase in labor cost to both Respondents and the Agency is due to labor rate adjustments that reflect the most recent available estimates.

Dated: December 7, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–31344 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0366; FRL–9238–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Rubber Tire Manufacturing (Renewal), EPA ICR Number 1158.10, OMB Control Number 2060–0156

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 13, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0366 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0366, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Rubber Tire Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1158.10, OMB Control Number 2060–0156.

ICR Status: This ICR is scheduled to expire on January 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Rubber Tire Manufacturing (40 CFR part 60, subpart BBB) were proposed on January 20, 1983, and promulgated on September 15, 1987. Minor revisions to the standards of performance for the rubber tire manufacturing industry were proposed on February 14, 1989, and promulgated on September 19, 1989.

The affected facilities include: Each undertread cementing operations, sidewall cementing operations, tread end cementing operations, bead cementing operations, green tire spraying operations, Michelin-A operations, Michelin-B operations, and Michelin-C automatic operations, that commencing construction, modification or reconstruction after January 20, 1983. The rule established standards for volatile organic compounds (VOCs) use and emission limits.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. This standard required performance test of Method 25 and an annual report of Method 23 results to verify VOC content of water-based sprays. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to rubber tire manufacturing plants provide information on the operation of the emissions control device and compliance with the VOCs standards. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart BBB, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA regulations are list in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 166 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel

to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Rubber tire manufacturing.

Estimated Number of Respondents: 41.

Frequency of Response: Initially, annually, and semiannually.

Estimated Total Annual Hour Burden: 13,323.

Estimated Total Annual Cost: $1,266,476, which includes $1,250,076 in labor costs, no capital/startup costs, and $16,400 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no increase in the number of affected facilities, labor hours, or the number of responses compared to the previous ICR.

There is however, an increase in the estimated labor burden cost as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program change. The change in the labor burden cost estimates has occurred because we updated the labor rates, which resulted in an increase in labor costs. There is also an increase of $400.00 to the operation and maintenance (O&M) costs.

Dated: December 7, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–31342 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0477; FRL–8856–5]

Endocrine Disruptor Screening Program; Second List of Chemicals for Tier 1 Screening; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA published a notice in the **Federal Register** issue of November 17, 2010, concerning the Endocrine Disruptor Screening Program's (EDSP) second list of chemicals for Tier 1 screening. This document extends the comment period from December 17, 2010, to January 18, 2011.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0477, must be received on or before January 18, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** notice of November 17, 2010.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wooge, Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8476; *e-mail address: wooge.william@epa.gov.*

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

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** notice of November 17, 2010 (75 FR 70248) (FRL–8848–7). In that notice, EPA announced the second list of chemicals and substances for which EPA intends to issue test orders under EDSP and requested comment. EPA is hereby extending the comment period, which was set to end on December 17, 2010, to January 18, 2011.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** notice of November 17, 2010. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Chemicals, Drinking water, Endocrine disruptors, Pesticides and pests.

Dated: December 8, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–31336 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9238–8]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Astoria (the City), OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver request from the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City for the utilization and installation of one (1) Slide Gate in the influent control structure and two (2) Stop Logs/Guides sets in access manholes as part of an overall Combined Sewage Overflow (CSO) control project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The City had the contractual obligation of the contractor and written verification from the manufacturer that the Slide Gate and Stop Logs/Guides would comply with Buy American requirements and be produced in a U.S. facility. However, the contractor observed that the Slide Gate and Stop Logs/Guides delivered to the site for installation had "Made in Canada" labeling. The contractor confirmed with the manufacturer that goods were actually manufactured in Canada, not in the U.S., and shipped to the project site in error. Due to contractual requirements, the contractor and manufacturer will absorb the costs of the Slide Gate and Stop Logs/Guides. Re-ordering the Slide Gate and Stop Logs/Guides and having them manufactured in a U.S. facility would delay project completion by at least nine to ten weeks. Of significant note, the City has a contractual obligation to the Oregon Department of Environmental Quality (DEQ) to begin project testing and start up by December 1, 2010 in order for the completed project to properly control CSOs and provide water quality protection during the typical wet weather associated with December and January, when CSOs are highest. Based upon information submitted by the City, EPA has concluded that requiring the installation of the domestic manufactured Slide Gate and Stop Logs/Guides, which would extend the project schedule by at least nine to ten weeks, would be inconsistent with the public interest, and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the Grants and Strategic Planning Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the installation of the foreign manufactured Slide Gate and Stop Logs/Guides, as

specified in the City's October 28, 2010 request.

DATES: *Effective Date:* December 3, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Fiedorczyk, CWSRF ARRA Program Management Analyst, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553–0506, U.S. EPA Region 10 (OWW–137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City of Astoria, Oregon for the installation of one (1) Slide Gate in the influent control structure and two (2) Stop Logs/Guides sets in access manholes as part of an overall Combined Sewage Overflow (CSO) control project. Based on the information provided by the City, EPA has determined that it is inconsistent with the public interest for the City to further delay the project and pursue the purchase of a domestically made Slide Gate and Stop Logs/Guides.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, in this case, the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Consistent with the direction of OMB's regulation at 2 CFR 176.120, EPA will generally consider a waiver request with respect to components that were specified in the bid solicitation or in a general/primary construction contract or those made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed, can be evaluated as timely because the contractor informed the City that due to an oversight, the Slide Gate and Stop Logs/Guides that were delivered to the construction site had been manufactured in a Canadian facility. The need for a waiver was not determined until after the contractor observed and verified the delivery of the foreign manufactured Slide Gate and Stop Logs/Guides. The recipient could not reasonably have foreseen the need for a determination until informed of the error. Accordingly, EPA will evaluate the request as if it were timely.

The City is requesting a waiver of the Buy American provision for installation of one (1) Slide Gate in the influent control structure and two (2) Stop Logs/Guides sets in access manholes, which are necessary components of an overall Combined Sewage Overflow (CSO) control project. As context, the project cost is estimated at $8.8 million, of which $4 million is ARRA funded, and the Slide Gate and Stop Logs/Guides are estimated to cost $20,000 or less.

The City's general contractor submitted the Slide Gate and Stop Logs/Guides shop drawings for review by the City Engineer; there was no indication in the shop drawings that equipment would be manufactured in Canada. Additionally, correspondence from the manufacturer for the equipment description proposal and purchase order were from a U.S. address in New Hampshire. Finally, in the additional quotation and delivery conditions, the manufacturer certified that its quotation complies with all specifications, which include ARRA Buy American requirements. For these reasons, the City had no reason to suspect that foreign made goods would be delivered to the project site.

However, the contractor noticed that the Slide Gate and Stop Logs/Guides delivered to the site for installation had "Made in Canada" labeling and verified with the manufacturer that they were actually manufactured in Canada, and not in the U.S. Due to contractual requirements, the contractor and manufacturer will absorb the costs of the Slide Gate and Stop Logs/Guides; thus, the cost of this equipment will not be paid by the City. The City, which could not reasonably foresee the need for a waiver to the Buy American provision of the ARRA, immediately contacted DEQ after they were informed by the contractor of the delivery oversight, and submitted a waiver request (October 29, 2010) after discussing the necessary course of action with DEQ and EPA Region 10.

Re-ordering the Slide Gate and Stop Logs/Guides and having them manufactured in a U.S. facility would delay project completion by at least nine to ten weeks. Of significant note, the City has a contractual obligation to DEQ to begin project testing and start up by December 1, 2010 in order for the completed project to properly control CSOs and provide water quality protection during the typical wet weather associated with December and January, when CSOs are highest.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready", such as this project in Astoria, Oregon. The implementation of the ARRA Buy American requirements in this case would result in an unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the City of Astoria, Oregon. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, the City of Astoria, Oregon is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the installation and utilization of foreign manufactured Slide Gate and Stop Logs/Guides as documented in the City's waiver request submittal dated October 28, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Issued on: December 3, 2010.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2010–31335 Filed 12–13–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0059]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Application for Express Insurance.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Express Insurance will be used to determine the eligibility of the applicant and the creditworthiness of one of the applicant's foreign buyers for Export-Import Bank assistance under its insurance program. Export-Import Bank customers will be able to submit this form on paper.

This is a new application form for use by small U.S. businesses with limited export experience. Companies that are eligible to use the Express policy will need to answer approximately 20 questions and sign an acknowledgement of the certifications that appear on the reverse of the application form. This program does not provide discretionary credit authority to the U.S. exporter, and therefore the financial and credit information needs are minimized. This new form incorporates the recently updated standard Certification and Notices section as well as two questions about the amount of U.S. employment to be supported by this policy.

Based upon comments received we have changed the name of this form from Application for Short-Term Express Export Credit Insurance Policy to Application for Express Insurance.

The form can be viewed at *http://www.exim.gov/pub/pending/EIB10_02.pdf.*

DATES: Comments should be received on or before January 13, 2011 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 attn: OMB 3048–xxxx.

SUPPLEMENTARY INFORMATION: *Titles and Form Number:* EIB 10–02 Application for Express Insurance.

OMB Number: 3048–xxxx.

Type of Review: New.

Need and Use: The Application for Express Insurance will be used to determine the eligibility of the applicant and the transaction for Export-Import Bank assistance under its insurance program.

Annual Number of Respondents: 500.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 1,000 hours.

Frequency of Reporting or Use: Once per year.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–31303 Filed 12–13–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 7, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 13, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918, or via Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–xxxx.

Title: Structure and Practices of the Video Relay Service Program, CG Docket No. 10–51.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 13 respondents; 169 responses.

Estimated Time per Response: .017 hours (1 minute average per response).

Frequency of Response: Annual and monthly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at sections 1, 4, 225, and 303(r) of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 154, 225, and 303(r).

Total Annual Burden: 3 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In document FCC 10–88, the Commission finds good cause to adopt an interim rule requiring the Chief Executive Officer, Chief Financial Officer, or other senior executive of a Telecommunications Relay Service (TRS) provider submitting minutes to the Interstate TRS Fund (Fund) administrator for compensation on a monthly basis to certify, under penalty of perjury, that the submitted minutes were handled in compliance with section 225 of the Act and the Commission's rules and orders. Also in this document, the Commission requires such an executive to certify, under penalty of perjury, that cost and demand data submitted to the Fund administrator on an annual basis related to the determination of compensation rates or methodologies are true and correct. The explosive growth in the Fund in recent years and evidence of fraud against the Fund, as evidenced by recent indictments and guilty pleas from call center managers and employees admitting to defrauding the Fund of tens of millions of dollars, require the Commission to take immediate steps in preserving the Fund to ensure the continued availability of TRS. By requiring providers to be more accountable for their submissions, the Commission takes necessary, affirmative steps to preserve the TRS Fund.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–31357 Filed 12–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2922]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 1, 2010.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by December 29, 2010. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter Amendment of Section 73.202(b), Table of Allotments FM Broadcast Stations (Markham, Ganado and Victoria, Texas) (MB Docket No. 07–163).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–31352 Filed 12–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2923]

Petition for Reconsideration of Action in Rulemaking Proceeding

December 3, 2010.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this document and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC, or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by December 29, 2010. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Amendment of Part 101 of the Commission's Rules to Accommodate 30 Megahertz Channels in the 6525–6875 MHz Band (WT Docket No. 09–114).

Amendment of Part 101 of the Commission's Rules to Provide for Conditional Authorization on Additional Channels in the 21.8–22.0 GHz and 23.0–23.2 GHz Band.

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–31354 Filed 12–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC, Commission, or the Agency).

ACTION: Notice; one new Privacy Act system of records; two deleted systems of records.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended ("Privacy Act"), 5 U.S.C. 552a, the FCC proposes to add one new, consolidated system of records, FCC/EB–5, "Enforcement Bureau Activity Tracking System (EBATS)." FCC/EB–5, "EBATS" will incorporate the information, *e.g.,* personally identifiable information (PII), presently covered by two FCC systems of records, FCC/EB–1, "Violators Files," and FCC/EB–3, "Investigations and Hearings," and also add new and updated information that pertains to the mission and activities of the FCC's Enforcement Bureau (EB or Bureau), including spectrum enforcement. Upon both the approval and deployment of FCC/EB–5, "EBATS," the Commission will cancel FCC/EB–1 and FCC/EB–3. The purposes for adding this new system of records, FCC/EB–5, "EBATS," are for EB to use the records in this system of records to improve the Bureau's operations and work flow, increase its reporting capabilities, and improve the reliability and consistency of its data. The new system of records will consolidate the systems of records that the Bureau currently uses so that all the PII data in the various EB information systems are now housed in a single, Bureau-wide, and consistently-defined system of records.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before January 13, 2011. The Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight

responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before January 24, 2011. The proposed new system of records will become effective on January 24, 2011 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of this proposed new system of records maintained by the FCC. The FCC previously gave complete notice of the two systems of records, FCC/EB–1, "Violators Files" and FCC/EB–3, "Investigations and Hearings," which it intends to cancel upon both the approval and deployment of FCC/EB–5, "EBATS," as referenced under this Notice by publication in the **Federal Register** on April 5, 2006 (71 FR 17234, 17237 and 17238 respectively). This notice is a summary of the more detailed information about the proposed new system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purposes for adding this new system of records, FCC/EB–5, "EBATS," are for the FCC's Enforcement Bureau (EB) to use the records in FCC/EB–5, "EBATS," to improve the Bureau's operations and workflow, increase its reporting capacities, and improve the reliability and consistency of its data. The new system of records will consolidate the separate and independent systems of records that the Bureau currently uses so that all PII data in the various EB information systems are now housed in a single, Bureau-wide, and consistently-defined system of records.

This notice meets the requirement documenting the change to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/EB–5

SYSTEM NAME: ENFORCEMENT BUREAU ACTIVITY TRACKING SYSTEM (EBATS).

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Primary: Enforcement Bureau (EB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554; and

Secondary: Various field facilities. Information about FCC Field Offices can also be found at *http://www.fcc.gov/eb/rfo.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in this system include:

1. Individuals, including FCC employees, who have filed complaints alleging violations of the Communications Act of 1934, as amended (the "Communications Act"); FCC regulations; other statutes and regulations subject to the FCC's jurisdiction; and/or international treaties (collectively referred to hereafter as "FCC Rules and Regulations") by FCC licensees or regulates, or individuals who have filed such complaints on behalf of business(es), institution(s), etc., and who may have included their personally identifiable information (PII) in the complaint;

2. Individuals who are or have been the subjects of Federal Communications Commission (FCC) field monitoring, inspection, and/or investigation, etc., for possible violations of FCC Rules and Regulations;

3. Licensees, applicants, regulatees, and unlicensed individuals about whom there are questions of compliance with FCC Rules and Regulations; and

4. FCC employees, contractors, and interns who perform work on behalf of the Enforcement Bureau.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include:

1. Information that is associated with those individuals who file complaints or who are being investigated for possible enforcement actions, *e.g.,* violators, *etc.* The information may include:

(a) An individual's name, Social Security Number (SSN) or Taxpayer Identification Number (TIN), gender, race/ethnicity, birth date/age, place of birth, biometric data (photograph(s)), marital status, spousal data, miscellaneous family data, home address, home address history, home telephone number(s), personal cell phone number(s), personal fax number(s), personal e-mail address(es), credit card number(s), driver license number(s), bank account data, financial data, law enforcement data, background investigatory data, national security data, employment and/or employer data, and other miscellaneous materials, documents, and files, etc., which are used for background information and data verification, *etc.;*

(b) Inspection reports, audit reports, complaints, referrals, monitoring reports, inspection cases, referral memos, correspondence, discrepancy notifications, warning notices, and forfeiture actions, *etc.;* and

(c) Miscellaneous materials, documents, files, and records that are used for background information and data verification concerning individuals who may be accused or have violated the Commission's rules and regulations.

2. The information that is associated with the same or similar current enforcement cases and historic records and other archival, background, and research data and materials that are stored for reference in enforcement actions, *i.e.,* inspection reports, complaints, monitoring reports, investigative cases, referral memos, correspondence, discrepancy notifications, warning notices, and forfeiture actions; and

3. Other, miscellaneous information that complainants may have included on FCC Forms 475B, 501, 1088, and/or 2000, as well as any additional FCC forms that may be used from time to time to report possible violations of FCC Rules and Regulations (as defined above) to the FCC or associated with case files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 101, 102, 104, 301, 303, 309(e), 312, 315, 318, 362, 364, 386, 501, 502, 503, 507, and 510.

PURPOSE(S):

The Enforcement Bureau uses the information in this information system:

1. To track the status of enforcement cases of entities (including individuals) that have been identified as possible violators of the FCC's Rules and Regulations (as defined above);

2. To determine the levels of compliance among FCC licensees, and other regulatees;

3. To document Commission monitoring, audits, inspections and investigations for compliance and enforcement purposes;

4. To provide a basis for the various administrative and civil, or criminal actions against violators by the Enforcement Bureau (EB), other appropriate Commission bureaus or offices, and/or other government agencies;

5. To gather background information for reference materials from various external databases and resources, *etc.,* to insure that the information that is being compiled is accurate and up-to-date ("cross-checking") in the course of investigating consumer complaints and/or enforcement cases;

6. To maintain archival information (paper documents and files) for reference in enforcement investigations and other actions; and

7. To prevent duplication of FCC's enforcement actions, *e.g.,* for cross-reference purposes, *etc.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. *Public Access*—Copies of FCC enforcement actions are available for public inspection via the Internet at *http://www.fcc.gov/eb/,* and in the FCC's Reference Information Center at *http://www.fcc.gov/cgb/ric.html;*

2. *Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency*—Disclosure may be made to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement records, other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit;

3. *Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by an Entity other than the Agency*—Disclosure may be made to a Federal, State, local, foreign, Tribal, or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire records if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the Agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action;

4. *Adjudication and Litigation*—Where by careful review, the Agency determines that the records are both relevant and necessary to litigation and the use of such records is deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records, these records may be used by a court or adjudicative body in a proceeding when: (a) The Agency or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation;

5. *Law enforcement and Investigation*—Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be shared with appropriate Federal, State, or local authorities either for purposes of obtaining additional information relevant to a FCC decision or for referring the record for investigation, enforcement, or prosecution by another agency;

6. *Congressional Inquiries*—When requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for their own records;

7. *Government-wide Program Management and Oversight*—When requested by the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act; or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

8. *FCC Enforcement Actions*—When a record in this system involves an informal complaint filed alleging a violation of FCC Rules and Regulations (as defined above) by an applicant, licensee, regulated entity or an unlicensed person or entity, the complaint may be provided to the alleged violator for a response. When an order or other Commission-issued document that includes consideration of an informal complaint or complaints is issued by the FCC to implement or to enforce FCC Rules and Regulations (as defined above), the complainant's name may be made public in that order or document. Where a complainant in filing his or her complaint explicitly requests that confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint;

9. *Breach of Federal Data*—A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

10. *Due Diligence Inquiries*—Where there is an indication of a violation or potential violation of FCC Rules and Regulations (as defined above), records from this system may be shared with a requesting individual, or representative thereof, for purposes of obtaining such information so long as relevant to a pending transaction of a FCC-issued license.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this information system consists of electronic records, files, and data that are stored in the FCC's computer network databases, at headquarters and in the field offices,

and paper records, documents, and files that are stored in filing cabinets in the EB office suites at headquarters and in field offices.

RETRIEVABILITY:

1. Information in the electronic database information can be retrieved by the name(s) of the individual(s) who filed the complaint(s), the individual who is subject of the complaint, and by a unique case number assigned to each type of activity conducted by the Bureau, *e.g.,* inspections, audits, investigations, hearings, due diligence requests, *etc.*

2. Information in the central files, *e.g.,* paper documents, records, and files, etc., includes all the other information pertaining to these complainant investigations and/or cases, *i.e.,* name, address, telephone number, etc., and is maintained for reference and archival purposes. This information is retrieved by a unique identification number assigned to each complainant investigation and/or case.

SAFEGUARDS:

The paper files, documents, and records are stored in file cabinets in non-public areas in the EB office suites at headquarters and in field offices. The file cabinets are locked at the end of each business day or when not in use.

The electronic records, data, and files are maintained in the FCC computer network databases at headquarters and in the field offices. Access to both the paper files and the electronic files is restricted to authorized EB supervisors and staff. Authorized staff and contractors in the FCC's Information Technology Center (ITC) have access to the electronic files. Other employees, interns, and contractors may be granted access to the paper files and/or the electronic files on a "need-to-know" basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Backup tapes are stored on-site and at a secured, off-site location. The information that is stored in the computer databases in the EB field offices is protected by similar security protocols and safeguards.

RETENTION AND DISPOSAL:

The retention schedule for this system of records has not yet been determined. No records will be destroyed until a disposal schedule is approved by the National Archives and Records Administration (NARA). [check with Records Management]

SYSTEM MANAGER(S) AND ADDRESS:

Enforcement Bureau (EB), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Under the authority granted to heads of agencies by 5 U.S.C. 552a(k), the FCC has determined (47 CFR Section 0.561) that this system of records is exempt from disclosing its notification procedure for this system of records.

RECORD ACCESS PROCEDURES:

Under the authority granted to heads of agencies by 5 U.S.C. 552a(k), the FCC has determined (47 CFR Section 0.561) that this system of records is exempt from disclosing its record access procedure for this system of records.

CONTESTING RECORD PROCEDURE:

Under the authority granted to heads of agencies by 5 U.S.C. 552a(k), the FCC has determined (47 CFR Section 0.561) that this system of records is exempt from disclosing its contesting record procedure for this system of records.

RECORD SOURCE CATEGORIES:

Under the authority granted to heads of agencies by 5 U.S.C. 552a(k), the FCC has determined (47 CFR Section 0.561) that this system of records is exempt from disclosing its record sources for this system of records.

EXEMPTION FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from sections (c)(3), (d), (e)(4)(G), (H), and (I), and (f) of the Privacy Act of 1974, 5 U.S.C. 552a, and from 47 CFR 0.554–0.557 of the Commission's rules. These provisions concern the notification, record access, and contesting procedures described above, and also the publication of record sources. The system is exempt from these provisions because it contains the following types of information:

1. Investigative material compiled for law enforcement purposes as defined in Section (k)(2) of the Privacy Act;

2. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy, as stated in Section (k)(1) of the Privacy Act; and

3. Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, as described in Section (k)(5) of the Privacy Act, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–31356 Filed 12–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 10–10]

Draft Cargoways India (PVT.) LTD. v. DAMCO U.S.A., INC., DAMCO A/S, A.P. Moller–Maersk A/S, Glencore LTD., and Allegheny Alloys Trading LP; Notice of Filing of Amended Complaint

Notice is given that an Amended Complaint has been filed with the Federal Maritime Commission ("Commission") by DRAFT CARGOWAYS (INDIA) PVT. LTD. ("Complainant") in this proceeding against DAMCO USA, INC., DAMCO A/S, AND A.P. MOLLER–MAERSK A/S ("Respondent") noticed on November 16, 2010 (75 FR 20005). Complainant asserted in its original complaint that Respondents violated Sections 8(a)(1), 10(b)(2)(A), 10(b)(11), 10(b)(13) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. 40501(a)(1), 41104(2) and (11), 41103(a) and 41102(c). Complainant alleged that Respondents "invoiced and attempted to collect amounts from Complainant for demurrage and detention" on the shipments at issue and that "DAMCO A/S' published tariff did not contain any demurrage and detention provisions * * *." Complainant alleged that Respondent DAMCO US has "made * * * false representations, misleading statements or omissions in a Complaint (* * *) filed in the United States District Court for the Eastern District of Virginia" pertaining to the same shipping transactions. Complainant also alleged that Respondents "have repeatedly utilized a 'bait and switch' scheme * * * in misleading the shipping public, including DRAFT, * * * by utilizing DAMCO US, DAMCO A/S, and MAERSK as interchangeable parts" and that the scheme is a "practice." Complainant asserted that by using this scheme Respondents "knowingly disclosed, offered, solicited and received information concerning the nature, kind, quantity, destination, shipper, consignee, and routing of the property * * * without the consent of DRAFT and us(ed) that information to the detriment and disadvantage to DRAFT." Complainant asserted that it "has lost significant business to MAERSK generated by its Indian accounts related to subject shipments."

The Amended Complaint describes further allegations raised by DAMCO A/S in the district court proceeding and makes further allegations indicating that DAMCO A/S "by cross-referencing MAERSK's demurrage clause in its tariff violated 46 CFR 520.7(a)(3)" and "by having two conflicting tariffs violated 46 CFR 520.7(a)(4). Also, the Amended Complaint adds as parties to this proceeding, Glencore Ltd. ("Glencore") and Allegheny Alloys Trading LP ("Allegheny"), as they were "the actual consignees for subject shipments," and requests that "[i]f the Commission finds that DAMCO A/S is entitled to demurrage/detention", Glencore and Allegheny be found in violation of Section 10(a)(1) of the Shipping Act, 46 U.S.C. 41102(a), and be required to make reparations to Complainant in the amount of $20,725. The Amended Complaint does not alter the Complainant's original request that the Commission: compel Respondents to answer the complaint; find Respondents DAMCO A/S, DAMCO US and MAERSK in violation of the Shipping Act; order Respondents DAMCO A/S, DAMCO US and MAERSK to make reparations to Complainant in the amount of $20,725 "for amounts paid for demurrage and detention", and $150,000 for lost business and clients; pay interest, costs and attorneys' fees; order Respondents DAMCO A/S, DAMCO US and MAERSK to "cease and desist in the action filed in the United States District Court, Eastern District of Virginia * * * and to cease and desist in attempting to collect amounts for demurrage and detention in the amount of $174,412.50; and impose any other relief as the Commission determines to be proper, fair, and just.

Notice is also given that Glencore and Allegheny are now identified as Respondents in the caption for this proceeding.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–31346 Filed 12–13–10; 8:45 am]

BILLING CODE 6730–01–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 December 28, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Chandrakant B. Patel, Surekha Patel, Bipin Patel, Sandhya Patel, and Chandrakant B. Patel, as trustee of the following trusts: Sushil Patel 2010 Irrevocable Trust, Rajan Patel 2010 Irrevocable Trust, Shetal Patel 2010 Irrevocable Trust, and Toral Balakrishnan 2010 Irrevocable Trust (also known as "Patel Family Group"), all of Irving, Texas; to acquire voting shares of SBT Bancshares, Inc., and thereby indirectly acquire voting shares of State Bank of Texas, both of Dallas, Texas.

Board of Governors of the Federal Reserve System, December 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31242 Filed 12–13–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Frontier Management, LLC,* and *Frontier Holdings, LLC,* both in Omaha, Nebraska; to acquire 100 percent of the voting shares of ARSEBECO, Inc., and thereby indirectly acquire voting shares of Richardson County Bank & Trust Company, both in Falls City, Nebraska.

Board of Governors of the Federal Reserve System, December 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31302 Filed 12–13–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 2:30 p.m., Thursday, December 16, 2010.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

You will be able to view the meeting via webcast from a link available on the Board's Web page at *http://www.federalreserve.gov* on the day of the meeting.

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may register online. You may pre-register until close of business (December 15, 2010). You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information. If you need an accommodation for a

disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed Rule Governing Debit Card Interchange Fees and Routing.

Note: 1. The staff memo to the Board will be made available to the public in paper and the background material will be made available on a computer disc in Word format. If you require a paper copy of the document, please call Penelope Beattie on 202–452–3982.

2. This meeting will be recorded for the benefit of those unable to attend. Computer discs (CDs) will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web page also includes procedural and other information about the open meeting.)

Dated: December 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31410 Filed 12–10–10; 11:15 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Bigfork Bancshares, Inc., Bigfork, Minnesota; to engage, *de novo,* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31241 Filed 12–13–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0022; FDA–2010–E–0023; FDA–2010–E–0024]

Determination of Regulatory Review Period for Purposes of Patent Extension; VIBATIV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VIBATIV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VIBATIV (televancin hydrochloride). VIBATIV is indicated for treatment of adult patients with complicated skin and skin structure infections caused by susceptible Gram-positive bacteria. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for VIBATIV (U.S. Patent Nos. 6,635,618; 6,872,701; and 7,208,471) from Theravance, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 3, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VIBATIV represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VIBATIV is 2,635 days. Of this time, 1,637 days occurred during the testing phase of the regulatory review period, while 998 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 27, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 27, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 19, 2006. The applicant claims December 7, 2006, as the date the new drug application (NDA) for VIBATIV (NDA 22–110) was initially submitted. However, FDA records indicate that NDA 22–110 was submitted on December 19, 2006.

3. *The date the application was approved:* September 11, 2009. FDA has verified the applicant's claim that NDA 22–110 was approved on September 11, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 719, 828, or 863 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by February 14, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 13, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments.

However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–31250 Filed 12–13–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0014]

Determination of Regulatory Review Period for Purposes of Patent Extension; FREESTYLE NAVIGATOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FREESTYLE NAVIGATOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, FREESTYLE NAVIGATOR. FREESTYLE NAVIGATOR is indicated for continually recording interstitial fluid glucose levels in people (ages 18 and older) with diabetes mellitus for the purpose of improving diabetes management. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FREESTYLE NAVIGATOR (U.S. Patent No. 5,262,035) from Abbott Diabetes Care Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of FREESTYLE NAVIGATOR represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period. FDA has determined that the applicable regulatory review period for FREESTYLE NAVIGATOR is 2,320 days. Of this time, 750 days occurred during the testing phase of the regulatory review period, while 1,570 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date clinical investigation on humans is begun as approved by an institutional review board (IRB) under section 520(g)(3) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) and when no investigational device exemption (IDE) is required:* November 6, 2001. The applicant claims that investigation of the device qualified for a non-significant risk study for the purpose of establishing clinical data necessary to support a subsequent premarket approval under section 515 of the FD&C Act. FDA has verified the applicant's claim that the device did not require an IDE under section 520(g) of the FD&C act, but did require IRB approval, granted November 6, 2001, for human tests to begin. This date represents the beginning of the testing phase of the regulatory review period.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* November 25, 2003. The applicant claims November 24, 2003, as the date the first premarket approval application (PMA) for FREESTYLE NAVIGATOR (PMA P030048) was initially submitted. However, FDA records indicate that PMA P030048 was submitted on November 25, 2003.

3. *The date the application was approved:* March 12, 2008. FDA has verified the applicant's claim that PMA P050020 was approved on March 12, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by February 14, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 13, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document. Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–31240 Filed 12–13–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0037 and FDA–2010–E–0038]

Determination of Regulatory Review Period for Purposes of Patent Extension; SAMSCA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SAMSCA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SAMSCA (tolvaptan). SAMSCA is indicated for the treatment of clinically significant hypervolemic and euvolemic hyponatremia, including patients with heart failure, cirrhosis, and Syndrome of Inappropriate Antidiuretic Hormone. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for SAMSCA (U.S. Patent Nos. 5,258,510 and 5,753,677) from Otsuka Pharmaceutical Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated March 3, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SAMSCA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SAMSCA is 4,722 days. Of this time, 4,147 days occurred during the testing phase of the regulatory review period, while 575 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* June 16, 1996. The applicant claims October 23, 1997, as the date the investigational new drug application (IND) became effective. However, according to FDA records, this IND was not the first IND received for this active ingredient. In general, FDA has used the first IND of the active ingredient of the drug product as the beginning of the testing phase, if information derived from this first IND was or could have been relied on or was relevant for approval to market the drug product. FDA records indicate that the effective date of the first IND for tolvaptan was June 16, 1996, which was 30 days after FDA receipt of this first IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 23, 2007. FDA has verified the applicant's claim that the new drug application (NDA) for SAMSCA (NDA 22–275) was submitted on October 23, 2007.

3. *The date the application was approved:* May 19, 2009. FDA has verified the applicant's claim that NDA 22–275 was approved on May 19, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,826 days or 1,827 days respectively of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by February 14, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 13, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–31298 Filed 12–13–10; 8:45 am]

BILLING CODE 4160–01–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: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on 7 October 2010 on pages 62132–3 and allowed 60-days for public comment. One public comment was received and addressed regarding the appropriateness and sources for funding the survey. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

5 CFR 1320.5: Reporting and Recordkeeping Requirements: Final Rule: Respondents to this collection of information are not required to respond unless the data collection instruments display a currently valid OMB control number.

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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. 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 30 days of the date of this publication.

Dated: December 9, 2010.

W. Christopher Long,

NIEHS, Acting Associate Director for Management, National Institutes of Health.

[FR Doc. 2010–31377 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Recruitment and Screening for the Insight Into Determination of Exceptional Aging and Longevity (IDEAL) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Aging (NIA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 17, 2010, page 57038 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30-days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an

information collection that has been extended, revised, or implemented on or after October 1, 1995 unless it displays a currently valid OMB control number.

Proposed Collection

Title: Recruitment and Screening for the Insight into Determination of Exceptional Aging and Longevity (IDEAL) Study. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of the project is to conduct recruitment and screening for the IDEAL Study. A multifaceted recruitment approach will be used to reach the target audience in a wide variety of ways. Those who are interested in participating in the IDEAL study will be asked to complete a two stage recruitment process consisting of a telephone interview and a physical exam. The Stage One interview consists of questions concerning demographics, physical ability, health status, and medical conditions. Those who are eligible after completing the telephone interview will be asked to complete the second stage of the screening process. The physical examination is a modified version of the full BLSA assessment protocol consisting of the following components: General appearance; vital signs; chest and heart auscultation; sensory systems including vision, hearing, sensory proprioception, neuropathy and balance; and movement and strength of the upper and lower extremities. In addition the potential participant will also be asked to complete physical performance tests, cognitive exams, an electrocardiogram and a blood draw. *Frequency of Response:* Once. *Affected Public:* Individuals or households. *Type of Respondents:* Healthy individuals who are at least 80 years of age. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,500; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.833; and *Estimated Total Annual Burden Hours Requested:* 701. There is no annualized cost to respondents. There are no Capital costs to report. There are no Operating or Maintenance Costs to report.

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Individuals who complete the phone interview	1,500	1	0.167	251
Individuals who complete the physical exam	*300	1	1.5	450
Totals	1,500			701

*These individuals are included in the 1,500 above.

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.

Direct Comments to OMB: Written comments and or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA submission@omb.eop.gov* or by fax to 202–395–6974. Attention: Desk Officer for NIH. To request more information on the proposed project or obtain a copy of the data collection plans and instruments, contact Dr. Luigi Ferrucci, Principal Investigator, NIA Clinical Research Branch, Harbor Hospital, 5th Floor, 3001 S. Hanover, Baltimore, MD 21225, or call this non-toll-free number (410) 350–3936 or E-mail your request including your address to: *Ferruccilu@grc.nia.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 6, 2010.

Melissa Fraczkowski,

Project Clearance Liaison, NIA.

[FR Doc. 2010–31376 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Software System for Quantitative Assessment of Vasculature in Three Dimensional Images

Description of Invention: This invention offered for licensing and further development is a software system that provides the capability of efficiently extracting, visualizing and quantifying three dimensional vascular networks from medical and basic research images. Deregulation of angiogenesis plays a major role in a number of human diseases, most notably cancer. A substantial increase in the research effort in this field over the past decade has deepened the understanding of the angiogenic process. However, the lack of methods and software to quantitatively assess vasculature in patients has considerably hampered the ability to directly study the angiogenesis process, as well as to discover and develop new therapeutics to modulate angiogenesis. The present

invention provides new semi-automated computer algorithms, statistical methods and user friendly visualization tools for rapid and intuitive quantitative evaluation of vasculature in three dimensional data sets obtained through non-invasive imaging techniques such as MRI, CT–Scans, confocal microscopy, microCT, etc. The methods and software embodied in this invention provide a three dimensional quantitative capability in the clinic as a vascular diagnostic tool and in basic research projects to evaluate changes in vascular network systems.

Applications:

- Medical research for studying angiogenesis and tumor vasculature.
- Potential applications in clinical studies and diagnostics.
- Discovery and development of anti-angiogenesis agents with application to cancer.
- Possible application to diseases other than cancer, such as those related to the lymphatic system, the pulmonary airway, the kidney filtration system.

Development Status:

- The invention is fully developed.
- The software will be readily available if so requested.

Inventors: Enrique Zudaire, Christopher Kurcz, Yanling Liu (NCI).

Patent Status: HHS Reference No. E–261–2010/0—Software. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.
- Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov*.

Compounds That Treat Malaria and Prevent Malaria Transmission

Technology Summary: The invention offered for licensing relates to therapeutic compounds and related pharmaceutical compositions that can be used in the prevention and treatment of malaria infection. More specifically, the invention is drawn to compounds that can kill malaria gametocytes to block malaria transmission and treat malaria infection in the non-erthtrocytic stages, as well as therapeutic uses of these molecules to prevent or slow the transmission of *plasmodium* organisms between mammals and eliminate or prevent infection in mammal. Furthermore, the compounds of the invention are tricyclic compounds where the side rings may be 5–7 membered rings (preferably 6-membered), and the center ring may be 6–8 membered ring (preferably 7-membered). Also preferable structures are ones in which the side rings are aryl rings while the center ring is cycloalkyl ring. The compounds of the invention have been identified by integrating quantitative high-throughput screening (qHTS) with genetic mapping and in vivo oocyst formation assay.

Applications: Prevention and treatment of malaria infections.

Inventors: Xin-zhuan Su and Jing Yuan (NIAID).

Patent Status: International Patent Application No. PCT/US2010/047019 filed August 27, 2010. Priority Application 61/237,417 filed August 27, 2009. (HHS Reference No. E–283–2009).

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.
- Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov*.

A Universal Antigen Delivery Platform for Enhanced Immune Response

Description of Invention: The present invention relates to use of the rotavirus NSP2 octamer as a universal antigen delivery platform for presenting a high density of neutralizing epitopes to the immune system, a strategy for boosting antigen immunogenicity. This application is advanced by the well-defined structural and biochemical properties of the octamer, its high stability at a broad range of pH, temperature and ionic stability, and its ease of purification (one step) under nondenaturing conditions. Long conformationally-dependent antigens are readily mounted onto the platform by fusion to the C-terminus of NSP2, a region of the NSP2 protein positioned on the exposed surface of the octamer. The platform can be expressed in and purified from prokaryotic and eukaryotic systems.

This technology can be used for rapid production of subunit vaccines against a wide range of infectious agents. Additional uses of the technology include the generation of delivery platforms with mounted short peptide antigens for use in cancer immunotherapy, production of specific antisera to conformationally and nonconformationally-dependent antigens for research purposes, and development of epitope targets and short peptide-antigen presentation platforms for diagnostic assays.

Applications:

- Vaccines against pathogens.
- Cancer vaccines.
- Antigen-specific antisera.
- Multivalent targets in diagnostic assays.

Advantages:

- Octameric platform is stable, efficiently expressed, and easily purified by a single step method.
- Enables the display of multivalent conformation-dependent epitopes.
- Effective platform for short peptides as well as long polypeptides.

Development Status: Proof-of-concept experiments have shown that the octamer mounted with short peptides or long multivalent polypeptides retains its structural and biophysical features and is highly effective in presenting foreign antigens to the immune system. Ease of purification and final protein yields of the short or long peptide antigen-mounted NSP2 octamers were comparable suggesting that the platform accommodates a large range of antigen sizes. The NSP2-platform also served as an adjuvant, significantly enhancing immunity of the mounted peptide.

Inventors: John T. Patton (NIAID); Zenobia F. Taraporewala (NIAID).

Relevant Publications:

1. P Schuck *et al.* Rotavirus nonstructural protein NSP2 self-assembles into octamers that undergo ligand-induced conformational changes. J Biol Chem. 2001 Mar 30;276(13):9679–9687. [PubMed: 11121414].

2. H Jayaram *et al.* Rotavirus protein involved in genome replication and packaging exhibits a HIT-like fold. Nature. 2002 May 16;417(6886):311–315. [PubMed: 12015608].

3. Z Taraporewala *et al.* Rotavirus NSP2 octamer as an epitope-mounting platform. Abstract, 23rd Annual Meeting of the American Society for Virology, 2004.

4. K Kearney *et al.* Cell-line-induced mutation of the rotavirus genome alters expression of an IRF3-interacting protein. EMBO J. 2004 Oct 13;23(20):4072–4081. [PubMed: 15372078].

Patent Status: U.S. Patent Application No. 11/293,654 filed 02 Dec 2005 (HHS Reference No. E–322–2004/0–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov*.

Dated: December 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–30640 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Pyruvate Kinase M2 Activators for the Treatment of Cancer

Description of Invention: NIH investigators have discovered a series of small compounds with the potential to treat a variety of cancers as well as hemolytic anemia. Contrary to most cancer medications, these molecules can be non-toxic to normal cells because they target a protein specific to the metabolic pathways in tumors, thus representing a significant clinical advantage over less-specific chemotherapeutics.

The invention described here is a series of small molecules that activate pyruvate kinase (PK) isoform M2. PK–M2 is a critical metabolic enzyme that is affected in all forms of cancer. Inactivation of PK–M2 leads to a buildup of metabolic intermediates inside the cell. Tumor cells require a buildup of metabolic intermediates in order to undergo rapid cell growth and proliferation. Hence, activation of PK–M2 in tumor cells may prevent the buildup of metabolic intermediates and thereby stall tumor cell proliferation or destroy the tumor cells. Further, while in normal post-embryonic cells only PK isoforms R, L, or M1 are active, in all tumors only PK–M2 is active. So, PK–M2 activation would affect only tumor cells, and small-molecule PK–M2 activators may not be toxic to healthy cells.

This invention discloses the use of two new small molecule pharmacophores that can activate PKM2 through the allosteric site: 3-oxo-3,4-dihydro-2H-benzo [b] [1,4] oxazine-7-sulfonamides, and 2-oxo-1,2,3,4-tetrahydroquinoline-6-sulfonamides.

Applications:

- Therapeutic developments for various cancers.
- Diagnostic assays for various cancers.
- Regulation of embryonic stem cell proliferation.

Advantages:

- Small molecule (series of analogs can be derived in search of improved performance).
- Target a select group of cells (Cancerous cells).

Development Status:

- Pre-clinical; no animal data.
- In vitro data available.

Market:

- Cancer-diagnostics.
- Cancer-therapeutics.
- Research tool-proliferation of embryonic stem cells and/or cancer cells.

Inventors: Matthew Boxer (NHGRI–NCGC); Min Shen (NHGRI–NCGC); Doug Auld (NHGRI–NCGC); Craig Thomas (NHGRI–NCGC).

Publications:

1. Jiang JK *et al.* (2010) Bioorg Med Chem Lett 20:3387–93 [PubMed: 20451379].
2. Boxer MB *et al.* (2010) J Med Chem. 53:1048–55 [PubMed: 20017496].

Patent Status: U.S. Provisional Application No. 61/329,158 filled 29 April 2010 (HHS Reference No. E–120–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steven H. Standley, PhD; 301–435–4074; *sstand@mail.nih.gov.*

Collaborative Research Opportunity: The NIH Chemical Genomics Center (NCGC), National Human Genome Research Institute, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these pyruvate kinase M2 activators. Please contact Dr. Matthew Boxer at *boxerm@mail.nih.gov* for more information.

Nitisinone for Treatment of Oculocutaneous/Ocular Albinism and for Increasing Pigmentation

Description of Invention: Albinism (also called achromia, achromasia, or achromatosis) is a congenital disorder characterized by the complete or partial absence of pigment in the skin, hair and eyes due to absence or defect in any one of a number of proteins involved in the production of melanin. Certain forms of albinism are known to be due to mutations in tyrosine metabolism. In oculocutaneous albinism (OCA), pigment is lacking in the eyes, skin and hair. In ocular albinism, only the eyes lack pigment. Patients with albinism experience varying degrees of vision loss associated with foveal hypoplasia, nystagmus, photophobia and/or glare sensitivity, refractive errors, and abnormal decussation of ganglion cell axons at the optic chiasm. Current treatment options for vision problems caused by albinism are limited to correction of refractive errors and amblyopia, low vision aids, and (in some cases) extraocular muscle surgery.

Nitisinone (NTBC) is an FDA-approved drug used in the treatment of tyrosinemia, type 1. The drug blocks the normal degradation pathway of tyrosine thus allowing greater circulating plasma levels of tyrosine. NIH investigators have identified that administration of NTBC to subjects (e.g., mice or humans) with certain forms of albinism, can result in increased circulating tyrosine levels, an increase in tyrosinase activity, and, subsequently, increased pigmentation.

This technology provides methods for increasing tyrosine plasma concentrations in patients suffering from oculocutaneous albinism or ocular albinism by administering a pharmaceutically acceptable composition of NTBC. Specifically, this technology can be useful in treating patients with type OCA1a albinism, who possess no measurable tyrosinase activity, or type OCA1b albinism, who exhibit greatly diminished tyrosinase activity.

Applications for this technology include treatment of impaired vision in patients suffering from oculocutaneous albinism, or ocular albinism, and as a treatment for increasing pigmentation in the eyes, hair and/or skin of patients.

Inventors: Brian P. Brooks (NEI), David R. Adams (NHGRI), William A. Gahl (NHGRI).

Patent Status: U.S. Provisional Application No. 61/308,771 filed 26 Feb 2010 (HHS Reference No. E–113–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Eye Institute, Ophthalmic

Genetics and Visual Function Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of nitisinone (NTBC) for oculocutaneous albinism or as a treatment for increasing pigmentation in the eyes, hair and/or skin of patients. Please contact Alan Hubbs, PhD at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Modulators of Survival Motor Neuron Production

Description of Invention: This technology discloses compounds that modulate the amount of Survival Motor Neuron protein (SMN). Low levels of SMN protein are associated with Spinal Muscular Atrophy (SMA), which constitutes a group of inherited diseases that cause progressive muscle degeneration leading to death. Consequently, therapeutic inventions have focused on increasing SMN protein levels. This invention discloses novel arylthiazolyl piperidines which are shown to be modulators of SMN production. This invention also discloses methods of treating SMA by administering SMN protein modulators.

Applications: Therapeutic developments for Spinal Muscular Atrophy.

Advantages: Small molecule (series of analogs can be derived in search of improved performance).

Development Status:

- Pre-clinical; no animal data.
- In vitro data available.

Market: Muscular dystrophy.

Inventors: Juan Jose Marugan (NHGRI–NCGC); Wei Zheng (NHGRI–NCGC); Noel Southall (NHGRI–NCGC); Jingbo Xiao (NHGRI–NCGC); Steve Titus (NHGRI–NCGC); Elliot Androphy (University of Massachusetts Medical School); Jonathan Cherry (University of Massachusetts Medical School).

Patent Status: U.S. Provisional Application No. 61/323,963 filed 14 April 2010 (HHS Reference No. E–109–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steven H. Standley, PhD; 301–435–4074; sstand@mail.nih.gov.

Collaborative Research Opportunity: The NIH Chemical Genomics Center (NCGC), National Human Genome Research Institute, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these SMN modulator compounds. Please contact Dr. Juan Marugan at *maruganj@mail.nih.gov* for more information.

Use of Sterculic Acid To Treat Choroidal Neovascularization

Description of Invention: Sterculic acid is a naturally occurring cyclopropene acid present in kapok seed oil, cottonseed oil, and in the seeds of the *Sterculia foetida* tree. Sterculic acid has been reported to be a non-specific inhibitor of stearoyl-Co desaturase (SCD), which has been implicated in several disease states, including cardiovascular disease, obesity, non-insulin-dependent diabetes mellitus, skin disease, hypertension, neurological diseases, immune disorders and cancer (Ntambi JM, *J. Lipid Res.,* 1999, 40(9):1549–1558). NIH investigators have recently discovered that sterculic acid inhibits the neovascularization of the chick chorioallantonic membrane demonstrating that this compound exhibits a potent anti-angiogenic activity. Further, the NIH investigators have shown that sterculic acid inhibits the formation of choroidal neovascularization in the retina of laser treated rats. These results suggest that sterculic acid possesses anti-angiogenic effect likely through regulating genes involved in the angiogenic process.

The present invention is directed to methods of using sterculic acid for the treatment of inflammation, in particular, 7-ketocholesterol mediated inflammation, 7-ketocholesterol cytotoxicity, or unregulated angiogenesis. Diseases mediated by 7-ketocholesterol-induced inflammation and 7-ketocholesterol cytotoxicity include atherosclerosis age-related macular degeneration, and Alzheimer's disease. Diseases mediated by unregulated angiogenesis include certain cancers and age-related macular degeneration. Also disclosed are methods of treating atherosclerosis or Alzheimer's disease using sterculic acid.

Applications: Therapeutics for inflammation, in particular, atherosclerosis, age-related macular degeneration, and Alzheimer's disease

Development Status: Early stage in vitro and animal model data.

Inventors: Ignacio R. Rodriguez *et al.* (NEI).

Patent Status: U.S. Provisional Application No. 61/358,485 filed 25 Jun 2010 (HHS Reference No. E–092–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Eye Institute (NEI), Laboratory of Retinal Cell and Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize sterculic acid, and its derivatives for the treatment of diseases related to angiogenesis or mediated by 7-ketocholesterol-induced inflammation. Please contact David L. Whitmer, Technology Development Coordinator, NEI, at 301–496–4876 or *whitmerd@mail.nih.gov* for more information.

Dated: December 8, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–31320 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Software System for Quantitative Assessment of Vasculature in Three Dimensional Images

Description of Invention:

This invention offered for licensing and further development is a software system that provides the capability of

efficiently extracting, visualizing and quantifying three dimensional vascular networks from medical and basic research images. Deregulation of angiogenesis plays a major role in a number of human diseases, most notably cancer. A substantial increase in the research effort in this field over the past decade has deepened the understanding of the angiogenic process. However, the lack of methods and software to quantitatively assess vasculature in patients has considerably hampered the ability to directly study the angiogenesis process, as well as to discover and develop new therapeutics to modulate angiogenesis. The present invention provides new semi-automated computer algorithms, statistical methods and user friendly visualization tools for rapid and intuitive quantitative evaluation of vasculature in three dimensional data sets obtained through non-invasive imaging techniques such as MRI, CT–Scans, confocal microscopy, microCT, *etc.* The methods and software embodied in this invention provide a three dimensional quantitative capability in the clinic as a vascular diagnostic tool and in basic research projects to evaluate changes in vascular network systems.

Applications:

- Medical research for studying angiogenesis and tumor vasculature.
- Potential applications in clinical studies and diagnostics.
- Discovery and development of anti-angiogenesis agents with application to cancer.
- Possible application to diseases other than cancer, such as those related to the lymphatic system, the pulmonary airway, the kidney filtration system.

Development Status:

- The invention is fully developed.
- The software will be readily available if so requested.

Inventors: Enrique Zudaire, Christopher Kurcz, Yanling Liu (NCI).

Patent Status: HHS Reference No. E–261–2010/0—Software. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*
- Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov.*

Compounds That Treat Malaria and Prevent Malaria Transmission

Technology Summary: The invention offered for licensing relates to therapeutic compounds and related pharmaceutical compositions that can be used in the prevention and treatment of malaria infection. More specifically, the invention is drawn to compounds that can kill malaria gametocytes to block malaria transmission and treat malaria infection in the non-erthtrocytic stages, as well as therapeutic uses of these molecules to prevent or slow the transmission of *plasmodium* organisms between mammals and eliminate or prevent infection in mammal. Furthermore, the compounds of the invention are tricyclic compounds where the side rings may be 5–7 membered rings (preferably 6-membered), and the center ring may be 6–8 membered ring (preferably 7-membered). Also preferable structures are ones in which the side rings are aryl rings while the center ring is cycloalkyl ring. The compounds of the invention have been identified by integrating quantitative high-throughput screening (qHTS) with genetic mapping and in vivo oocyst formation assay.

Applications: Prevention and treatment of malaria infections.

Inventors: Xin-zhuan Su and Jing Yuan (NIAID).

Patent Status: International Patent Application No. PCT/US2010/047019 filed August 27, 2010. Priority Application 61/237,417 filed August 27, 2009. (HHS Reference No. E–283–2009).

Licensing Status: Available for licensing.

Licensing Contacts:

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*
- Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov.*

A Universal Antigen Delivery Platform for Enhanced Immune Response

Description of Invention: The present invention relates to use of the rotavirus NSP2 octamer as a universal antigen delivery platform for presenting a high density of neutralizing epitopes to the immune system, a strategy for boosting antigen immunogenicity. This application is advanced by the well-defined structural and biochemical properties of the octamer, its high stability at a broad range of pH, temperature and ionic stability, and its ease of purification (one step) under nondenaturing conditions. Long conformationally-dependent antigens are readily mounted onto the platform by fusion to the C-terminus of NSP2, a region of the NSP2 protein positioned on the exposed surface of the octamer. The platform can be expressed in and purified from prokaryotic and eukaryotic systems.

This technology can be used for rapid production of subunit vaccines against a wide range of infectious agents. Additional uses of the technology include the generation of delivery platforms with mounted short peptide antigens for use in cancer immunotherapy, production of specific antisera to conformationally and nonconformationally-dependent antigens for research purposes, and development of epitope targets and short peptide-antigen presentation platforms for diagnostic assays.

Applications:

- Vaccines against pathogens.
- Cancer vaccines.
- Antigen-specific antisera.
- Multivalent targets in diagnostic assays.

Advantages:

- Octameric platform is stable, efficiently expressed, and easily purified by a single step method.
- Enables the display of multivalent conformation-dependent epitopes.
- Effective platform for short peptides as well as long polypeptides.

Development Status: Proof-of-concept experiments have shown that the octamer mounted with short peptides or long multivalent polypeptides retains its structural and biophysical features and is highly effective in presenting foreign antigens to the immune system. Ease of purification and final protein yields of the short or long peptide antigen-mounted NSP2 octamers were comparable suggesting that the platform accommodates a large range of antigen sizes. The NSP2-platform also served as an adjuvant, significantly enhancing immunity of the mounted peptide.

Inventors: John T. Patton (NIAID); Zenobia F. Taraporewala (NIAID).

Relevant Publications:

1. P Schuck et al. Rotavirus nonstructural protein NSP2 self-assembles into octamers that undergo ligand-induced conformational changes. J Biol Chem. 2001 Mar 30;276(13):9679–9687. [PubMed: 11121414]

2. H Jayaram et al. Rotavirus protein involved in genome replication and packaging exhibits a HIT-like fold. Nature. 2002 May 16;417(6886):311–315. [PubMed: 12015608]

3. Z Taraporewala et al. Rotavirus NSP2 octamer as an epitope-mounting platform. Abstract, 23rd Annual Meeting of the American Society for Virology, 2004.

4. K Kearney et al. Cell-line-induced mutation of the rotavirus genome alters expression of an IRF3-interacting protein. EMBO J. 2004 Oct 13;23(20):4072–4081. [PubMed: 15372078]

Patent Status: U.S. Patent Application No. 11/293,654 filed 02 Dec 2005 (HHS Reference No. E–322–2004/0–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov.*

Dated: December 1, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–31319 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Sardinia.

Date: January 19, 2011.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of an Aged Rodent Tissue Bank.

Date: January 27, 2011.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of a Multigenotypic Aged Rat Colony.

Date: January 27, 2011.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31322 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of 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 National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: January 25–26, 2011.

Closed: January 25, 2011, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Open: January 26, 2011, 8 a.m. to 12:45 p.m.

Agenda: Call to order and reports from the Director; discussion of future meeting dates; consideration of minutes from last meeting; reports from the Task Force on Minority Aging Research, the Working Group on Program, and Council of Councils; council speaker Dr. Eileen Crimmins; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: January 26, 2011, 12:45 p.m. to 1:15 p.m.

Agenda: To review and evaluate the Intramural Research Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robin Barr, PhD, Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31321 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Biology and Diseases of the Posterior Eye.
Date: January 11, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892. 301–435–2406. *ariasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Genetic Disease Therapy.
Date: January 19, 2011.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Diane L Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892. 301–435–2514. *stassid@csr.nih.gov*.

Name of Committe: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.
Date: January 24, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: John Bleasdale, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170 MSC 7892, Bethesda, MD 20892. 301–435–4514. *bleasdaleje@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Social Science and Population Studies: R03s, R15s, and R21s.
Date: January 26–27, 2011.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892. (301) 435–1712. *ryansj@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.
Date: January 27–28, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. 301–435–1044. *David.Weinberg@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group. Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section.
Date: January 31–February 1, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892. 301–435–1119. *mselmanoff@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group. Neurotoxicology and Alcohol Study Section.
Date: January 31–February 1, 2011.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. 301–435–1033. *hoshawb@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31317 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Accessible and Affordable Hearing Health Care.
Date: January 18, 2011.
Time: 10 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call)
Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Immune-Mediated Ear Disease/Hearing Loss.
Date: January 26, 2011.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call)
Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 8, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31318 Filed 12–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0002; Internal Agency Docket No. FEMA–1946–DR]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1946–DR), dated October 26, 2010, and related determinations.

DATES: *Effective Date:* November 29, 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: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 26, 2010.

Cayey, Ciales, Corozal, and San Lorenzo Municipalities for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–31286 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1949–DR; Docket ID FEMA–2010–0002]

Virgin Islands; 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 Territory of the U.S. Virgin Islands (FEMA–1949–DR), dated November 24, 2010, and related determinations.

DATES: *Effective Date:* November 24, 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 November 24, 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 Territory of the U.S. Virgin Islands resulting from severe storms, flooding, rockslides, and mudslides associated with Tropical Storm Tomas during the period of November 8–12, 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 Territory of the U.S. Virgin Islands.

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 Territory of the U.S. Virgin Islands. 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, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following islands of the Territory of the U.S. Virgin Islands have been designated as adversely affected by this major disaster:

The island of St. Croix for Public Assistance.

All islands in the Territory of the U.S. Virgin Islands 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. 2010–31287 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–590, Registration for Classification as Refuge; OMB Control No. 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 14, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the

Form I–590. Should USCIS decide to revise Form I–590 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–590.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0068 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form I–590. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours. If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: December 8, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–31251 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–1145, E-Notification of Application/Petition Acceptance; OMB Control No. 1615–0109.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 14, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form G–1145. Should USCIS decide to revise Form G–1145 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–1145.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 29 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0109 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form G–1145. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* E-Notification of Application/Petition Acceptance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1145; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. If an applicant or petitioner wants to be notified via email and/or text message on their cell phone that their application or petition has been accepted, they are requested to provide their email address and/or cell phone number on Form G–1145, and attach the form to the application or petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 3 minutes (.05) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: December 8, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–31253 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: E-Verify Self Check Program (Internal File Number OMB–59).

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 1, 2010, at 75 FR 60771, allowing for a 60-day public comment period. USCIS received comments from three commenters. The comments and USCIS's response will be contained as an attachment to the supporting statement which can be viewed at *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 13, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB–59 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Self Check Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* Self Check will allow U.S. workers to enter data into the E-Verify system to ensure that the information relating to their eligibility to work is correct and accurate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* ID Authentication—2,900,000 responses at .0833 (5 Minutes) per response; Self Check Query—2,175,000 responses at .0833 (5 Minutes) per response; Further Action Pursued—5,582 responses at 1.183 (1 hour and 11 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 429,352 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: December 9, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–31333 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–134, Affidavit of Support; OMB Control No. 1615–0014.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be

submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days February 14, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–134. Should USCIS decide to revise Form I–134 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–134.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0014 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form I–134. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit of Support.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–134; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection is necessary to determine if at the time of application into the United States, the applicant is likely to become a public charge.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 90 minutes (1.5 hours) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 66,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: December 8, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–31254 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: e-Allegations Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0131.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the e-Allegations Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or recordkeepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: e-Allegations Submission.

OMB Number: 1651–0131.

Abstract: In the interest of detecting trade violations to customs laws, Customs and Border Protection (CBP) established the e-Allegations Web site to provide a means for concerned members of the trade community to confidentially report violations to CBP. The e-Allegations site allows the public to submit pertinent information that assists

CBP in its decision whether or not to pursue the alleged violations by initiating an investigation, and how to best proceed in the case that an investigation is warranted. The information collected includes the name, phone number and e-mail address of the member of the trade community reporting the alleged violation. It also includes a description of the alleged violation, and the name and address of the potential violators. The e-Allegations Web site is accessible at *https://apps.cbp.gov/eallegations/*.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses, Individuals.

Estimated Number of Respondents: 1,600.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 400.

Dated: December 9, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–31304 Filed 12–13–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–121]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Housing Opportunities for Persons With AIDS (HOPWA) Program: Annual Performance Reporting Requirements and Competitive/Renewal Grant Budget Summary Forms Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 28, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2506–0133) and should be sent to: Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross_A._Rutledge@omb.eop.gov*; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 7212, Washington, DC 20410; telephone (202) 402–4620 (this is not a toll-free number). For copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to this information is collected on new mortgages offered by FHA approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure through the HOPE for Homeowners Program, and to those who owe more than the value of their homes through the FHA Refinance of Borrowers in Negative Equity Positions. The new FHA insured mortgages refinance the borrowers existing mortgage at a significant writedown. Under the HOPE for Homeowners program the mortgagors share the new equity with FHA.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Opportunities for Persons with AIDS (HOPWA) Program: Annual Performance Reporting Requirements and Competitive/Renewal Grant Budget Summary Forms.

Description of Information Collection: These forms provide HUD with vital information to assess program evaluation and measure performance outcomes for the Housing Opportunities for Persons with AIDS (HOPWA) program. Competitive/Renewal grant recipients submit an Annual Progress Report (APR) and Formula grantees submit the Consolidated Annual Performance and Evaluation Report (CAPER). These annual reports provide HUD with information about program beneficiaries in addition to enabling HUD to assess the success of the HOPWA program through the three performance goals of housing stability, prevention of homelessness, and access to care and support. Information collected in the reports allows HUD to fulfill reporting requirements for internal reporting requirements, the Office of Management and Budget (OMB), and other entities.

OMB Control Number: 2506–0133.

Agency Form Numbers: HUD–40110–B HOPWA Competitive and Renewal of Permanent Supportive Housing Project Budget Summary; HUD–40110–C Annual Progress Report (APR); and HUD–40110–D Consolidated Annual Performance and Evaluation Report (CAPER).

Members of Affected Public: Formula and competitive grant recipients of the Housing Opportunities for Persons with AIDS (HOPWA) program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: APR (96 respondents and total annual responses × 55 hours per response = 5,280 hours) + CAPER (124 respondents and total annual responses × 40 hours per response = 4,960 hours) + HOPWA Competitive & Renewal of Permanent Supportive Housing Project Budget Summary (35 respondents and total annual responses × 12 hours per response = 420 hours) = 10,660 hours.

Status of the proposed information collection: Revision of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 8, 2010.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–31361 Filed 12–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–116]

Notice of Submission of Proposed Information Collection to OMB Mortgagee's Application for Partial Settlement (Multifamily Mortgage)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees who elect to assign multifamily property to HUD complete form HUD–2537, Mortgagee's Application for Partial Settlement, Multifamily Mortgage. HUD uses the information to process a partial claim payment within 24 to 48 hours after assignment or conveyance.

DATES: *Comments Due Date: January 13, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0427) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage).

OMB Approval Number: 2502–0427.

Form Numbers: HUD–2537.

Description of the Need for the Information and Its Proposed Use: Mortgagees who elect to assign multifamily property to HUD complete form HUD–2537, Mortgagee's Application for Partial Settlement, Multifamily Mortgage. HUD uses the information to process a partial claim payment within 24 to 48 hours after assignment or conveyance.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	150	3.947		0.253		150

Total Estimated Burden Hours: 150.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–31363 Filed 12–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–115]

Notice of Submission of Proposed Information Collection to OMB Recertification of Family Income and Composition

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Recertification information is submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The information collected is also used by mortgagees to report statistical and general program data to HUD.

DATES: *Comments Due Date: January 13, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0082) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies

concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Recertification of Family Income and Composition.

OMB Approval Number: 2502–0082.

Form Numbers: HUD–93101A, HUD 93101.

Description of the Need For the Information and its Proposed Use:

Recertification information is submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The information collected is also used by mortgagees to report statistical and general program data to HUD.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting Burden	3,500	0.909		1.1		3,500

Total Estimated Burden Hours: 3,500,800.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–31364 Filed 12–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–117]

Notice of Submission of Proposed Information Collection to OMB; HUD Multifamily Energy Assessment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is used to ensure that owners assess energy needs in an effort to reduce project operating costs and utility expenses through cost-effective energy conservation and efficiency measures. HUD used the information in monitoring the Department's energy strategy and for inclusion in the Department's biannual reporting requirements to Congress as required by Section 154 of the Energy Policy Act of 2005.

DATES: *Comments Due Date:* January 13, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0568) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. E-mail: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Multifamily Energy Assessment.

OMB Approval Number: 2502–0568.

Form Numbers: HUD 9614.

Description of the Need for the Information and its Proposed Use:

This information is used to ensure that owners assess energy needs in an effort to reduce project operating costs and utility expenses through cost-effective energy conservation and efficiency measures. HUD used the information in monitoring the Department's energy strategy and for inclusion in the Department's biannual reporting requirements to Congress as required by Section 154 of the Energy Policy Act of 2005.

Frequency of Submission: On occasion, Monthly, Annually.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden:	10,296	0.123		8.125		10,296

Total Estimated Burden Hours: 10,296.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 2010.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–31362 Filed 12–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[5284–TT02–371]

Notice of Availability: Tamiami Trail Modifications: Next Steps Project, Final Environmental Impact Statement, Everglades National Park, Florida

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making), the NPS announces the availability of a Final Environmental Impact Statement (FEIS) for the Tamiami Trail (U.S. Highway 41) Modifications: Next Steps Project for Everglades National Park, Florida.

The 2009 Omnibus Appropriations Act (Pub. L. 111–008, dated March 11, 2009) directed the U.S. Army Corps of Engineers (USACE) to construct modifications to Tamiami Trail (U.S. Highway 41) that were approved in the 2008 Limited Reevaluation Report and Environmental Assessment. The 2009 Omnibus Appropriations Act also directed the NPS to "immediately evaluate the feasibility of additional bridge length, beyond that to be constructed pursuant to the Modified Water Deliveries to Everglades National Park Project (16 U.S.C. 410r–8), including a continuous bridge, or additional bridges or some combination thereof, for the Tamiami Trail (U.S. Highway 41) to restore more natural water flow to Everglades National Park and Florida Bay and for the purpose of restoring habitat within the Park and the ecological connectivity between the Park and the Water Conservation Areas."

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the FEIS.

ADDRESSES: The document will be available for public review online at *http://parkplanning.nps.gov/ever.* A limited number of compact discs (CDs) and hard copies are available at Park headquarters. You may request a hard copy or CD by contacting Everglades National Park, Attn: Bruce Boler, 950 N. Krome Avenue, Homestead, FL 33030–6733; telephone 305–224–4234.

SUPPLEMENTARY INFORMATION: Public scoping was initiated in the summer of 2009. A newsletter was distributed on May 31, 2009, and a public meeting was held on June 2, 2009, to keep the public informed and involved throughout the planning process. As the lead agency, the NPS conducted several inter-agency/Tribal meetings and one workshop to develop project objectives, identify alternatives, evaluate the benefits of alternatives, and identify a preferred alternative. The draft document was revised as a result of public and agency feedback received during the public comment period. The FEIS provides historical information, existing conditions, alternatives for infrastructure modifications, and related impacts of the alternatives. The FEIS describes six alternatives for consideration, including a no-action alternative that provides for the continuation of the current Tamiami Trail infrastructure configuration. The five action alternatives present a range of infrastructure modification opportunities. The environmental impacts of each alternative, including the no-action alternative, are systematically analyzed in the document.

The six analyzed alternatives (with corresponding identifiers as they appear in the document) are as follows:

- *No-Action Alternative:* The No-Action Alternative consists of a 1-mile eastern bridge and elevation of the remaining roadway to allow for 8.5 feet stages in the L–29 Canal. This alternative continues the status quo.
- *Alternative 1: 2.2 miles of bridges and remaining roadway elevated:* Alternative 1 would involve creating conveyance openings through Tamiami Trail by removing 2.2 miles of the existing highway and embankment. Four bridges would be constructed in the openings to replace the removed section of road and maintain vehicle traffic across the openings. This alternative would create 2.2 miles of ecological connectivity and better distribute flows in the western area of the 11-mile project corridor.
- *Alternative 2a: 3.3 miles of bridges and remaining roadway elevated:* Alternative 2a would involve creating conveyance openings through Tamiami Trail by removing 3.3 miles of the existing highway and embankment. Six bridges would be constructed in the openings to replace the removed section of road and maintain vehicle traffic across the openings. This alternative would create 3.3 miles of ecological connectivity and moderately reduce the adverse effects of high velocity discharges associated with the existing culverts.
- *Alternative 4: 1.0 miles of bridging and remaining roadway elevated:* Alternative 4 would involve creating conveyance openings through Tamiami Trail by removing 1.0 mile of the existing highway and embankment where the bridging is proposed. Two bridges would be constructed in the opening to replace the removed section of road and maintain vehicle traffic. This alternative would increase ecological connectivity by 1.0 mile.
- *Alternative 5: 1.5 miles of bridging and remaining roadway elevated:* Alternative 5 would involve creating conveyance openings through Tamiami Trail by removing 1.5 miles of the existing highway and embankment. Three bridges would be constructed in the opening to replace the removed section of road and maintain vehicle traffic. This alternative would increase ecological connectivity by 1.5 miles.
- *Alternative 6e: 5.5 miles of bridging and remaining roadway elevated.* Alternative 6e is the maximum bridging option and involves creating conveyance openings through Tamiami Trail by removing 5.5 miles of the existing highway and embankment. Four bridges would be constructed in the opening to replace the removed section of road and maintain vehicle traffic. Bridge down-ramp (access ramps) options were also developed for Alternative 6e to maintain access to two commercial airboat facilities: Everglades Safari Park and Coopertown. Option 4 (Modified Parallel Down Ramp) was selected as the preferred option for Everglades Safari and Option 5 (Parallel Down Ramp with Existing Frontage Road) was selected as the preferred option for Coopertown. Alternative 6e would increase ecological connectivity by 5.5 miles, reduce flow velocities below the 0.10 feet per second (fps)

threshold that causes harm to marshes, and substantially restore the flow patterns associated with a healthy ridge and slough landscape in Northeast Shark River Slough.

• *Common to all action alternatives:* The remaining highway embankments along stretches of the road that are not bridged would be reconstructed to raise the crown elevation to 12.3 feet, the minimum required based on the design high water of 9.7 feet and the roadway cross-section geometry.

Preferred Alternative: Alternative 6e was determined to be the preferred alternative (and environmentally preferable alternative) by the NPS and the U.S. Department of the Interior.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Contact Everglades National Park at the address and telephone number shown above.

The responsible official for this Final EIS is the Regional Director, Southeast Region, NPS, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: December 2, 2010.

Gordon Wissinger,

Deputy Regional Director, Chief of Staff, Southeast Region, National Park Service.

[FR Doc. 2010–31307 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–XH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[7700–1104–SZS]

Long Walk National Historic Trail Feasibility Study, Abbreviated Final Environmental Impact Statement, National Trails Intermountain Region, NM

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Abbreviated Final Environmental Impact Statement for the Long Walk National Historic Trail Feasibility Study.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, (NEPA) 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Abbreviated Final Environmental Impact Statement for the Long Walk National Historic Trail Feasibility Study, National Trails Intermountain Region, New Mexico.

Four alternatives and their respective environmental consequences were presented in the feasibility study. Under alternative A, the no-action alternative, current practices and policies would continue. A national historic trail would not be designated, and interpretation and protection of Long Walk-related events and resources would not be coordinated. Under alternative B, Congress would designate two national historic trails (dual designations) to emphasize the unique removal experiences of the Mescalero Apache and Navajo tribes within the contextual history. An auto tour route would be established. Interpretation and education would emphasize the distinctive tribal and individual removal histories. Under alternative C (Environmentally Preferable Alternative) one national historic trail would be designated, emphasizing the removal experiences common to both tribes. An auto tour route would be established. Interpretation and education would emphasize overviews of the Long Walk events. Under alternatives B and C, the Secretary of the Interior would administer the trail through partnerships, primarily with the Mescalero Apache Tribe and Navajo Nation. Under alternative D, Congress would provide a grant program to the tribes focusing on interpretation and education projects and resource protection on tribal lands. All decisions about strategy, level of protection, etc., would be made by the tribes. A national historic trail would not be designated. No other alternatives were considered during the course of the study.

The feasibility study determined the Long Walk routes fully meet the criteria for designation as national historic trails. The overall nature of public comments during the review period for the draft study supported designation.

Neither the draft feasibility study nor the abbreviated final environmental impact statement identified a preferred alternative. The National Park Service has subsequently identified Alternative A, the no-action alternative, to be the preferred alternative after requesting and considering comments on the draft plan from the Navajo Nation.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Abbreviated Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov/ntir,* in the office of the Superintendent, Aaron Mahr, National Trails Intermountain Region, National Park Service, PO Box 728, Santa Fe, New Mexico 87504–0728; (505) 988–6098.

FOR FURTHER INFORMATION CONTACT: Sharon A. Brown, National Trails Intermountain Region, National Park Service, PO Box 728, Santa Fe, New Mexico 87504–0728; (505) 988–6717.

Dated: November 26, 2010.

John Wessels,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2010–31308 Filed 12–13–10; 8:45 am]

BILLING CODE 4311–36–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA, that meet the definitions of sacred objects and/or objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The eight Tlingit objects are one wooden box drum (catalogue number NA6828); one hide robe (catalogue number NA6829); two carved wooden masks (catalogue numbers NA6831 and NA6832); one carved wooden headdress (catalogue number NA6835); one head cover (catalogue number NA6836); one carved wooden rattle (catalogue number NA6845); and one carved wooden pipe (catalogue number NA6862).

The first cultural item is a drum (NA6828) made of two pieces of cedar wood, called Old-Man-of-War Box Drum. One narrow side is carved to represent the "old-man-of-war" and the opposing side is open; the broad sides are painted in geometric figures in red and black. The drum measures approximately 65.0 cm long, 32.0 cm wide and 85.0 cm high.

The second cultural item is a robe (NA6829) made from three panels of caribou hide sewn together, called the Lituya Bay Robe. The seams are fringed and the top and sides are trimmed with marten fur. The imagery on the robe is painted with black and red, and either yellow or white pigment. The central figure of the image represents a rock in Lituya Bay and two side images represent rapids. The robe measures approximately 157.0 cm wide and 127.0 cm long.

The third cultural item is a mask (NA6831) that consists of carved wood painted with red, black and white pigment, representing a tree stump, and called the Owl-of-the Heavens. On the top of the stump sits a taxidermic owl that can be moved by the performer wearing the mask. The mask measures approximately 24.5 cm high and 20.5 cm wide.

The fourth cultural item is a mask (NA6832), called Commander-of-the-Tides. The face is painted with red and black pigmented designs representing feathers, and includes actual bird feathers crowning the mask and a wide leather band at the back. The eyes are movable and made to represent the movements of the changing ocean tides. The mask measures approximately 35.0 cm high and 24.0 cm wide.

The fifth cultural item is a headdress or shakee.at (NA6835), called Little Ravine, after a passageway over a sand mount at Dry Bay, near Yakutat. It is elaborately carved with multiple figures painted with red, black and blue-green pigment, and ornamented with abalone, ermine fur, eagle down and feathers. The carving represents an episode of the Raven's Journey that took place near the sand mount. The headdress measures approximately 53.0 cm high and 22.0 cm wide.

The sixth cultural item is a head cover (NA6836) formed from a corner piece of a Chilkat blanket made of twisted wild mountain goat wool. A piece of red felt was added as a border and a second small piece of red felt covers the lower front of the head cover. The head cover is ornamented with mountain goat hair and a fox tail. A carved wooden figure, painted with black, red and blue-green pigment, and representing the Raven, is positioned at the top front of the head cover. The head cover measures approximately 31.8 cm high and 21.6 cm long.

The seventh cultural item is a rattle (NA6845) carved to represent a loon, with a recumbent human figure and a raven's head on top. It is painted with black, red and blue-green pigment. The rattle measures approximately 32.5 cm long, 7.7 cm wide and 9.5 cm high.

The eighth cultural item is a tobacco pipe (NA6862) carved with a representation of a spirit or animal, which remains unidentified. It is painted with blue pigment at the base only and a metal strip, probably copper, is attached around the opening of the bowl. The pipe is large, measuring approximately 20.0 cm high and 14.5 cm wide.

In 1924, Louis Shotridge, a Tlingit Curator employed by the University of Pennsylvania Museum, purchased the eight objects as part of a collection of 49 objects, which are represented by 38 catalogue numbers, referred to as the "Snail House Collection," for $500.00 from a Tlingit individual, Archie White (Dimitri Tu*kk'*axaaw), the Mt. Fairweather/Snail House headmaster of the T'a*k*deintaan Clan of Hoonah, AK, for the collections of the University of Pennsylvania Museum.

The cultural affiliation of the eight cultural items is with the Tlingit T'a*k*deintaan Clan of Hoonah, AK, as indicated through museum records, and by consultation evidence presented by the Hoonah Indian Association, a Federally-recognized Indian Tribe, and the Huna Heritage Foundation, a non-Federally recognized Indian group, acting on behalf of the Huna Totem Corporation and the Tlingit T'a*k*deintaan Clan of Hoonah, AK.

Based on consultation, museum documentation, anthropological literature, and expert opinion, six of the cultural items are considered to be sacred objects, one is considered to be an object of cultural patrimony, and one is considered to be both an object of cultural patrimony and sacred object. The six cultural items that are sacred objects are the two carved wooden masks (NA6831 and NA6832); the headdress (NA6835); the head cover (NA6836); the carved wooden rattle (NA6845); and the carved wooden pipe (NA6862). The cultural item that is considered an object of cultural patrimony is the wooden box drum (NA6828). Lastly, the cultural item that is considered to be both a sacred object and an object of cultural patrimony is the hide robe (NA6829).

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(3)(C), seven cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined, pursuant to 25 U.S.C. 3001(3)(D), two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the objects of cultural patrimony and the Hoonah Indian Association, a Federally-recognized Indian Tribe, and the Tlingit T'a*k*deintaan Clan of Hoonah, AK.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the sacred objects and/or objects of cultural patrimony should contact Dr. Richard Hodges, Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South St., Philadelphia, PA 19104–6324, telephone (215) 898–4050, before January 13, 2011. Repatriation of the sacred objects and objects of cultural patrimony to the Hoonah Indian Association, a Federally-recognized Indian Tribe, and the Tlingít T'a*k*deintaan Clan of Hoonah, AK, may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Hoonah Indian Association, a Federally-recognized Indian Tribe, and the Huna Heritage Foundation, a non-federally recognized Indian group, that this notice has been published.

Dated: December 7, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–31285 Filed 12–13–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the

University of Colorado Museum, Boulder, CO. The human remains were removed from an unknown geographic location in Wisconsin.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Colorado Museum professional staff in consultation with representatives of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin.

On an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Wisconsin, by D.M. Andrews. In 1963, Mrs. Walter Steele donated the human remains to the museum. No known individual was identified. No associated funerary objects are present.

The remains of this individual are ear bones. Although ear bones do not contain unique indicators, the human remains are reasonably believed to be Native American based on the collecting history of the museum as well as the types of items included in the Steele donation of the D.M. Andrews collection.

Officials of the University of Colorado Museum have determined, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

Wisconsin is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; and Sokaogon Chippewa Community, Wisconsin, based on Indian Land Cessions 1784–1894 and oral tradition. The Oneida Tribe of Indians of Wisconsin moved to Wisconsin from New York. In the Treaty of 1821 and the Treaty of 1822, 8 million acres of land held by the Menominee in present-day Wisconsin were provided for the use of the Oneida Tribe of Indians of Wisconsin. On August 18, 1821, the Stockbridge Munsee Community (Wisconsin) purchased 2 million acres along the Fox River, in present-day Wisconsin. Today, the reservation boundaries encompass the two townships of Red Springs and Bartelme. Subsequently, they left New York, sold their New York land holdings, and moved to the land purchased from the Menominee and Winnebago Tribes. The Tribes listed in this paragraph represent all of the Federally-recognized Indian Tribes residing in Wisconsin. These Tribes are members of the Wisconsin Inter-Tribal Repatriation Committee. The Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Oneida Tribe of Indians of Wisconsin; and Sokaogon Chippewa Community, Wisconsin, signed the disposition agreement that was presented to all of the Tribes consulted. None of the Tribes opposed disposition of the human remains described above to these four Indian Tribes.

Officials of the University of Colorado Museum have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry. Lastly, officials of the University of Colorado Museum have determined, pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Oneida Tribe of Indians of Wisconsin; and Sokaogon Chippewa Community, Wisconsin.

Representatives of any Indian Tribe that believes itself to be culturally affiliated with the human remains or any other Indian Tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, NAGPRA Consultant, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894–0648, before January 13, 2011. Disposition of the human remains to the Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Oneida Tribe of Indians of Wisconsin; and Sokaogon Chippewa Community, Wisconsin, may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Oneida Tribe of Indians of Wisconsin; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; St. Croix Chippewa Indians of Wisconsin; Sokaogon Chippewa Community, Wisconsin; and Stockbridge Munsee Community, Wisconsin, that this notice has been published.

Dated: December 7, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–31283 Filed 12–13–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Minnesota Indian Affairs Council, St. Paul and Bemidji, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN. The human remains and associated funerary objects were removed from Goodhue County, MN.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota.

In 1968, human remains representing a minimum of six individuals were removed from the Birch Lake Burial Mound Group, (21GD61), Goodhue County, MN, during archeological excavations conducted by the University of Minnesota for the Northern States Power Company. The University of Minnesota transferred control of the human remains and associated funerary objects to the Minnesota Indian Affairs Council per a transfer agreement dated June 16, 1989. No known individuals were identified. The two associated funerary objects are a small ceramic mortuary vessel and a ceramic potsherd.

Based on the material culture and manner of internment, these individuals have been identified as Native American. According to records in the Office of the Minnesota State Archaeologist, including a report by Elden Johnson, the funerary objects and the mound group pattern indicate a probable Woodland Period temporal affiliation, a broad archeological classification that cannot be identified with any present-day Indian Tribe or group.

Officials of the Minnesota Indian Affairs Council have determined, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.

The Native American human remains and associated funerary objects were removed from the aboriginal land of the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota (Indian Claims Commission, Land Claim Map #74). The site is also adjacent to the current Tribal lands of the Prairie Island Indian Community.

Officials of the Minnesota Indian Affairs Council have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of six individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council also have determined, pursuant to 25 U.S.C. 3001(3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined, pursuant to 43 CFR 10.11(c)(1), the disposition of the Native American human remains and associated funerary objects is to the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota.

Representatives of any other Indian Tribe that believes itself to be culturally affiliated with the Native American human remains and associated funerary objects or any other Indian Tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact James L. Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 3801 Bemidji Ave. N., Suite 5, Bemidji, MN 56601, telephone (218) 755–3223, before January 13, 2011. Disposition of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota, may proceed after that date if no additional claimants come forward.

The Minnesota Indian Affairs Council is responsible for notifying the Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and Upper Sioux Community, Minnesota, that this notice has been published.

Dated: December 7, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–31284 Filed 12–13–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Seventy-Seventh Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on January 10, 2010, at 1 p.m.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting (November 15, 2010).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report. Update on Dune Shacks. Improved Properties/Town Bylaws. Herring River Wetland Restoration. Wind Turbines/Cell Towers. Flexible Shorebird Management. Highlands Center Update. Alternate Transportation funding.

Ocean stewardship topics. Climate Friendly Park program update. 50th Anniversary.

6. Old Business.

7. New Business. Cape Cod Commission review of herbicide use. Regional waste water treatment plans.

8. Date and agenda for next meeting.

9. Public comment; and

10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. 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.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: November 30, 2010.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2010–31309 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 20, 2010. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 29, 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

San Francisco County

Rialto Building, 116 New Montgomery St, San Francisco, 10001108

San Joaquin County

Harmony Grove Church, 11455 E Locke Rd, Lockeford, 10001103

INDIANA

Hendricks County

Danville Courthouse Square Historic District, Roughly bounded by Clinton, Tennessee, Broadway, and Cross Sts, Danville, 02001559

NEW JERSEY

Mercer County

Delaware Inn, 1030 Lamberton St, Trenton, 10001109

NORTH CAROLINA

Franklin County

Perry School, 2266 Laurel Mill-Centerville Rd, Centerville, 10001110

Wake County

Battery Heights Historic District, (Post-World War II and Modern Architecture in Raleigh, North Carolina, 1945–1965, MPS), Bounded roughly by E Martin St on the N, Battery Dr on the E, E Davie St on the S, and Sherrybrook Dr on the W, Raleigh, 10001111

Capitol Heights Historic District, (Post-World War II and Modern Architecture in Raleigh, North Carolina, 1945–1965), Roughly bounded by Penn Rd, N State St, Glascock St, and Madison Rd, Raleigh, 10001112

Longview Gardens Historic District, (Post-World War II and Modern Architecture in Raleigh, North Carolina, 1945–1965), Bounded roughly by King Charles Rd, Poole Rd, Donald Ross Dr, Albemarle Ave, Longview Lake Dr, and New Bern Ave, Raleigh, 10001113

PENNSYLVANIA

Montgomery County

Souderton Historic District, Roughly bounded by Railroad Ave, E Broad St, Noble St, Spruce Alley, S Front St, Washington Ave, Souderton, 10001107

PUERTO RICO

Aguada Municipality, Puente de Coloso, (Historic Bridges of Puerto Rico MPS), State Road No. 418, km.5, Guanabano, 10001102

WASHINGTON

King County

First Methodist Episcopal Church, 801 Fifth Ave, Seattle, 10001105

Pacific County

Ilwaco Railway and Navigation Co—NAHCOTTA (Railway Car), 115 SE Lake St, Ilwaco, 10001106

Spokane County

Rogers, John R., High School, 1622 E Wellesley Ave, Spokane, 10001104

[FR Doc. 2010–31252 Filed 12–13–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[0050–XXXX–673]

30-Day Notice of Opportunity for Public Comment on U.S. Nominations to the World Heritage List and Potential Additions to the U.S. World Heritage Tentative List

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: This is a first notice for the public to comment on the next potential U.S. nominations from the U.S. World Heritage Tentative List to the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List, and on possible additions to the Tentative List. This notice complies with 36 CFR 73.7(c).

The U.S. World Heritage Tentative List (formerly referred to as the Indicative Inventory) appears at the end of this notice. The current Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008, and includes properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List. Any property nominated to the World Heritage List must have been on the Tentative List for at least a year prior to its nomination, according to the *Operational Guidelines* of the World Heritage Committee.

The preparation of the Tentative List provides multiple opportunities for the public to comment on which sites to include, as part of a process that also included recommendations by the U.S. National Commission for UNESCO, a Federal Advisory Commission to the U.S. Department of State.

The U.S. Department of the Interior is now considering whether to nominate any of the properties on the Tentative List to the World Heritage List. The Department will consider public comments received during this comment period and the advice of the Federal Interagency Panel for World Heritage in making a final decision on future nominations. Comments may also be made on suggestions for additions to the Tentative List, although the Department is not required to make additions to the List.

DATES: Comments upon whether to nominate any of the properties on the Tentative List or for properties to be added to the Tentative List will be accepted on or before thirty days from the date of publication of this notice in the **Federal Register**.

If a site is selected by the Department for nomination, public notice will be made of the decision. The site's owner(s) will be responsible, in cooperation with the National Park Service, for preparing the draft nomination in the nomination format required by the World Heritage Committee and for gathering documentation in support of it. Legal protective measures must be in place before a property may be nominated. Any such nominations must be received from the preparers by the National Park Service in substantially complete draft form by a date on or near July 15, 2011. Such draft nominations will be reviewed, amended if necessary, and if considered by the Department to be technically and substantively adequate, provided to the World Heritage Centre for technical review no later than September 30, 2011. The Centre would then provide comments by November 14, 2011, with final submittal to the World Heritage Centre by the Department of the Interior through the Department of State by January 30, 2012. Any nomination submitted by that date will be considered by the World Heritage Committee at its meeting in the summer of 2013. The Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List. If a nomination cannot be completed in accordance with this timeline, work may continue on the nomination for possible submission to UNESCO in a subsequent year.

ADDRESSES: Please provide all comments directly to Jonathan Putnam, Office of International Affairs, National Park Service, 1201 Eye Street, NW. (0050), Washington, DC 20005 or by e-mail to: *jonathan_putnam@nps.gov.* Phone: 202–354–1809. Fax 202–371–1446. All comments will be a matter of public record. Before including an address, phone number, e-mail address, or other personal identifying information in a comment, please be aware that the entire comment—including personal identifying information—may be made public at any time. While you can request that personal identifying information be withheld from public review, it may not be possible to comply with this request.

Comments on whether to nominate any of the properties on the Tentative List or whether to add properties to the Tentative List should address the qualifications of the properties for World Heritage listing. The World Heritage nomination criteria can be found on the National Park Service Office of International Affairs Web site *http://www.nps.gov/oia*. Suggestions for additions to the Tentative List should also address the U.S. legal prerequisites noted in the Supplementary Information below.

All public comments are welcomed and will be summarized and provided to Department of the Interior officials, who will obtain the advice of the Federal Interagency Panel for World Heritage before making any selection of properties for World Heritage nomination. The selection may include the following considerations:

(i) How well the particular type of property (*i.e.,* theme or region) is represented on the World Heritage List;

(ii) The balance between cultural and natural properties already on the List and those under consideration;

(iii) Opportunities the property affords for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation; and,

(v) Other relevant factors, including public interest and awareness of the property, and the likelihood of being able to complete a satisfactory nomination according to the timeline described above.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, 202–354–1809 or April Brooks, 202–354–1808. General information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm*.

Only the 13 properties or groups of properties included in the U.S. Tentative List are eligible to be considered for nomination by the United States to the World Heritage List at this time. One property on the List, Papahanaumokuakea Marine National Monument, was nominated in 2009 and listed as a World Heritage Site in 2010. Brief descriptions of the properties appear on the Web site just noted.

To request a paper copy of the U.S. Tentative List, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW. (0050) Washington, DC 20005. E-mail: *april_brooks@nps.gov.*

For the World Heritage nomination *Format,* see the World Heritage Centre Web site at *http://whc.unesco.org/en/nominations*.

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the U.S. was the first nation to ratify it. The United States has served several terms on the elected 21-nation World Heritage Committee, but is not currently on the Committee. There are 911 sites in 151 of the 187 signatory countries. Currently there are 21 World Heritage Sites in the United States.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR 73—World Heritage Convention.

The National Park Service serves as the principal technical agency for the U.S. Government to the Convention and manages all or parts of 17 of the 21 U.S. World Heritage Sites currently listed, including Yellowstone National Park, Everglades National Park, and the Statue of Liberty.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites a country

intends to consider for nomination within a given time period. A country cannot nominate a property unless it has been on its Tentative List for a minimum of one year. Countries also are limited to nominating no more than two sites in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. laws. Inclusion in the Tentative List merely indicates the property may be further examined for possible World Heritage nomination in the future.

The World Heritage Committee's *Operational Guidelines* ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee schedule its work over the long term.

In order to guide the U.S. World Heritage Program effectively and in a timely manner, NPS prepared and submitted (through the Secretary of the Interior and the Secretary of State) to the World Heritage Centre of UNESCO on January 24, 2008, the previously referenced Tentative List of properties that appear to meet the criteria for nomination.

In order to be included, a proposed site must meet several U.S. prerequisites in addition to appearing to meet the stringent World Heritage criteria of international importance. The U.S. prerequisites include the written agreement of all property owners to the nomination of their property, general support from stakeholders, including elected officials, and a prior official determination that the property is nationally important (such as by designation as a National Historic or National Natural Landmark).

Process for Developing the U.S. World Heritage Tentative List

The Tentative List was developed using an application approved by the Office of Management and Budget (OMB) on August 29, 2006 (OMB Control No. 1024–0250), pursuant to a 30-Day Notice of Request for Clearance of Collection of Information to the Office of Management and Budget published by NPS in the **Federal Register** on July 27, 2006 (FR 71, 144:42664–42665).

The National Park Service Office of International Affairs provided the application form in August 2006 for voluntary applications to a new U.S. World Heritage Tentative List by governmental and private property owners. It was intended that preparers use the application to demonstrate the property meets the criteria established by the World Heritage Committee for inclusion in the World Heritage List and other requirements, including those of U.S. domestic law (16 U.S.C. 470a–1, a–2, d) and program regulations (36 CFR 73–World Heritage Convention).

Thirty-seven (37) applications were received by the April 1, 2007, deadline. Two were subsequently withdrawn. The National Park Service made recommendations based on staff review of the applications by the Office of International Affairs, in consultation with National Park Service subject matter experts and external reviewers for cultural and natural resources who are knowledgeable about the World Heritage Committee's policies, practices and precedents. Additional correspondence and/or addenda containing revised or expanded material was received from most applicants in response to written reviews that were provided to them; all of this material was carefully considered.

NPS staff recommendations were provided to the World Heritage Tentative List Subcommittee of the U.S. National Commission for UNESCO for review.

The subcommittee made recommendations to the full Commission, whose recommendations were published for comment in the **Federal Register** on October 31, 2007.

U.S. World Heritage Tentative List Cultural Sites (9)

Civil Rights Movement Sites, Alabama

Dexter Avenue King Memorial Baptist Church, Montgomery
Bethel Baptist Church, Birmingham
16th Street Baptist Church, Birmingham

Dayton Aviation Sites, Ohio

Dayton Aviation Heritage National Historical Park, including:
—Huffman Prairie (part of Wright-Patterson Air Force Base)
—Wright Cycle Company and Wright & Wright Printing, Dayton
—Wright Hall (housing the Wright Flyer III), Dayton
—Hawthorn Hill, Dayton

Hopewell Ceremonial Earthworks, Ohio

Fort Ancient State Memorial, Warren County
Hopewell Culture National Historical Park, near Chillicothe
Newark Earthworks State Historic Site, Newark and Heath, including:
—Wright Earthworks
—The Octagon Earthworks.
—Great Circle Earthworks

Jefferson (Thomas) Buildings, Virginia

Poplar Forest, Bedford County
Virginia State Capitol, Richmond. (Proposed jointly as an extension to the World Heritage listing of Monticello and the University of Virginia Historic District)

Mount Vernon, Virginia

Poverty Point National Monument and State Historic Site, Louisiana

San Antonio Franciscan Missions, Texas

Mission San Antonio de Valero (The Alamo)
San Antonio Missions National Historical Park, including:
—Mission Concepción
—Mission San Jose
—Mission San Juan
—Mission Espada (including Rancho de las Cabras)

Serpent Mound, Ohio

Wright (Frank Lloyd) Buildings

Taliesin West, Scottsdale, Arizona. Hollyhock House, Los Angeles, California
Marin County Civic Center, San Rafael, California
Frederick C. Robie House, Chicago, Illinois
Unity Temple, Oak Park, Illinois
Solomon R. Guggenheim Museum, New York, New York
Price Tower, Bartlesville, Oklahoma
Fallingwater, Mill Run, Pennsylvania
S. C. Johnson and Son, Inc., Administration Building and Research Tower, Racine, Wisconsin
Taliesin, Spring Green, Wisconsin

Natural Sites (4)

Fagatele Bay National Marine Sanctuary, American Samoa

Okefenokee National Wildlife Refuge, Georgia

Petrified Forest National Park, Arizona

White Sands National Monument, New Mexico

Authority: 16 U.S.C. 470 a–1, a–2, d; 36 CFR 73.

Dated: December 6, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–31316 Filed 12–13–10; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–751]

In the Matter of Certain Turbomachinery Blades, Engines and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 5, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of United Technologies Corporation of Hartford, Connecticut. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain turbomachinery blades, engines, and components thereof by reason of infringement of certain claims of U.S. Patent No. RE38,040 ("the '040 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *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.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 7, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain turbomachinery blades, engines, and components thereof that infringe one or more of claims 1 and 2 of the '040, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: United Technologies Corporation, United Technologies Building, Hartford, CT 06101.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Rolls-Royce Group plc, Registered Office, 65 Buckingham Gate, London SW1E6AT, United Kingdom; Rolls-Royce plc, 65 Buckingham Gate, London SW1E6AT, United Kingdom.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 8, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–31296 Filed 12–13–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: COPS Non Hiring Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until February 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street, NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* COPS Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and public safety agencies, institutions of higher learning and non-profit organizations that are recipients of COPS hiring or non-hiring grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:*

It is estimated that approximately 7,400 annual, quarterly, and final report respondents can complete the report in an average of 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,700 total burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 8, 2010.

Lynn Murray,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 2010–31282 Filed 12–13–10; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0078]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Limited Permitee Transaction Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for "sixty days" until February 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, *William.Miller@atf.gov*. Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226 Fax (202) 648–9741.

Written comments and suggestions from the public and affected agencies concerning the proposed information collection are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Summary of Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond:*

Primary: Business or other for-profit. *Other:* Individuals or households.

Need for Collection:

The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their maximum allotment of receipts of explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,000 respondents will spend approximately 5 minutes to receive, file, and forward the appropriate documentation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, 2 Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Dated: December 8, 2010.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–31281 Filed 12–13–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0043]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Drug Questionnaire DEA Form 341

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Raymond A. Pagliarini, Jr., Assistant Administrator, Human Resources Division, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0043

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Drug Questionnaire (DEA Form 341).

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 341.

Component: Human Resources Division, Drug Enforcement Administration, U.S. Department of Justice

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other: None.

Abstract: DEA Policy states that a past history of illegal drug use may be a disqualification for employment with DEA. This form asks job applicants specific questions about their personal history, if any, of illegal drug use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 173,800 respondents will respond annually, taking 5 minutes to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,483 annual burden hours

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 8, 2010

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–31280 Filed 12–13–10; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 9 a.m., Friday, December 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

Matters To Be Considered

1. Consideration of Supervisory Activities (3). Closed pursuant to some or all of the following: Exemptions (8), (9)(A)(ii) and 9(B).

2. Personnel. Closed pursuant to exemption (2).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–31495 Filed 12–10–10; 4:15 pm]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0382]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 18, 2010, to December 1, 2010. The last biweekly notice was published on November 30, 2010 (75 FR 74091).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. 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 O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for

hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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 at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 29, 2009, as supplemented June 24, 2010.

Description of amendment request: The proposed amendments would approve changes to the updated final safety analysis report to allow the use of fiber reinforce polymer on masonry walls for uniform pressure loads resulting from a tornado event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a Significant Increase in The Probability or Consequences of an Accident Previously Evaluated

Response: Physical protection from a tornado event is a design basis criterion rather than a requirement of a previously analyzed [updated final safety analysis report] UFSAR accident analysis. The current

licensing basis (CLB) for Oconee states that systems, structures, and components (SSC's) required to shut down and maintain the units in a shutdown condition will not fail as a result of damage caused by natural phenomena.

The in-fill masonry walls to be strengthened using an FRP system are passive, non-structural elements. The use of a fiber reinforced polymer [FRP] system on existing Auxiliary Building masonry walls will allow them to resist uniform pressure loads resulting from a tornado and will not adversely affect the structure's ability to withstand other design basis events such as earthquakes or fires. Therefore, the proposed use of FRP on existing masonry walls will not significantly increase the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Response: The final state of the FRP system is passive in nature and will not initiate or cause an accident. More generally, this understanding supports the conclusion that the potential for new or different kinds of accidents is not created.

(3) Involve a Significant Reduction in a Margin of Safety

Response: The application of an FRP system to existing Auxiliary Building masonry walls will act to enhance the margin of safety, e.g., the West Penetration Room walls, by increasing the walls' ability to resist tornado-induced differential pressure. Consequently, this change does not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, Duke has concluded that the proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 14, 2010.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to adopt NRC Approved Technical Specification Task Force (TSTF) Change to the Standard TS, TSTF–52 concerning performance-based containment leakage testing requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within acceptance limits as delineated in [Title 10 of the Code of Federal Regulations (10 CFR) Part 50] 10 CFR Part 50, Appendix J, Option B. The changes are consistent with current safety analyses. Although some of the proposed changes represent minor relaxation to existing [Technical Specifications] TS requirements, they are consistent with the requirements specified by Option B of 10 CFR Part 50, Appendix J. The systems affecting containment integrity related to this proposed amendment request are not assumed in any safety analyses to initiate any accident sequence. Therefore, the probability of any accident previously evaluated is not increased by this proposed amendment. The proposed changes maintain an equivalent level of reliability and availability for all affected systems. In addition, maintaining leakage within analyzed limits assumed in accident analyses does not adversely affect either onsite or offsite dose consequences.

Therefore, adopting Appendix J, Option B does not significantly increase the probability or consequences of any accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. No changes are being proposed which will introduce any physical changes to the existing plant design. The proposed changes are consistent with the current safety analyses. Some of the changes may involve revision in the testing of components; however, these are in accordance with the current safety analyses and provide for appropriate testing or surveillance that is consistent with 10 CFR Part 50, Appendix J, Option B. The proposed changes will not introduce new failure mechanisms beyond those already considered in the current accident analyses. No new modes of operation are introduced by the proposed changes. The proposed changes maintain, at minimum, the present level of operability of any system that affects containment integrity.

Therefore, adoption of Appendix J, Option B will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The provisions specified in Option B of 10 CFR Part 50, Appendix J allow changes to Type B and Type C test intervals based upon the performance of past leak rate tests. 10 CFR Part 50, Appendix J, Option B allows longer intervals between leakage tests based on performance trends, but does not relax the leakage acceptance criteria. Changing test intervals from those currently provided in the TS to those provided in 10 CFR Part 50, Appendix J, Option B does not increase any risks above and beyond those that the [U S. Nuclear Regulatory Commission] NRC has deemed acceptable for the performance based option. In addition, there are risk reduction benefits associated with reduction in component cycling, stress, and wear associated with increased test intervals. The proposed changes provide continued assurance of leakage integrity of containment without adversely affecting the public health and safety and will not significantly reduce existing safety margins.

Therefore, adoption of Appendix J, option B does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station (ONS), Units 1, 2, and 3, Oconee County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station (MNS), Units 1 and 2, Mecklenburg County, North Carolina; Docket Nos. 50–413 and 50–414, Catawba Nuclear Station (CNS), Units 1 and 2, York County, South Carolina

Date of amendment request: September 16, 2010.

Description of amendment request: The proposed amendments would revise the Technical Specifications to update the qualification requirements for the Station Manager and Radiation Protection Manager to meet or exceed the minimum qualifications in ANSI/ANS–3.1–1993, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to [Technical Specifications] TS 5.3.1 is an administrative change to update the minimum qualification requirements for Station Manager and Radiation Protection Manager to meet or exceed ANSI/ANS 3.1–1993 as endorsed by Regulatory Guide 1.8, Revision 3, dated May 2000. This update for Station Manager and Radiation Protection Manager qualifications will also provide Oconee, McGuire, and Catawba the needed flexibility to appoint Station Managers and Radiation Protection Managers from a larger candidate pool. The current qualification requirements restrict the pool of personnel capable of performing the Station Manager and Radiation Protection Manager functions. This change will also revise the current Oconee, McGuire, and Catawba TS 5.3.1 qualification requirements for Station Manager and Radiation Protection Manager to be consistent among all three stations. The proposed change does not impact the physical configuration or function of plant structures, systems, or components or the manner in which structures, systems, or components are operated, maintained, modified, tested, or inspected. Updating the minimum qualification requirements for Station Manager and Radiation Protection Manager is not an initiator of any accident previously evaluated. Updating the minimum qualification requirements for Station Manager and Radiation Protection Manager is not an assumption in the consequence mitigation of any accident previously evaluated. Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to TS 5.3.1 is an administrative change to update the minimum qualification requirements for Station Manager and Radiation Protection Manager to meet or exceed ANSI/ANS 3.1–1993 as endorsed by RG 1.8, Revision 3, dated May 2000. This represents an update to current guidance. This update for Station Manager and Radiation Protection Manager qualifications will also provide Oconee, McGuire, and Catawba the needed flexibility to appoint Station Manager and Radiation Protection Manager from a larger candidate pool. The current qualification requirements restrict the pool of personnel capable of performing the Station Manager and Radiation Protection Manager functions. This change will also revise the current Oconee, McGuire and Catawba TS 5.3.1 qualification requirements for Station Manager and Radiation Protection Manager to be consistent among all three stations.

The proposed change does not impact the physical configuration or function of plant structures, systems, or components or the manner in which structures, systems, or components are operated, maintained, modified, tested, or inspected. In addition, there is no change in the types or increases in the amounts of effluents that may be released offsite, and there is no increase in individual or cumulative occupational radiation exposure.

As the proposed change is administrative in nature, operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS 5.3.1 is an administrative change to update the minimum qualification requirements for Station Manager and Radiation Protection Manager to meet or exceed ANSI/ANS 3.1–1993 as endorsed by RG 1.8, Revision 3, dated May 2000. This update for Station Manager and Radiation Protection Manager qualifications will also provide Oconee, McGuire, and Catawba the needed flexibility to appoint Station Manager and Radiation Protection Manager from a larger candidate pool. The current qualification requirements restrict the pool of personnel capable of performing the Station Manager and Radiation Protection Manager functions. This change will also revise the current ONS, MNS, and CNS TS 5.3.1 qualification requirements for Station Manager and Radiation Protection Manager to be consistent among all three stations. The proposed change does not impact the physical configuration or function of plant structures, systems, or components or the manner in which structures, systems, or components are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. The proposed change is administrative in nature; thus operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 8, 2010.

Description of amendment request: The proposed amendments would approve revisions to the updated final safety analysis report to incorporate the licensee's reactor vessel internals inspection plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated

No. The proposed license amendment request provides the Reactor Vessel Internals Inspection Plan report. The report also provides a description of the inspection plan as it relates to the management of aging effects consistent with previous commitments. The inspection plan is based on MRP–227, Revision 0, "Pressurized Water Reactors Internals Inspection and Evaluation Guidelines" and describes using the ten Aging Management Program (AMP) elements in the current revision of NUREG–1801 "Generic Aging Lessons Learned" (GALL, Revision 1) report.

The inspection plan contains a discussion of the background of the Babcock and Wilcox designed plant Reactor Vessel Internals programs, first sponsored by the utilities through the Babcock and Wilcox Owner's Group and later by the Pressurized Water Reactor Owner's Group, culminating in a submittal to the Nuclear Regulatory Commission through the Electric Power Research Institute Materials Reliability Program. The inspection plan also contains a discussion of operational experience, time-limited aging analyses, and relevant existing programs.

The Reactor Vessel Internals Aging Management Program includes the inspection plan and demonstrates that the program adequately manages the effects of aging for Reactor Vessel Internals components and establishes the basis for providing reasonable assurance the Reactor Vessel Internals components will remain functional through the license renewal period of extended operation.

This license amendment request provides an inspection plan based on industry work and experiences as agreed to in Duke Energy's license renewal commitments for Reactor Vessel Internals Inspection. It is not an accident initiator; therefore, it will not increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated

No. The proposed Reactor Vessel Internals Inspection Plan does not change the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered. The revised inspection plan is not an accident/event initiator. No new initiating events or transients result from the use of the Reactor Vessel Internals Inspection plan.

(3) Involve a significant reduction in a margin of safety

No. The proposed safety limits have been preserved. The License Amendment Request requests review and approval for the Reactor Vessel Internals Inspection plan that Duke Energy committed to provide prior to commencing inspections.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: November 15, 2010.

Description of amendment request: The proposed amendments would approve changes to the updated final safety analysis report to allow operation of a reverse osmosis system during normal plant operation to remove silica from borated water storage tank and the spent fuel pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change requests Nuclear Regulatory Commission (NRC) approval of design features and controls that will be used to ensure that periodic limited operation of a Reverse Osmosis (RO) System during Unit operation does not significantly impact the Borated Water Storage Tank (BWST) or Spent Fuel Pool (SFP) function or other plant equipment. Duke Energy evaluated the effect of potential failures, identified precautionary measures that must be taken before and during RO System operation, and required operator actions to protect affected structures, systems, and components (SSCs) important to safety. The new high energy piping and non seismic piping being installed for the RO System is non QA–1 and is postulated to fail and cause an Auxiliary Building flood. Duke Energy determined that adequate time is available to isolate the flood source (BWST or SFP) prior to affecting SSCs important to safety.

The existing Auxiliary Building Flood evaluation postulates a single break in the nonseismic piping occurring in a seismic event. The addition of the RO System will not increase the frequency of a seismic event. This event does not consider the amount of non-seismic piping that is currently in the Auxiliary Building. The new piping is not more likely to fail as compared to the existing non-seismic piping. The existing postulated source of the pipe break in the Auxiliary Building is due to the piping not being seismically designed. The new RO System piping is considered a potential source of a single pipe break for the same reason. Since the accident itself is defined as the failure of non-seismic pipe, the new non-seismic piping does not increase the frequency of occurrence of an Auxiliary Building flood. The mitigation of an Auxiliary Building flood due to non seismic piping failure is by manual operator action. The same mitigation technique is used for the high energy line break.

The RO System takes suction from the top of the SFP to protect SFP inventory. Plant procedures will prohibit the use of the RO System during the time period directly after an outage that requires the Unit 1 & 2 SFP level to be maintained higher than the Technical Specification (TS) Limiting Condition for Operation (LCO) 3.7.11 level requirement. The higher level is required to support TS LCO 3.10.1 requirements for Standby Shutdown Facility (SSF) Reactor Coolant (RC) Makeup System operability (due to the additional decay heat from the recently offloaded spent fuel). Plant procedures will also specify the siphon be broken during this time period so the SFP water above the RO suction point cannot be siphoned off if the RO piping breaks. The proposed change does not impact the fuel assemblies, the movement of fuel, or the movement of fuel shipping casks. The SFP boron concentration, level, and temperature limits will not be outside of required parameters due to restrictions/requirements on the system's operation.

The BWST is used for mitigation of Steam Generator Tube Rupture (SGTR), Main Steam Line Break (MSLB) and Loss of Coolant Accidents (LOCAs). The SGTR and MSLB are bounded by the [small-break] SBLOCA analyses with respect to the performance requirements for the [high pressure injection] HPI System. In the normal mode of Unit operation, the BWST is not an accident initiator. The SFP is assumed to maintain acceptable criticality margin for all abnormal and accident conditions including Fuel Handling Accidents (FHAs) and cask drop accidents. Both the BWST and SFP are specified by TS requirements to have minimum levels/volumes and boron concentrations. The BWST also has TS requirements for temperature. Prior to RO operation, procedures will require that minimum required initial boron concentration, and initial level/volume be adjusted and that the RO System be operated for a specified maximum time period before readjusting volume and boron concentration prior to another RO session to ensure that the TS specified boron concentration and level/volume limits for both the SFP and the BWST are not exceeded during RO System operation. Thus, the design functions of the BWST and the SFP will continue to be met during RO System operation.

An Auxiliary Building flood due to a non-seismic RO System pipe break does not increase the consequences of the flood since the new non-seismic pipe break is bounded by the Auxiliary Building flood caused by existing non-seismic pipe breaks. Although the RO System will return water with lower boron concentration, procedural controls will ensure that the TS boron concentration level does not go below the limit. Thus, no adverse effects from decreased boron concentration levels will occur.

Since the BWST and SFP will still have TS required boron concentration and level/volume, the mitigation of a LOCA or FHA does not result in an increase in dose consequence.

Therefore, installation and operation of the RO System during Unit operation does not significantly increase the probability or consequences of any accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The RO System adds non-seismic piping in the Auxiliary Building. However, the break of a single non-seismic pipe in the Auxiliary Building has already been postulated as an event in the licensing basis. The RO System also does not create the possibility of a seismic event concurrent with a LOCA since a seismic event is a natural phenomena event. The RO System does not adversely affect the Reactor Coolant System pressure boundary. The suction to the RO System, when using the system for BWST purification, contains a normally closed manual seismic boundary valve so the seismic design criteria is met for separation of seismic/non-seismic piping boundaries.

Duke Energy also evaluated potential releases of radioactive liquid to the environment due to RO System piping failures. Design features and administrative controls preclude release of radioactive materials outside the Auxiliary Building. Releases inside the Auxiliary Building are bounded by existing analyses.

The SFP suction line is designed such that the SFP water level will not go below TS required levels, thus the fuel assemblies will have the TS required water level over them. Procedural controls will restrict the use of the RO System and require breaking vacuum on the SFP suction line when the SSF conditions require the SFP level be raised to support SSF RC Makeup System operability. Thus, the SFP water level will not be reduced below required water levels for these conditions. RO System operating restrictions will prevent reducing the SFP boron concentration below TS limits.

Therefore, operation of the RO System during Unit operation will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The RO System adds non-seismic piping in the Auxiliary Building. Duke

Energy evaluated the impact of RO System operation on SSCs important to safety and determined that procedural controls will ensure that TS limits for SFP and BWST volume, temperature and boron concentration will continue to be met during RO operation. For the BWST, these controls will ensure the TS minimum BWST boron concentration and level are available to mitigate the consequences of a small break LOCA or a large break LOCA. For the SFP, these controls ensure the assumptions of the fuel handling and cask drop accident analyses are preserved. Additionally, the failure of non seismic RO System piping will not significantly impact SSCs important to safety. The BWST level may drop below the TS required level due to a rupture of the non seismic piping during a seismic event. However, due to the low probability of a seismic event coupled with the relatively short period of time the RO System will be aligned to the BWST, the possibility of dropping below the TS required level does not involve a significant reduction in the margin of safety. In addition, Oconee's licensing basis does not assume a design basis event occurs simultaneously with a seismic event. The proposed change does not significantly impact the condition or performance of SSCs relied upon for accident mitigation. This change does not alter the existing TS allowable values or analytical limits. The existing operating margin between Unit conditions and actual Unit setpoints is not significantly reduced due to these changes. The assumptions and results in any safety analyses are not impacted. Therefore, operation of the RO System during Unit operation does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Gloria Kulesa.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 30, 2010.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to add Surveillance Requirement (SR) 3.1.7.9 to verify sodium pentaborate enrichment prior to the addition to the SLC tank. The increase in boron-10 enrichment is needed to support future reloads of GE14 fuel by providing additional margin for preserving the shutdown objective of the SLC system. Reload analysis indicates that a core that is made up of a majority of GE14 fuel has a higher reactivity than previous Columbia Generating Station core designs warranting a corresponding increase in the shutdown capability of the SLC system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The SLC system is designed to provide sufficient negative reactivity to bring the reactor from full power to a subcritical condition at any time in a fuel cycle, without taking credit for control rod movement. The proposed changes to the SLC sodium pentaborate solution requirements maintain the capability of the SLC to perform this reactivity control function, and assure continued compliance with the requirements of 10 CFR 50.62 for ATWS [automatic transient without scram]. The proposed changes do not impact the LOCA [loss-of-coolant accident] suppression pool pH control function of SLC because single-pump minimum flow and sodium pentaborate solution concentration (weight percent) are not changed from the level credited in the LOCA analysis. The SLC is provided to mitigate ATWS events and LOCA and, as such, is not considered to be an initiator of the ATWS event, LOCA, or any other analyzed accident. The use of sodium pentaborate solution enriched with the boron-10 isotope, which is chemically and physically similar to the current solution, does not alter the design or operation of the SLC or increase the likelihood of a system malfunction that could increase the consequences of an accident.

Based on the above discussion, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Injection of sodium pentaborate solution into the reactor vessel has been considered in the plant design. The proposed changes revise the SLC boron solution requirements such that the capability of the SLC system to bring the reactor to a subcritical condition without taking credit for control rod movement is maintained, considering operation with an equilibrium core of GE14 fuel. The use of sodium pentaborate solution enriched with the boron-10 isotope, which is chemically and physically similar to the current solution, does not alter the design, function, or operation of the SLC system. The correct boron-10 enrichment is assured by the proposed addition of an SR to the TS. The solution concentration and volume are not changed; thus, the existing minimum volume and solution and piping temperature specified in the TS will ensure that the boron remains in solution and does not precipitate out in the SLC storage tank or in the SLC pump suction piping. The minimum volume and concentration specified in the TS ensure that the LOCA suppression pool pH control function is not impacted.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise the SLC boron solution requirements to maintain the capability of the SLC system to bring the reactor to a subcritical condition without taking credit for control rod movement. These changes support operation with an equilibrium core of GE14 fuel and assure continued compliance with the requirements of 10 CFR 50.62. The minimum required average boron-10 concentration in the reactor core, resulting from the injection of sodium pentaborate solution by the SLC system, has been determined using approved analytical methods. The analysis demonstrates that sufficient shutdown margin is maintained in the reactor such that the reactivity control function of the SLC system is assured. The additional quantity of boron included to account for imperfect mixing and leakage is maintained at 25 percent. No change in the solution pH or volume is made. Thus, the safety margin is maintained to bring the reactor subcritical in the event of an ATWS and to control suppression pool pH in the event of a LOCA.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William A. Horin, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: July 20, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.8.3, "Diesel Fuel, Lube Oil, and Starting Air," by relocating the current stored

diesel fuel oil and lube oil numerical volume requirements from the TS to the TS Bases so that they may be modified under licensee control. The TS are modified so that the stored diesel fuel oil and lube oil inventory will require that a 7-day supply be available for either diesel generator. Condition A and Condition B in the Action table are revised and Surveillance Requirements (SR) 3.8.3.1 and 3.8.3.2 are revised to reflect the above change.

The proposed changes also revise TS 3.8.3 by reducing the Completion Time for Condition C. Condition C currently requires that an inoperable fuel transfer system associated with fuel oil transfer pump P–18A be restored to operable status within 15 hours. The proposed TS change reduces the Completion Time for this Required Action from 15 to 12 hours. The Completion Time is reduced to reflect the amount of time that an emergency diesel generator fuel oil day tank can support emergency diesel generator operation under design conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the volume of diesel fuel oil and lube oil required to support 7-day operation of the onsite emergency diesel generators, and the volume equivalent to a 6-day supply, to licensee control. The specific volume of fuel oil equivalent to a 7-day and 6-day supply is calculated using the NRC approved methodology described in Regulatory Guide 1.137, Revision 1, "Fuel Oil Systems for Standby Emergency diesel generators" and ANSI N195–1976, "Fuel Oil Systems for Standby Diesel Generators." The specific volume of lube oil equivalent to a 7-day and 6-day supply is based on the emergency diesel generator manufacturer's consumption values for the run time of the diesel generator. Because the requirement to maintain a 7-day supply of diesel fuel oil and lube oil is not changed and is consistent with the assumptions in the accident analyses, and the actions taken when the volume of fuel oil and lube oil are less than a 6-day supply have not changed, neither the probability or the consequences of any accident previously evaluated will be affected.

The proposed change also reduces the Completion Time for TS 3.8.3 Condition C for an inoperable P–18A fuel transfer system from 15 hours to 12 hours. Reducing the Completion Time to 12 hours bounds the 13.5-hour time duration that the emergency diesel generator day tank will support emergency diesel generator operation under accident loading conditions. The change in Completion Time does not affect required TS actions if the Completion Time is exceeded. The Completion Time change does not affect the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed fuel oil and lube oil changes do not involve a physical alteration of the plant *(i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis but ensures that the emergency diesel generator operates as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions.

The proposed change also reduces the Completion Time for TS 3.8.3 Condition C for an inoperable P–18A fuel transfer system from 15 hours to 12 hours. This change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed). This change does not create a condition in which a new or different kind of accident can occur. It does not alter assumptions made in the safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change relocates the volume of fuel oil and lube oil required to support 7-day operation of either emergency diesel generator, and the volume equivalent to a 6-day supply, to licensee control. As the bases for the existing limits on diesel fuel oil and lube oil are not changed, no change is made to the accident analysis assumptions and no margin of safety is reduced as part of this change.

The proposed change also reduces the Completion Time for TS 3.8.3 Condition C for an inoperable P–18A fuel transfer system from 15 hours to 12 hours. There are no adverse affects on margins of safety since a more stringent operability requirement will be applied to the P–18A fuel transfer system.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: March 24, 2010, as supplemented by letter dated July 23, 2010.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time for Condition C (*i.e.,* two SLC subsystems inoperable for reasons other than Condition A) from 8 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC), which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) for Condition C (*i.e.,* "Two SLC subsystems inoperable for reasons other than Condition A.") from eight hours to 72 hours.

The proposed change is based on a risk-informed evaluation performed in accordance with Regulatory Guides (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications."

The proposed amendment modifies an existing CT for a dual-train SLC System inoperability. The condition evaluated, the action requirements, and the associated CT do not impact any initiating conditions for any accident previously evaluated.

The proposed amendment does not increase postulated frequencies or the analyzed consequences of an Anticipated Transient Without Scram (ATWS). Requirements associated with 10 CFR 50.62 will continue to be met. In addition, the proposed amendment does not increase postulated frequencies or the analyzed consequences of a large-break loss-of-coolant accident for which the SLC System is used for pH control. The new action requirement provides appropriate remedial actions to be taken in response to a dual-train SLC System

inoperability while minimizing the risk associated with continued operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition C from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. This proposed TS amendment does not change the design function of the SLC System and does not affect the system's ability to perform its design function. The SLC System provides a method to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive xenon free state without taking credit for control rod movement. Required actions and surveillance requirements are sufficient to ensure that the SLC System functions are maintained. No new accident initiators are introduced by this amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition C from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated and the setpoints for the actuation of equipment relied upon to respond to an event.

Safety margins applicable to the SLC System include pump capacity, boron concentration, boron enrichment, and system response timing. The proposed amendment does not modify these safety margins or the setpoints at which SLC is initiated, nor does it affect the system's ability to perform its design function. In addition, the proposed change complies with the intent of the defense-in-depth philosophy and the principle that sufficient safety margins are maintained consistent with RG 1.177 requirements (*i.e.,* Section C, "Regulatory Position," paragraph 2.2,"Traditional Engineering Considerations"). Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 12, 2010.

Description of amendment request: A change is proposed to the technical specifications to allow a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.9 will be added to individual TS providing this allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration by affirming the applicability of the model analysis presented in the **Federal Register** notice dated October 3, 2006, starting on page 71 FR 58452, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in [Regulatory Guide] RG 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP and ICLERP) as shown in Table 1 of Section 3.1.1 in the [model] Safety Evaluation [on page 71 FR 58450 of the Federal Register dated October 3, 2006].

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. S. Ross, Florida Power & Light Company, P. O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Robert J. Pascarelli.

South Carolina Electric and Gas Company (SCE and G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: November 11, 2010.

Description of Amendment Request: The licensee proposes to amend the operating license for Virgil C. Summer Nuclear Station (VCSNS), by revising

the Technical Specifications (TS) and SCE&G proposes to provide surveillance enhancements that will improve operation and testing of the Emergency Diesel Generators (EDG). The changes will provide a more restrictive voltage and frequency band for operation when not connected in parallel with the offsite sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The changes proposed by this license amendment will revise the Surveillance Requirements of Technical Specification ¾.8.1, AC SOURCES—OPERATING, to expand the continuous rated load specification to a range of 90% to 100% of the continuous rated load, specify an overload range of 105% to 110% of the continuous rated load, add a power factor limit while testing, allow gradual loading and unloading of the EDG, specify a maximum frequency for the overspeed limit, specify a maximum allowable overspeed voltage, and add a more restrictive voltage and frequency band for testing during steady state operation.

The majority of these changes are being proposed in order to implement recommendations contained in [Institute of Nuclear Power Operations] INPO Significant Operating Experience Report (SOER) 03–01, *Emergency Power Reliability,* Recommendation Number 5, which recommends that the utility review testing practices for emergency power systems to verify that the practices are representative of actual demand conditions and appropriately exercise equipment that is expected to respond in an actual demand condition. These changes are based on the guidance provided by Regulatory Guide 1.9, Revision 3, *Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plant.*

The more restrictive voltage and frequency band for testing during steady state operation is proposed to ease the impact of EDG voltage and frequency that are being incorporated into the Charging Pump performance requirements. The allowable voltage and frequency uncertainty limits for steady state operation are being reduced. This will ensure that the Charging Pumps continue to operate within their analyzed range.

These changes do not affect the probability or consequences of an accident previously evaluated because the proposed changes do not make a change to any accident initiator, initiating condition, or assumption. The proposed changes do not involve a significant change to the plant design or operation. These changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter a potential radiological release. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

No changes are being made in equipment hardware or software, operational philosophy, testing frequency, or how the system actually operates. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

These changes do not involve a significant reduction in a margin of safety because the proposed changes do not reduce the margin of safety that exists in the present Technical Specifications or Updated Final Safety Analysis Report. The operability requirements of the Technical Specifications are consistent with the initial condition assumptions of the safety analyses. The proposed changes do not affect the Action statement requirements for the various levels of degradation in the EDG. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, SCE&G concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Gloria Kulesa.

Southern Nuclear Operating Company, Inc. (SNC), Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: October 29, 2010.

Description of amendment request: The proposed amendments request the adoption of an approved change to the standard technical specifications for Westinghouse Plants (NUREG–1431), to allow relocation of specific Technical Specifications (TS) surveillance frequencies to a licensee-controlled program. The proposed change is described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML080280275), and was described in the Notice of Availability published in the **Federal Register** (FR) on July 6, 2009 (74 FR 31996). The proposed changes are consistent with NRC-approved TSTF–425, Revision 3. The proposed change relocates surveillance frequencies to a licensee-controlled program, the surveillance frequency control program. This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved [Nuclear Energy Institute] NEI 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," (ADAMS Accession No. 071360456).

The licensee affirmed the applicability to the FNP of the model no significant hazards consideration determination provided in the FR on July 6, 2009 (74 FR 31996), in its application dated October 29, 2010.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program [SFCP]. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, the licensee will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1, in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, licensee concludes that the requested change does not involve a significant hazards consideration as set forth in 10 CFR 50.92(c), Issuance of Amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Gloria J. Kulesa.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant (HNP), Units 1 and 2, Appling County, Georgia

Date of amendment request: October 29, 2010.

Description of amendment request: The proposed amendments request the adoption of an approved change to the standard technical specifications for General Electric Plants, BWR/4 (NUREG–1433), to allow relocation of specific Technical Specification (TS) surveillance frequencies to a licensee-controlled program. The proposed change is described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b." (Agencywide Documents Access and Management System (ADAMS) Accession No. ML080280275), and was described in the Notice of Availability published in the **Federal Register** (FR) on July 6, 2009 (74 FR 31996). The proposed changes are consistent with NRC-approved TSTF–425, Revision 3. The proposed change relocates surveillance frequencies to a licensee-controlled program, the surveillance frequency control program. This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved [Nuclear Energy Institute] NEI 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," (ADAMS Accession No. 071360456). The licensee affirmed the applicability to the HNP of the model no significant hazards consideration determination provided in the FR on July 6, 2009 (74 FR 31996) in its application dated October 29, 2010.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program [SFCP]. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the Technical Specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, SNC will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1, in accordance with the TS SFCP. NEI 04–10, Rev.1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, licensee concludes that the requested change does not involve a significant hazards consideration as set forth in 10 CFR 50.92(c), Issuance of Amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Gloria J. Kulesa.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: February 18, 2010, as supplemented on November 12, 2010 (TS–468).

Description of amendment request: The proposed amendment would modify Technical Specification 3.8.1 to extend the completion time (CT) for the return of an inoperable emergency diesel generator (DGs) to operable status from 7 days to 14 days, based on the availability of two non-safety related temporary diesel generators (TDGs). Commensurate changes to the maximum completion times were also proposed, extending the times from 14 to 21 days in Required Actions A.3 and B.4. The change also eliminates a historical footnote for a previous CT for Unit 3 only that is no longer needed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not affect the design of the DGs, the operational characteristics or function of the DGs, the interfaces between the DGs and other plant systems, or the reliability of the DGs. Required Actions and their associated CTs are not considered initiating conditions for any UFSAR [updated final safety analysis report] accident previously evaluated, nor are the DGs considered initiators of any previously evaluated accidents. The DGs are provided to mitigate the consequences of previously evaluated accidents, including a loss of off-site power.

The consequences of previously evaluated accidents will not be significantly affected by the extended DG CT, because a sufficient number of onsite Alternating Current [AC] power sources will continue to remain available to perform the accident mitigation functions associated with the DGs, as assumed in the accident analyses. In addition, as a risk mitigation and defense-in-depth action, an independent AC power source, via two available TDGs, will be available to support the ESF [engineered safety feature] bus with the inoperable DG during a SBO [station blackout].

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a change in the permanent design, configuration, or method of operation of the plant. The proposed changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The proposed changes allow operation of the unit to continue while a DG is repaired and retested with the TDGs in standby to mitigate a SBO event. The proposed extensions do not affect the interaction of a DG with any system whose failure or malfunction can initiate an accident. As such, no new failure modes are being introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the permanent plant design, including instrument set points, nor does it change the assumptions contained in the safety analyses. The standby TDG alternate AC system is designed with sufficient redundancy such that a DG may be removed from service for maintenance or testing. The remaining seven DGs are capable of carrying sufficient electrical loads to satisfy the UFSAR requirements for accident Mitigation or unit safe shutdown. The proposed changes do not impact the redundancy or availability requirements of offsite power supplies or change the ability of the plant to cope with station blackout events. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

mitigation or unit safe shutdown. The proposed changes do not impact the redundancy or availability requirements of offsite power supplies or change the ability of the plant to cope with station blackout events. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 2010.

Description of amendment request: The proposed amendment would correct a typographical error in Section 5, Administrative Controls, of the Technical Specifications (TSs). The current TSs, on page 5.0–31, has two paragraphs numbered as 5.7.2d.3. The amendment proposes to renumber the second paragraph as 5.7.2d.4. The typographical error was introduced in Amendment No. 123 issued on March 31, 1999.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature. The change involves correcting a typographical error. This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the TS remain unchanged.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature. Since there [are] no changes to the operation of the facility or the physical design, the Updated Safety Analysis Report (USAR) design basis, accident assumptions, or TS Bases are not affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendment: September 8, 2010.

Brief description of amendment: The licensee proposed to delete the Technical Specification requirements related to the containment hydrogen recombiners and the hydrogen monitors, in accordance with Nuclear Energy Institute Technical Specification Task Force (TSTF) initiative designated as TSTF–447.

*Date of publication of individual notice in **Federal Register***: October 14, 2010 (75 FR 63209).

Expiration date of individual notice: December 13, 2010.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: November 30, 2009, as supplemented by letter dated July 22, 2010.

Brief description of amendment: The amendments revised Table 3.3.5–1 of Technical Specification (TS) 3.3.5, "Engineered Safety Features Actuation System (ESFAS) Instrumentation," to raise the refueling water tank (RWT) low level allowable values for the recirculation actuation signal; raised the minimum required RWT volume shown in TS Figure 3.5.5–1 of TS 3.5.5, "Refueling Water Tank (RWT)"; and implemented a time-critical operator action to close the RWT isolation valves, including consideration of a potentially more limiting single failure of a low-pressure safety injection pump to automatically stop, as designed, on a recirculation actuation signal.

Date of issuance: November 24, 2010.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1—182; Unit 2—182; Unit 3—182.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register***: April 20, 2010 (75 FR 20629). The supplemental letter dated July 22, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 2010.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 5, 2010.

Brief description of amendments: The amendment made title changes and corrections within Technical Specification (TS) 5.0, "Administrative

Controls." Specifically, the changes included:

(1) Replacement of the use of plant specific titles to generic titles consistent with TS Task Force (TSTF) Traveler TSTF–65, Revision 1, "Use of Generic Titles for Utility Positions,"

(2) Changes made to more closely align selected TSs with the Improved Standard TSs, and

(3) Administrative changes to specified TSs.

Date of issuance: November 22, 2010.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 296 for Unit 1 and 272 for Unit 2.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 1, 2010 (75 FR 30443).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 22, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of December 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–31086 Filed 12–13–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400; NRC–2010–0020]

Carolina Power & Light Company Shearon Harris Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an exemption, pursuant to title 10 of the Code of Federal Regulations (10 CFR) section 73.5, "Specific exemptions," from the implementation date for certain requirements of 10 CFR part 73, "Physical protection of plants and materials," for Renewed Facility Operating License No. NPF–63, issued to Carolina Power & Light Company (the licensee), now doing business as Progress Energy Carolinas, Inc., for operation of the Shearon Harris Nuclear Power Plant (HNP), Unit 1, located in New Hill, North Carolina. In accordance with 10 CFR 51.21, the NRC staff prepared an environmental assessment documenting its finding. The NRC staff concluded that the proposed actions will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the required implementation date of March 31, 2010, for one specific requirement of 10 CFR part 73. Specifically, HNP, Unit 1 would be granted a second exemption, further extending the date for compliance with one remaining item of the requirements contained in 10 CFR 73.55, from December 15, 2010, (the date specified in a prior exemption granted by NRC on February 24, 2010), until November 30, 2011. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR part 73, does not result in any additional physical changes to the reactor, fuel, plant structures, support structures, water, or land at the HNP, Unit 1 site.

The proposed action is in accordance with the licensee's application dated September 20, 2010.

The Need for the Proposed Action

The proposed exemption is needed to provide the licensee with additional time, beyond the date granted by the NRC letter dated February 24, 2010, to implement one remaining item of the three requirements in the previous exemption that involves important physical modifications to the HNP, Unit 1 security system. There are several issues which have delayed the work to this point, and/or impacted the projected schedule, such as the existence of safety-related conduit and dedicated safe shut down (SSD) equipment of HNP, Unit 1 within the room in which some important security modifications are planned. A direct outside access route to the physical construction area has not been available due to design basis tornado and missile considerations for the safety related conduits and SSD equipment. These issues were revealed as the design evolved from the conceptual state to a detailed design state. Presently, the licensee is pursuing a design solution that will allow both temporary and ultimately permanent direct outside access to the area. Additional time, beyond that previously approved, is needed due the extensive redesign and review effort that was unforeseen at the conceptual design stage.

Environmental Impacts of the Proposed Action

The NRC staff has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed action to further extend the implementation deadline for one item would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those hazards previously analyzed in the environmental assessment and final finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

With its request to extend the implementation deadline, the licensee currently maintains a security system acceptable to the NRC and that will continue to provide acceptable physical protection of HNP, Unit 1 in lieu of the new requirements in 10 CFR part 73. Therefore, the extension of the implementation date for one element of the new requirements of 10 CFR part 73 to November 30, 2011, would not have any significant environmental impacts.

The NRC staff's safety evaluation will be provided in the exemption that will

be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the existing implementation deadline of December 15, 2010, for one remaining item of the three requirements, as granted on February 24, 2010. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for HNP, Unit 1, NUREG–0972, dated October 31, 1983, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Shearon Harris Nuclear Power Plant, Unit 1—Final Report (NUREG–1437, Supplement 33)."

Agencies and Persons Consulted

In accordance with its stated policy, on December 2, 2010, the NRC staff consulted with the North Carolina State official, *lee.cox@ncdenr.gov* of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human 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 20, 2010. Portions of the September 20, 2010, submittal contain security-related information and, accordingly, a redacted version of this letter is available for public review in the Agencywide Documents Access and Management System (ADAMS), Accession No. ML102650191. This document 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 O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. 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 send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of December, 2010.

For the Nuclear Regulatory Commission.

Farideh E. Saba,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–31326 Filed 12–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; NRC–2008–0672]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 2 and 3; Notice of Availability of the Final Supplement 38 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a final plant-specific supplement to the *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (GEIS), NUREG–1437, regarding the renewal of Operating Licenses DPR–26 and DPR–64 for an additional 20 years of operation for Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3). The IP2 and IP3 site is located approximately 24 miles north of New York, NY. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

As discussed in Section 9.3 of the final supplement, the staff determined that the adverse environmental impacts of license renewal for IP2 and IP3 are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by Entergy Nuclear Operations, Inc.; (3) consultation with Federal, State, local, and tribal agencies; (4) the staff's own independent review; and (5) consideration of public comments received during the scoping process and on the draft Supplemental Environmental Impact Statement.

The final Supplement 38 to the GEIS is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://www.nrc.gov/reading-rm/adams.html.* The accession numbers for the final Supplement 38 to the GEIS are ML103350405 (Volume 1), ML103350438, ML103360209, ML103360212 (Volume 2), and ML103350442 (Volume 3). Persons who do not have access to ADAMS or who encounter problems while accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail at *pdr.resource@nrc.gov.* In addition, the White Plains Public Library (White Plains, NY), Hendrick Hudson Free Library (Montrose, NY), and the Field Library (Peekskill, NY), have all agreed to make the final supplement available for public inspection.

For Further Information, Contact: Mr. Andrew Stuyvenberg, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Stuyvenberg may be contacted by telephone at (800) 368–5642, extension 4006, or by e-mail at *andrew.stuyvenberg@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of December, 2010.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–31325 Filed 12–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Notice of Sunshine Act Meetings

DATE: Weeks of December 13, 20, 27, 2010, January 3, 10, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 13, 2010

Thursday, December 16, 2010—

2 p.m. Briefing on Construction Reactor Oversight Program (cROP) (Public Meeting). (Contact: Aida Rivera-Varona, 301–415–4001.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 20, 2010—Tentative

Tuesday, December 21, 2010—

9:30 a.m. Briefing on the Threat Environment Assessment (Closed—Ex. 1).

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

Week of December 27, 2010—Tentative

There are no meetings scheduled for the week of December 27, 2010.

Week of January 3, 2011—Tentative

There are no meetings scheduled for the week of January 3, 2011.

Week of January 10, 2011—Tentative

Tuesday, January 11, 2011—

9:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of January 17, 2011—Tentative

There are no meetings scheduled for the week of January 17, 2011.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: December 9, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–31463 Filed 12–10–10; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Office of Administrative Services; Mandatory Declassification Review Address

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice.

SUMMARY: Pursuant to Executive Order 13526 and 32 CFR parts 2001 and 2003 section 2001.33, this notice provides the Overseas Private Investment Corporation address to which written Mandatory Declassification Review (MDR) requests may be sent. This notice benefits the public in advising them where to send such requests for declassification review. MDR is a mechanism provided in Executive Order 13526 whereby an individual may request the declassification review of specific classified material that (s)he is able to identify so that the agency may retrieve it with reasonable effort.

SUPPLEMENTARY INFORMATION: It is the policy of OPIC to act in matters relating to national security information in accordance with Executive Order 13526 and directives issued there-under by the Information Security Oversight Office (ISOO). OPIC does not have the authority to classify national security information. Documents that are originally classified outside of OPIC must be sent to that respective agency to be reviewed for declassification. Requests for classified information in OPIC's custody are forwarded to the classifying agency for review.

Related Information: For more information on Executive Order 13526 and the U.S. Government's directives on classification, declassification, marking, and safeguarding of classified information, please refer to the following:

—Information Security Oversight Office (National Archives and Records Administration)

—**Federal Register** Notice 75 FR 707, "Classified National Security Information" (January 5, 2010)

—**Federal Register** Notice 75 FR 37254, "32 CFR Parts 2001 and 2003 Classified National Security Information"

Where To File a Request for MDR:

MDR requests must be sent in writing to the following address or facsimile:

Overseas Private Investment Corporation, Ms. Lena Paulsen, Director, Security & Administrative Services, Security and Administrative Services, 1100 New York Ave., NW., Washington, DC 20527, *Telephone:* 202–336–8565.

FAX: 202–408–9859.

E-mail: lena.paulsen@opic.gov.

How To Request MDR

The request should specifically mention MRD under E.O. 13526. The request must identify the document or information to be reviewed with as much specificity as possible. MDRs should be filed only for the declassification and release of information known to be classified.

Dated: December 9, 2010.

Connie M. Downs,

Corporate Secretary.

[FR Doc. 2010–31315 Filed 12–13–10; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice; correction.

SUMMARY: The Postal Regulatory Commission published a document in the **Federal Register** of November 30, 2010 concerning an appeal of the closing of the Graves Mill, Virginia post office. The procedural schedule that appeared after ordering paragraph number 5 contained two incorrect entries. This document corrects those entries.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6824 or *stephen.sharfman@prc.gov.*

Correction

In the **Federal Register** of November 30, 2010, in FR Doc. 2010–30075, on page 74109, in the table that appears following ordering paragraph number 5 in the third column of text, correct the Procedural Schedule by (i) deleting the entry for December 13, 2010 in the first column of the table in its entirety and deleting the corresponding description in the second column of the table; and (ii) with respect to the December 27, 2010 entry in the first column of the

table, deleting the corresponding entry in the second column of the table in its entirety and replacing it with the following description: Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).

Dated: December 9, 2010.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–31294 Filed 12–13–10; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29522; File No. 812–13839]

Nuveen Asset Management, et al.; Notice of Application

December 8, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Nuveen Asset Management ("NAM"), First American Strategy Funds, Inc. ("FASF"), First American Investment Funds, Inc. ("FAIF") and Nuveen Investments, LLC ("Nuveen Investments").

Filing Dates: The application was filed on November 5, 2010 and amended on December 7, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 28, 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; *Applicants:* NAM and Nuveen Investments, 333 West Wacker Drive, 32nd Floor, Chicago, Illinois, 60606; FASF and FAIF, 800 Nicollet Mall, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Dalia Osman Blass, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. FASF is organized as a Minnesota corporation and FAIF as a Maryland corporation, and each is registered under the Act as an open-end management investment company. NAM, a wholly owned subsidiary of Nuveen Investments, Inc., is organized as a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940. Nuveen Investments, a wholly owned subsidiary of Nuveen Investments, Inc., is organized as a Delaware limited liability company and is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended ("Exchange Act").

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof (i) that is advised by NAM or an entity controlling, controlled by, under common control with NAM (each, an "Advisor"), (ii) that is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act, (iii) that invests in other registered open-end management investment companies in reliance on section 12(d)(1)(G) of the Act, and (iv) that is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each a "Fund of Funds"), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1] Applicants also request that the order exempt any entity controlling, controlled by or under common control with NAM or Nuveen Investments that now or in the future acts as principal underwriter with respect to the transactions described in the application.[2]

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of directors will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not

[1] Under a prior order, the Commission granted relief to FASF, FAIF, FAF Advisors, Inc. ("FAF") and Quasar Distributors, LLC. to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments. First American Strategy Funds, Inc., *et al.,* Investment Company Act Release Nos. 28683 (Mar. 31, 2009) (notice) and 28715 (Apr. 28, 2009) (order) ("Existing Order"). On July 29, 2010, U.S. Bank National Association and its wholly-owned subsidiary, FAF, entered into an agreement to transfer identified assets associated with FAF's management of FASF and FAIF to NAM in exchange for cash and an ownership interest in NAM's and Nuveen Investments, Inc.'s parent company (the "Transaction"). As part of the Transaction, and subject to approval by the shareholders of FASF and FAIF, NAM will replace FAF as the investment adviser to FASF and FAIF. Applicants will not rely on the requested order until the closing of the Transaction. Once the requested order is issued and the Transaction is closed, applicants will cease to rely on the Existing Order.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with Rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31256 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63463; File No. SR–NYSEAmex-2010–109]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending Its Rules Regarding the Listing of Options Series With $1 Strike Prices

December 8, 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 November 24, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the listing of $1 strike prices. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, on the Commission's Web site at *http://www.sec.gov*, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 903 Commentary .06 to improve the operation of the $1 Strike Price Program.

Currently, the $1 Strike Price Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the Exchange was not able to add $32, $33, $34, $36, $37 or $38 strikes during the day.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Price Program may currently have $2.50 interval strike prices added that

are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange proposes to prohibit $2.50 interval strikes below $50 in all $1 Strike Price Program issues, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") Provisions in Rule 903A.[3] For instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long-term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from these changes to the $1 Strike Price Program.

2. *Statutory Basis*

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Price Program by providing a consistent application of strike price intervals for issues in the $1 Strike Price Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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 the 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–NYSEAmex–2010–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2010–109. 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

[3] Rule 903A codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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–NYSEAmex–2010–109 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31228 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63461; File No. SR–BX–2010–085]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

December 8, 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 December 2, 2010, NASDAQ OMX BX, Inc. (the "Exchange") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Supplementary Material to Chapter IV, Section 6 (Series of Options Contracts Open for Trading) and Chapter V, Section 3 (Days and Hours of Business) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to establish strike price intervals and trading hours for options on Index-Linked Securities. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, at the Commission's Public Reference Room, and on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the commencement of trading options on Index-Linked Securities on BOX, the Exchange is proposing to establish strike price intervals and trading hours for these products.

The Securities and Exchange Commission (the "Commission") has approved BOX's and other option exchanges' proposals to enable the listing and trading of options on Index-Linked Securities.[3] BOX has not commenced trading options on Index-Linked Securities to date. Trading in options on Index-Linked Securities has commenced on other exchanges following the Commission's approval of The Options Clearing Corporation's ("OCC") May 2010 supplement to the Options Disclosure Document ("ODD") that provides disclosure regarding options on Index-Linked Securities.[4]

$1 Strikes for Options on Index-Linked Securities

Prior to the commencement of trading on BOX of options on Index-Linked Securities that satisfy the criteria set forth in Chapter IV, Section 3(k) of the BOX Rules, the Exchange is proposing to establish that strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the proposed addition of Supplementary Material .01(c) to Chapter IV, Section 6 of the BOX Rules.

Without discounting the differences between exchange-traded funds ("ETFs") and Index-Linked Securities, BOX seeks to extend the trading conventions applicable to options on ETFs to options on Index-Linked Securities. BOX contends that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. BOX believes that $1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives. BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

Trading Hours for Options on Index-Linked Securities

Similar to the trading hours for ETF options, the Exchange proposes to amend Chapter V, Section 3(b) of the BOX Rules to provide that options on Index-Linked Securities may be traded on BOX until 4:15 p.m. each business day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of the Securities and Exchange Act of 1934 ("Exchange Act"), in general, and Section 6(b)(5) of the Exchange Act,[5] in particular, that an exchange has rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposal will lessen investor confusion by having strike price intervals and trading hours established prior to the commencement of trading on BOX of options on Index-Linked Securities.

[3] *See* Securities Exchange Act Release Nos. 58941 (Nov. 13, 2008), 73 FR 70392 (Nov. 20, 2008) (SR–BSE–2008–50); 58985 (Nov. 10, 2008), 73 FR 72538 (Nov. 28, 2008) (SR–ISE–2008–86); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR–CBOE–2008–64); and 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR–NYSEArca-2008–57).

[4] OCC previously received Commission approval to clear options based on Index-Linked Securities. *See* Securities Exchange Act Release No. 60872 (Oct. 23, 2009), 74 FR 55878 (Oct. 29, 2009) (SR–OCC–2009–14).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b-4(f)(6) thereunder.[7]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[8] Therefore, the Commission designates the proposal operative upon filing.[9]

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.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[8] *See* Securities and Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–085. 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–BX–2010–085 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31230 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63464; File No. SR–NYSEArca–2010–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the ETFS Asian Gold Trust

December 8, 2010.

On September 22, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] a proposed rule change to list and trade shares ("Shares") of the ETFS Asian Gold Trust ("Trust"). The proposed rule change was published in the **Federal Register** on November 12, 2010.[4] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade Shares pursuant to NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.

The Trust will issue Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations.[5]

The Exchange deems the Shares to be equity securities, which subjects the Shares to the Exchange's existing rules

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 63267 (November 8, 2010), 75 FR 69494 ("Notice").

[5] *See* the Registration Statement for the Trust on Form S–1, filed with the Commission on July 22, 2010 (No. 333–168277) ("Registration Statement"). The descriptions of the Trust, the Shares and the gold market contained in the Notice are based on the Registration Statement.

governing the trading of equity securities, and has represented that trading of the Shares on the Exchange, will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange also has represented that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Additional details regarding the Shares and Trust including, among other things, creations and redemptions of the Shares, the organization and structure of the Trust, custody of the Trust's holdings, Trust expenses, Trust termination events, the Singapore and London gold markets, the gold futures markets, and the gold markets generally, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.[6]

II. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change to list and trade the Shares is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[9] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. The Exchange states that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services as discussed below. For example, investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg.

In addition, the Trust's Web site will provide the following information: (1) An intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., Eastern Standard Time); and (2) the Creation Basket Deposit and net asset value ("NAV") of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (1) The mid-point of the bid-ask price[10] at the close of trading in relation to the NAV as of the time the NAV is calculated ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Shares as traded in the US market.

The Exchange will provide on its Web site *http://www.nyx.com* a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at or *http://www.thebulliondesk.com.*

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it will obtain a representation from the Trust that the NAV will be calculated daily and made available to all market participants at the same time.[11]

Following the initial 12-month period following commencement of trading, the Exchange will consider the suspension of trading in Shares or removing Shares from listing if, among other things: (1) The value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange; (2) the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (3) the IIV is no longer made available on at least a 15-second delayed basis.[12] Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. These may include: (1) The extent to which conditions in the underlying gold

[6] *See supra* notes 4 and 5.

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[10] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[11] *See* e-mail from Timothy J. Malinowski, Senior Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Steve Varholik, Special Counsel, Commission, dated December 1, 2010.

[12] *See* NYSE Arca Equities Rule 8.201(e)(2).

markets have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[13]

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201(e).

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (d) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (e) trading information. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 45th day after publication of notice in the **Federal Register**. The Commission does not believe that the Exchange's proposal to list and trade the Shares presents any novel regulatory issues. The Commission has previously approved proposals by the Exchange to list and trade shares of similar trusts that hold gold bullion pursuant to NYSE Arca Equities Rule 8.201.[15] Additionally, the Commission has previously approved proposals to list and trade shares of trusts that hold other commodities such as platinum, palladium, and silver pursuant to NYSE Arca Equities Rule 8.201.[16]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2010–95) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31288 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* NYSE Arca Equities Rule 7.12.

[14] 15 U.S.C. 78s(b)(2).

[15] *See, e.g.,* Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[16] *See* Notice, *supra* note 4, 75 FR at 69495, nn. 5–11.

[17] 15 U.S.C.78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63471; File No. SR–NYSEArca–2010–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Its Fee Schedule

December 8, 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 December 1, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective on filing, the changes will become operative on December 1, 2010. The text of the proposed rule change is available at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and the Exchange's Web site at *http:www.nyse.com.*

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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 purpose of this filing is to amend the Schedule to cap transaction fees for Firm Proprietary trades executed in open outcry (manual trades) at $75,000 per month. The proposed cap will become operative on December 1, 2010.

The proposed fees will only apply to OTP Holder transactions marked with account origin code "F", and will not include Royalty Fees, which are pass-through fees whose purpose is to cover payments that must be made by the Exchange without respect to any cap, and Strategy Executions, which are subject to a separate daily cap. Execution of orders on behalf of Joint Back Office ("JBO") participants will not be included in the monthly cap on fees because the Exchange is unable to differentiate orders of a JBO participant from orders of its clearing broker-dealer, and is therefore unable to aggregate the JBO participant's orders.[3]

The proposed fee cap is similar to a monthly cap previously adopted by NASDAQ OMX PHLX, Inc. ("PHLX") that is currently applicable to all firm proprietary orders on that exchange, and which also excludes orders of JBO participants. In a rule filing last year, PHLX increased that cap to $75,000 per month per firm, which is the same level as the Exchange's proposed cap.[4]

The Exchange believes the proposed cap on Firm transaction fees will help attract participants to direct proprietary orders for execution on the Trading Floor of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed change to the Schedule is part of the Exchange's continued effort to attract and enhance participation on the Exchange by offering competitive rates for certain transactions on the Exchange. The proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated OTP Holders. The Exchange also believes that the proposed monthly fee cap is equitable, even though it is not available to JBO participants, because the Exchange intends to compete for non-JBO firm business with the CBOE, which excludes JBO participants from its sliding scale for the same reason as the Exchange, which is that each is unable to identify these orders from a billing standpoint to bill them correctly.[7]

In addition, the Exchange believes that the proposed monthly fee cap, which applies only to manual Firm Proprietary trades, is not unfairly discriminatory to other market participants because its purpose is to attract large block order flow to the floor of the Exchange where such orders can be better handled in comparison with electronic orders that are not negotiable. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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–NYSEArca–2010–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–108. 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–

[3] The proposed exclusion of JBO volumes from the $75,000 cap is similar to the provision in footnote 11 of the Chicago Board Options Exchange's rate schedule that excludes JBO participants from participating in the benefits associated with certain sliding scale rates.

[4] *See* Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (File No. SR–PHLX–2009–12).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See supra* note 4 [sic].

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

NYSEArca–2010–108 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31289 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63476; File No. SR–NYSEARCA–2010–109]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Re-establishing and Extending the Exchange's Pilot Program Relating to Cabinet Trades Until June 1, 2011

December 8, 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 December 2, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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

The Exchange proposes to re-establish and extend its program that allows transactions to take place at a price that is below $1 per option contract until June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to re-establish the Pilot Program [3] under Rule 6.80 to allow accommodation transactions ("Cabinet Trades") to take place at a price that is below $1 per option contract, and to extend the program to June 1, 2011. The Exchange proposes to extend the program to the same date as The Chicago Board Options Exchange ("CBOE").[4] The Pilot Program expired on July 1, 2010.

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.80 Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange temporarily amended the procedures through July 1, 2010 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower priced transactions were permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions were only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures were also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believed (and continues to believe) that allowing a price of at least $0 but less than $1 would better accommodate the closing of options positions in series that were worthless or not actively traded, particularly due to recent market conditions which had resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (*e.g.,* the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.80, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions will be exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.67 Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

The Pilot Program lapsed on July 1, 2010. The Exchange is proposing to reinstate the Program at this time to be in place for end-of-year liquidations. During the period from July 1 to date, no sub-penny cabinet trades were executed on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61727 (March 17, 2010), 75 FR 14217 (March 24, 2010) (SR–NYSEArca–2010–13).

[4] *See* Securities Exchange Act Release No. 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010) (SR–CBOE–2010–052).

[5] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the instant rule change would allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures would be made available for all classes, including those classes participating in the Penny Pilot Program.

6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the request. The Commission notes that the proposal is nearly identical to the rules of another exchange.[11] Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.[12]

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.[13]

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–NYSEARCA–2010–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–109. 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 identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–109 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31329 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6) provides that the self-regulatory organization must provide the Commission 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. The Exchange has satisfied this requirement.

[11] *See* CBOE Rule 6.54, Interpretations and Policies .03.

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63469; File No. SR–ISE–2010–113]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow Fees

December 8, 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 November 30, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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 ISE is proposing to amend its payment for order flow program. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

office of the Exchange, 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE currently has a payment-for-order-flow ("PFOF") program pursuant to which the Exchange charges a PFOF fee of $0.65 per contract for all options classes that are not in the penny pilot program and are not subject to the Exchange's maker/taker fees. For penny pilot classes, the Exchange charges a PFOF fee of $0.25 per contract. The Exchange's PFOF fee currently does not apply to market makers executing a Public Customer Order in the Exchange's Price Improvement Mechanism ("PIM"). For competitive reasons, the Exchange now proposes to apply its PFOF fee for Public Customer Orders executed in the Exchange's PIM. As a result of this change, ISE will be more competitive with the PFOF fee that at least one other options exchange [3] assesses for these types of orders. This proposed fee change will also allow ISE market makers to better compete for order flow.

The Exchange has designated this proposal to be operative on December 1, 2010.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will allow the Exchange and its market makers to better compete for order flow and thus enhance competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [4] and Rule 19b–4(f)(2) thereunder [5] because it establishes a due, fee, or other charge imposed on its members by ISE. 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–ISE–2010–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–113. 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,[6] 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–ISE–2010–113 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31328 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

[3] For example, the Chicago Board Options Exchange, Inc. ("CBOE") currently charges a marketing fee of up to $0.65 per contract for customer orders executed in its Automated Improvement Mechanism. *See* CBOE Fees Schedule dated October 29, 2010.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63475; File No. SR–NYSEAMEX–2010–114]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reestablishing a Pilot Program Relating to Cabinet Trades Until June 1, 2011

December 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on December 2, 2010, NYSE Amex LLC ("Exchange" or "NYSE Amex") 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

The Exchange proposes to establish and extend its program that allows transactions to take place at a price that is below $1 per option contract until June 1, 201 [*sic*]. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to re-establish the Pilot Program [3] under Rule 968NY to allow accommodation transactions ("Cabinet Trades") to take place at a price that is below $1 per option contract, and to extend the program to June 1, 2011. The Exchange proposes to extend the program to the same date as The Chicago Board Options Exchange ("CBOE").[4] The Pilot Program expired on July 1, 2010.

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 968NY Cabinet Trades (Accommodation Transactions), which sets forth specific procedures for engaging in cabinet trades. Rule 968NY currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange temporarily amended the procedures through July 1, 2010 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower priced transactions were permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions were only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures were also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believed (and continues to believe) that allowing a price of at least $0 but less than $1 would better accommodate the closing of options positions in series that were worthless or not actively traded, particularly due to recent market conditions which had resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 968NY, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 968NY, the transactions will be exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 955NY. Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

The Pilot Program lapsed on July 1, 2010. The Exchange is proposing to reinstate the Program at this time to be in place for end-of-year liquidations. During the period from July 1 to date, no sub-penny cabinet trades were executed on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release No. 61726 (March 17, 2010), 75 FR 14234 (March 24, 2010) (SR–NYSE Amex–2010–21).

[4] *See* Securities Exchange Act Release No. 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010) (SR–CBOE–2010–052).

[5] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the instant rule change would allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures would be made available for all classes, including those classes participating in the Penny Pilot Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder [9] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission hereby grants the request. The Commission notes that the proposal is nearly identical to the rules of another exchange.[11] Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.[12]

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.[13]

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–NYSEAmex–2010–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–114. 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 identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–114 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31290 Filed 12–13–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In addition, Rule 19b–4(f)(6) provides that the Exchange must provide the Commission 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. The Exchange has satisfied this requirement.

[11] *See* CBOE Rule 6.54, Interpretations and Policies .03.

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Information Security Task Force

AGENCY: U.S. Small Business Administration.

ACTION: Notice of meeting minutes.

SUMMARY: The SBA is issuing this notice to publish meeting minutes for the Small Business Information Security Task Force Meeting.

DATES: 1 p.m., Wednesday, November 10, 2010.

ADDRESSES: The meeting was held via teleconference.

SUPPLEMENTARY INFORMATION: Pursuant to section 507(i)(4)(A) of the Credit Card Accountability Responsibility and Disclosure Act of 2009, SBA submits the meeting minutes for the second meeting of the Small Business Information Security Task Force. Chairman Rusty Pickens called the meeting to order on November 10, 2010 at 1 p.m. Roll call was taken and a quorum was established. An overview of the last meeting was provided. Introductions were provided for Dr. Babita Gupta, and Katherine White, both of whom were unable to attend the first meeting. Dr. Gupta and Ms. White then each provided a brief overview to the group.

Ms. Frances Henderson provided that the focus for today is on what resources the group will need going forward in terms of personnel, systems, and software as there will be lots of material to collate before being able to produce a final report. Input to define tasks and how to keep the group on schedule were sought. It was indicated the work plan will continue to be developed.

Mr. Pickens recapped the Task Force scope of work and asked everyone to keep the charter readily available and to review Section 507 of the authorizing law as it provides the requirements for the work the Task Force has been directed to complete. The focus is to examine resources available nationwide for small business on privacy and technology concerns and then collate the data. A gap analysis then needs to be performed to determine how effective the programs are and provide a report to the Administrator with recommendations of what can be done to improve on them. The Task Force has until the end of 2013 to complete the report but it is hoped that the work could be completed sooner. It was also clarified that there is no authorization for the Task Force to establish any new programs; the Task Force has only been directed to report to the Administrator their recommendations.

A discussion was held on possible methodology for research and gap analysis. Solicitations on how to organize the gathered data and compile lists was sought. It was stated that it is important that topics don't get missed during the first pass of data sorting. To help with this work, Mr. Michael Mitchell volunteered to be a liaison to the PCI Standards organization. He stated that they have a small business section with lots of potentially valuable information and would be happy to work with them on behalf of the Task Force to gather information from them.

The discussion evolved into the need for resources and a software tool to capture, store, and list all of the gathered data. This discussion highlighted the need for qualitative caveats, as the amount of information such as certification and training resources could be enormous. The issue of funding and licenses for the purpose of this project was discussed. A question on Task Force funding was asked. Mr. Pickens stated that an appropriation of finances was included within the authorizing law to support the Task Force. Mr. Pickens agreed to consult the appropriate parties to determine if it was indeed allocated.

During the open floor portion of the meeting, Mr. Terry Erdle volunteered to interface on behalf of CompTIA to the list of Trade Associations, as CompTIA functions both as a certifying body and a Trade Association for the computing technology industry itself. Mr. Aaron Berstein then volunteered to contact Microsoft to inquire into the possibility of Microsoft providing an online collaborative space software tool for use. Additionally, Dr. Babita Gupta volunteered to look at resources within the nonprofit and academia sectors for available research that would be helpful to the Task Force.

At the conclusion of the meeting, everyone was instructed to take away the draft work plan handout as a starting point for brainstorming how to handle the task of gathering, sorting, and reporting back on the data. Responses on the document were requested to be provided to Mr. Pickens by Friday, December 3, 2010, who will then consolidate them all into a single document for discussion at the next meeting.

The meeting was adjourned at 1:42 p.m.

FOR FURTHER INFORMATION CONTACT: Rusty Pickens, Special Consultant to the Office of the CIO, U.S. Small Business Administration, *Rusty.Pickens@sba.gov.*

Paul T. Christy,

SBA Chief Information Officer.

[FR Doc. 2010–31324 Filed 12–13–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Patriot Express Pilot Loan Initiative

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of extension of the Patriot Express Pilot Loan Initiative.

SUMMARY: This notice extends the Patriot Express Pilot Loan Initiative in its current form through December 31, 2013. This pilot initiative, established in 2007, was designed to increase lending to small businesses owned by members of the military community. It is based on the SBA Express model which uses streamlined documentation but provides a higher SBA guaranty of 85 percent for loans of $150,000 or less and 75 percent for loans greater than $150,000 up to $500,000.

DATES: The Patriot Express Pilot Loan Initiative is extended through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490; *grady.hedgespeth@sba.gov.*

SUPPLEMENTARY INFORMATION: The Patriot Express Pilot Loan Initiative was established in 2007 and was based on the Agency's SBA Express Program. Lenders approved for participation in Patriot Express are authorized to use the expedited loan processing procedures in place for SBA Express, in order to specifically support lending to small businesses owned by eligible members of the military community. To encourage lenders to make these loans, SBA provides its full 75–85 percent guaranty, rather than the 50 percent guaranty the Agency provides under SBA Express. Also, the maximum loan amount under this pilot initiative is $500,000.

On June 22, 2007, SBA published a notice in the **Federal Register** announcing the program. (72 FR 34501) Since the program was implemented, more than 6,800 Patriot Express loans have been approved. SBA believes it is premature to assess the results of this pilot initiative at this time because most of the loans in this pilot were made in the last two years and there has not been sufficient time to measure their performance. An extension of this pilot for an additional three years will allow SBA time to better evaluate the results of the program and determine whether changes need to be made.

Authority: 15 U.S.C. 636(a)(25); 13 CFR 120.3.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. 2010–31323 Filed 12–13–10; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7266]

30-Day Notice of Proposed Information Collection: DS–160, Online Application for Nonimmigrant Visa, OMB 1405–0182

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Online Application for Nonimmigrant Visa.
- *OMB Control Number:* 1405–0182.
- *Type of Request:* Revision.
- *Originating Office:* Bureau of Consular Affairs, Visa Services (CA/VO).
- *Form Number:* DS–160.
- *Respondents:* All nonimmigrant visa applicants.
- *Estimated Number of Respondents:* 6.5 million.
- *Estimated Number of Responses:* 6.5 million.
- *Average Hours Per Response:* 75 minutes.
- *Total Estimated Burden:* 8,125,000 hours.
- *Frequency:* Once per visa application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from December 14, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number,

information collection title, and OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stefanie Claus, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The Nonimmigrant Visa Electronic Application (DS–160) will be used to collect biographical and other information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. This collection combines questions from current information collections DS–156 (Nonimmigrant Visa Application), DS–157 (Nonimmigrant Supplemental Visa Application), and the DS–158 (Contact Information and Work History Application).

Methodology

The DS–160 will be submitted electronically to the Department via the Internet. The applicant will be instructed to print a confirmation page containing a bar-coded record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: December 1, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–31353 Filed 12–13–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 7265]

60–Day Notice of Proposed Information Collection: Forms DS–2053, DS–2054; Medical Examination for Immigrant or Refugee Applicant; DS–3024, DS–3030, Chest X–Ray and Classification Worksheet; DS–3025, Vaccination Documentation Worksheet; DS–3026; Medical History and Physical Examination Worksheet; OMB Control Number 1405–0113

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Electronic Medical Examination for Immigrant or Refugee Applicant.

• *OMB Control Number:* 1405–0113.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).

• *Form Numbers:* DS–2053, DS–2054, DS–3024, DS–3025, DS–3026, and DS–3030.

• *Respondents:* Immigrant visa and refugee applicants.

• *Estimated Number of Respondents:* 630,000 per year.

• *Estimated Number of Responses:* 630,000 per year.

• *Average Hours Per Response:* 1 hour.

• *Total Estimated Burden:* 630,000 hours annually.

• *Frequency:* Once per application.

• *Obligation to Respond:* Required to Obtain Benefit.

DATE(S): The Department will accept comments from the public up to 60 days from December 14, 2010.

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

• *E-mail: claussr@state.gov.*

• *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—OMB 1405–0113 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.

• *Fax:* (202) 663–3898.

You must include the DS form number(s) (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

INA Section 221(d) requires that prior to the issuance of an immigrant visa the applicant undergo a physical and mental examination. The results of the medical examination are used to determine the alien's eligibility for such a visa under INA 212(a)(1). INA Section 412(b)(4)(B) requires that the United States Government "provide for the identification of refugees who have been determined to have medical conditions affecting the public health and requiring treatment." Form DS–2053, Medical Examination for Immigrant or Refugee Applicant (1991 Technical Instructions); Form DS–2054, Medical Examination for Immigrant or Refugee Applicant (2007 Technical Instructions); Form DS–3024, Chest X–Ray and Classification Worksheet (1991 Technical Instructions); Form DS–3030, Chest X–Ray and Classification Worksheet (2007 Technical Instructions); Form DS–3025, Vaccination Documentation Worksheet; Form DS–3026, Medical History and Physical Examination Worksheet, are designed to record the results of the medical examination. The panel physician performs the medical examination of the applicant and completes the forms. Medical exams may also be required occasionally for nonimmigrant visa applicants.

Methodology

The electronic medical forms will be submitted electronically to the Department. Doctors who submit the

medical information electronically will no longer submit paper-based forms to the Department. It is the intention of the Department to discontinue the paper versions as this electronic submission option is made available to all panel physicians worldwide.

At posts that continue in the short term to use the paper version of the medical forms, panel physicians will keep copies of the form at their offices. The completed forms are then submitted in hard copy to the consular officer for processing.

Dated: November 29, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–31355 Filed 12–13–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2010–0290]

2011 Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

Monday, November 29, 2010.

AGENCY: Office of the Secretary, DOT.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of their rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Caffin Gordon, Associate Director of Policy, Education, and Quality Control Division, S–35, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W78–312, Washington, DC 20590, 202–366–4648. You can also reach Caffin Gordon by e-mail at *caffin.gordon@dot.gov,* or else via TTY/TDD at (202) 366–8538.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online 24 hours a day 365 days a year through the Federal Document Management System (FDMS) at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the Web site. An electronic copy is also available for download from the Government Printing Office's Electronic Bulletin Board at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

No Fear Act Notice

On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws" (Pub. L. 107–174, Summary). In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination" (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the Agency to provide notice to all its Federal employees, former Federal employees, and applicants for Federal employment. This notice is to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex (including equal payment of wages and benefits, and pregnancy), national origin, age (40 and over), disability, marital status, or political affiliation. Discrimination under these bases is strictly prohibited by the following statutes: 5 U.S.C. 2302(b)(1) 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), and 29 U.S.C. 79142 U.S.C. 2000e–16.

If you believe you have been the victim of unlawful discrimination on the bases of race, color, religion, sex (including equal payment of wages and benefits, and pregnancy), national origin, age (40 and over), and/or disability you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action. In the case of a personnel action, you must contact the counselor within 45 calendar days of the effective date of the action to try and resolve the matter informally, before you can file a formal complaint of discrimination with your agency (*See, e.g.,* 29 CFR part 1614).

If you believe that you have been the victim of unlawful discrimination based on age, you must contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, an aggrieved individual may file a civil action in a United States District Court under the Age Discrimination in Employment Act (ADEA) against the head of an alleged discriminating agency after giving the Commission not less than 30 days notice of the intent to file such an action. File such notice in writing with the EEOC at P.O. Box 77960, Washington, DC 20013, or deliver the notice by personal/courier delivery or by facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you can file a complaint with the U.S. Office of Special Counsel (OSC) (See Contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available (*Contact Information:* Form OSC–11 is available to be filled out online at the OSC Web site (*http://www.osc.gov/index.htm*, under the filing tab). Alternatively, download the form from the same filing tab, under the OSC Forms tab, fill it out, and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218 Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at (800) 872–9855 for additional assistance.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or in the conduct of foreign affairs.

5 U.S.C. 2302(b)(8) prohibits retaliation against an employee or

applicant for making a protected disclosure. If you believe you have been the victim of whistleblower retaliation, you have the right to file a written complaint with the U.S. Office of Special Counsel's Complaints Examining Unit (OSC Form 11, Complaint of Prohibited Personnel Practice), at 1730 M Street NW., Suite 218, Washington, DC 20036–4505. OSC Form 11 can be downloaded from the OSC Web site at *http://www.osc.gov* (from under the filing tab), or you may contact the Complaints Examining Unit (CEU) at 1–800–872–9855 or the Disclosure Unit (DU) Hotline at 1–800–572–2249 directly.

In addition, you may also alert the OSC to possible wrongdoing in a Federal agency through a whistleblower disclosure form (OSC Form 12, Whistleblower Disclosure). An employee who believes he or she has suffered reprisal for whistleblowing may elect to file both OSC Form 11, to report reprisal, and OSC Form 12, to disclose the underlying wrongdoing.

The OSC does *not* have authority to investigate the disclosures that it receives. The law provides that OSC (a) refer protected disclosures that establish a substantial likelihood of wrongdoing to the appropriate agency head, and (b) require the agency head to conduct an investigation, and submit a written report on the findings of the investigation to the Special Counsel.

If OSC finds no substantial likelihood that the information discloses one or more of the categories of wrongdoing, the Special Counsel must: (a) Inform the whistleblower of the reasons why the disclosure may not be acted on further; and (b) direct the whistleblower to other offices available for receiving disclosures.

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, according to 5 U.S.C. 1214(f) agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a Federal employee, or to violate the procedural rights of a Federal employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (*e.g.,* EEO/civil rights offices, human resources offices, or legal offices). Additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws are located on the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued in Washington, DC, on November 29, 2010.

Camille Hazeur,

Director, Departmental Office of Civil Rights, United States Department of Transportation.

[FR Doc. 2010–31311 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From Federal Obligations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 2.71 acres at the Orlando Executive Airport, Orlando, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Orlando, dated September 30, 1955. The release of property will allow the Greater Orlando Aviation Authority to dispose of the property for other than aeronautical purposes. The property is located adjacent to Crystal Lake Drive in Orange County, Florida. The parcel is currently designated as non-aeronautical use. The property will be released of its federal obligations to swap the land for another City-owned parcel. The 1.71 acre parcels to be acquired is also located adjacent to Crystal Lake Drive in Orange County, Florida. This parcel is adjacent to airport property. The fair market value of the airport-obligated parcels has been determined by appraisal to be 1,843,400. The fair market value of the non-obligated parcels has been determined by appraisal to be 2,155,110.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the offices of the Greater Orlando Aviation Authority at Orlando International Airport, and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before January 13, 2011.

ADDRESSES: Documents are available for review at the the offices of the Greater Orlando Aviation Authority at Orlando International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

Issued in Orlando, Florida on December 2, 2010.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2010–31179 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From Federal Obligations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties on 23.45 acres at the Orlando International Airport, Orlando, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the United States Government and the City of Orlando, dated September 28, 2000. The release of property will allow the Greater Orlando Aviation Authority to dispose of the property for other than aeronautical purposes. The property is located on the northwest portion of airport property, near the corner of Avenue C and Binnacle Way in Orange County, Florida. The parcel is currently designated as non-aeronautical use. The property will be released of its Federal obligations to swap the land for another City-owned parcel. The 12.3 acre parcel to be acquired is located at the corner of Daetwyler Drive and Jetport Drive in Orange County, Florida. The fair market value of the Binnacle Way parcels has been determined by appraisal to be $3,115,900. The fair market value of the Jetport Drive parcel has been determined by appraisal to be $3,215,000.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Orlando International Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before *January 13, 2011.*

ADDRESSES: Documents are available for review at the Palm Beach International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

Issued in Orlando, Florida, on December 2, 2010.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2010–31176 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0378]

Agency Information Collection Activities; Revision of a Currently Approved Information Collection Request: Accident Recordkeeping Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise and extend an ICR entitled, "*Accident Recordkeeping Requirements.*" The collection is necessary for FMCSA to assess the effectiveness of the safety management controls of motor carriers. On September 9, 2010, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comment was received.

DATES: Please send your comments by January 13, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0378. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Accident Recordkeeping Requirements.

OMB Control Number: 2126–0009.

Type of Request: Revision of a currently-approved information collection.

Respondents: Motor carriers engaged in interstate commerce.

Estimated Number of Respondents: 500,000.

Estimated Number of Responses: 75,000.

Estimated Time per Response: 18 minutes.

Expiration Date: February 28, 2011.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 22,500 hours.

Improved FMCSA accident data provides a more accurate estimate of the total responses to this information collection each year: 75,000. The Agency's previous estimate was 106,800 responses. FMCSA retains its prior estimate that a motor carrier requires approximately 18 minutes, on average, to complete the tasks necessary to comply with § 390.15, *i.e.,* collecting the required information about the accident, entering it into the Accident Register and maintaining it and other documents required by § 390.15. Therefore, the annual burden hours for all motor carriers is 22,500 hours (rounded) (75,000 responses x 18 minutes each divided by 60 minutes per hour).

Background: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each IC they conduct, sponsor, or require through regulations. FMCSA has determined that it needs to revise the currently-approved estimate for OMB Control No. 2126–0009, "Accident Recordkeeping Requirements." The regulation underlying this ICR is 49 CFR 390.15, "Assistance in investigations and special studies." It requires motor carriers to make all records and information pertaining to specified accidents available to an authorized representative or special agent of the FMCSA upon request, or as part of an inquiry.

Interstate motor carriers are required to maintain an Accident Register consisting of specified information about each accident involving their commercial motor vehicles. The information for each accident must include, at a minimum, the following elements: Date of accident, city or town in which or most near where the accident occurred, the State in which the accident occurred, driver name, number of injuries, number of fatalities, and whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicles involved in the accident, were released. In addition, the register must contain copies of all accident reports required by State or other governmental entities or insurers. Motor carriers must maintain the required information in the Accident Register for 3 years after the date of the accident.

This ICR strengthens FMCSA's ability to assess motor carrier safety performance. These assessments enable FMCSA to direct its enforcement resources to the motor carriers with the weakest safety records, helping those carriers prevent accidents and reduce their severity.

On February 8, 2008, OMB approved FMCSA's estimate for this ICR of 32,040 annual burden hours and established an expiration date for this ICR of February 28, 2011. Today, FMCSA announces its plan to request that OMB approve revision of this estimate to 22,500 annual burden hours.

Definitions: Each of these definitions can be found at 49 CFR 390.5: "Motor carrier": Any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it. "Commercial motor vehicle": A self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds, whichever is greater; or (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103. "Accident": an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (i) A fatality; (ii) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident; or (iii) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle. The term "accident" does not include: (i) An occurrence involving only boarding or alighting from a stationary motor vehicle or (ii) an occurrence involving only the loading or unloading of cargo.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 30, 2010.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2010–31262 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0391]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to extend an existing ICR titled, "Transportation of Hazardous Materials, Highway Routing." The information reported by States and Indian tribes is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on their highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations. On September 13, 2010, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comment was received.

DATES: Please send your comments by January 13, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0391. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Bomgardner, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE, Washington, DC 20590. *Telephone:* 202–493–0027; *e-mail: paul.bomgardner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently-approved information collection.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas Islands and the U.S. Virgin Islands.

Estimated Number of Respondents: 51.

Estimated Time per Response: 15 minutes.

Expiration Date: March 31, 2011.

Frequency of Response: Annually.

Estimated Total Annual Burden: 13 hours [51 annual respondents × 1

response × 15 minutes per response/60 minutes per response = 12.75 hours, rounded to 13 hours].

Background: The data for the Transportation of Hazardous Materials; Highway Routing designations ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, "shall update and publish periodically a list of current effective hazardous materials highway route designations."

Under 49 CFR 397.73, the FMCSA Administrator has the authority to request that each State and Indian tribe, through its routing agency, provide information identifying hazardous materials designations within their jurisdictions. That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register**.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: December 5, 2010.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2010–31264 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0341]

Agency Information Collection Activities; Revision of an Approved Information Collection: Request for Revocation of Authority Granted

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This ICR notifies the FMCSA of when a motor carrier, freight forwarder, or property broker requests to amend or revoke its approved registration of authority. On August 24, 2010, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. Two comments in support of the ICR were received by the agency.

DATES: Please send your comments by January 13, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0341. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling, Customer Support Team Leader, Commercial Enforcement Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. *Telephone Number:* (202) 385–2412; *E-mail Address: tura.gatling@dot.gov.* Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for Revocation of Authority.

OMB Control Number: 2126–0018.

Type of Request: Revision of a currently-approved information collection.

Form Number: OCE–46.

Respondents: Motor carriers, freight forwarders and property brokers.

Estimated Number of Respondents: 3,700.

Estimated Time per Response: 15 minutes.

Expiration Date: February 28, 2011.

Form: OCE–46.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 925 hours [3,700 annual Form OCE–46 filers × 15 minutes/60 minutes per filing = 925].

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation (Secretary) to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface transportation freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904).

Under 49 U.S.C. 13905(c), each registration is effective from the date specified. Section 13905(d) grants the Secretary the authority to amend or revoke a registration at the registrant's request. On complaint, or on the Secretary's own initiative, the Secretary may also suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with the regulations, an order of the Secretary, or a condition of its registration.

Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration authority in whole or in part. FMCSA uses the form to seek information concerning the registrant's docket number, name and address, and the reasons for the revocation request. This ICR is being revised due to an increase in the estimated number of annual respondents from 3,250 to 3,700 along with a new notarization fee.

Public Comments Invited: You are asked to comment on any aspect of this revised information collection request, including: (1) The necessity and usefulness of the information collection for FMCSA to meet its goal in reducing truck crashes; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 30, 2010.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2010–31266 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2000–7165; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2008–0231; FMCSA–2008–0266]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 17 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on November 18, 2010 (75 FR 64396).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 17 renewal applications, FMCSA renews the Federal vision exemptions for Rick A. Benevides, Allen S. Bush, Delone W. Dudley, Irvin L. Eaddy. James W. Lappan, Jeromy W. Leatherman, Ernest B. Martin, Mark L. McWhorter, Raymond C. Miller, James G. Mitchell, Dennis E. Palmer, Jr., Sylvester Silver, James D. St. Peter, Kenneth C. Steele, Michael Sutton, John E. Rains, and Brian W. Whitmer.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: December 6, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31260 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0385]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 24 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before January 13, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0385 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 24 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Gary S. Alvarez

Mr. Alvarez, age 46, has had blunt contusion to his right eye with vision loss from optic atropy since 1985. The visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "It is my continued opinion that Mr. Alvarez has sufficient vision to perform the driving tasks required for commercial driving." Mr. Alvarez reported that he has driven straight trucks for 3½ years, accumulating 175,000 miles and tractor-trailer combinations for 5 years, accumulating 500,000 miles. He holds a Class A Commercial Driver's License (CDL) from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wayne D. Bost

Mr. Bost, 75, has had macular degeneration in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2010, his ophthalmologist noted, "I certify that in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bost reported that he has driven buses for 13 years, accumulating 357,500 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Brasher

Mr. Brasher, 58, has had prosthetic left eye due to an accident that happened 30 years ago. The corrected visual acuity in his right eye is 20/20 and in his left eye, no light perception. Following an examination in 2010, his optometrist noted, "In my opinion Mr. Brasher has sufficient vision to operate a commercial vehicle." Mr. Brasher reported that he has driven straight trucks for 37 years, accumulating 1.8 million miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows one crash, for which he was not cited and no convictions for moving violations in a CMV.

Marcus L. Conner

Mr. Conner, 52, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "This in no way in my medical opinion this limits his ability to operate safely a commercial vehicle." Mr. Conner reported that he has driven straight trucks for 12 years, accumulating 115,200 miles and tractor-trailer combinations for 1.8 years, accumulating 80,546 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joseph L. Dahlman

Mr. Dahlman, 29, has had refractive amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2010, his optometrist noted, "I am confident in certifying Joseph as having the vision skills necessary to have the ability to perform the driving tasks required to operate a commercial motor vehicle." Mr. Dahlman reported that he has driven straight trucks for 10½ years, accumulating 420,000 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brett K. Hasty

Mr. Hasty, 28, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his ophthalmologist noted, "My medical opinion is that Mr. Hasty has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hasty reported that he has driven straight trucks for 5¾ years, accumulating 8,625 miles. He holds a Class C operator's license from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frederick A. Irby

Mr. Irby, 61, has had a displaced pupil in his right eye since childhood. The best corrected visual acuity in his right eye is light perception only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I feel Mr. Irby has sufficient vision to drive a commercial vehicle as in the past 30 years." Mr. Irby reported that he has driven straight trucks for 40 years, accumulating 192,000 miles and tractor-trailer combinations for 37 years, accumulating 414,400 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Matthew B. Lairamore

Mr. Lairamore, 29, has a retinal detachment in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "He has chronic, permanent vision loss in the right eye; however, he has adequate vision in the left eye, both central and peripheral to perform all needed tasks for operating a commercial vehicle." Mr. Lairamore reported that he has driven straight trucks for 9 years, accumulating 90,000 miles and tractor-trailer combinations for 9 years, accumulating 18,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Garry D. Layton

Mr. Layton, 50, has had strabismic amblyopia in his left eye since birth. The corrected visual acuity in his right eye is 20/20 and in his left eye, 20/100. Following an examination in 2010, his optometrist noted, "I certify that Garry Layton, in my medical opinion, has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Layton reported that he has driven tractor-trailer combinations for 4 years, accumulating 260,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Boynton L. Manuel

Mr. Manuel, 67, has had a retinal detachment in his left eye due to an accident in 1985. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand motion only. Following an examination in 2010, his optometrist noted, "In my medical opinion Mr. Manuel has sufficient vision for driving a commercial vehicle." Mr. Manuel reported that he has driven straight trucks for 50 years, accumulating 910,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony W. Miller

Mr. Miller, 37, has had a misshapened pupil and a retinal detachment in his left eye since birth. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/200. Following an examination in 2010, his optometrist

noted, "In my medical opinion, Anthony possesses adequate corrected vision to safely perform his commercial driving." Mr. Miller reported that he has driven straight trucks for 12 years, accumulating 624,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley G. Moore

Mr. Moore, 62, has had aphakia in his left eye since childhood due to trauma. The visual acuity in his right eye is 20/20 and in his left eye, light perception only. Following an examination in 2010, his optometrist noted, "In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Moore reported that he has driven straight trucks for 5 years, accumulating 100,000 miles and tractor-trailer combinations for 32 years, accumulating 3.2 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 10 mph.

Rocky Moorhead

Mr. Moorhead, 52, has had complete loss of vision in his right eye since childhood due to trauma. The best corrected visual acuity in his right eye is no light perception and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, Rocky has sufficient vision in his left eye to operate a commercial vehicle." Mr. Moorhead reported that he has driven straight trucks for 25 years, accumulating 875,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary J. Peterson

Mr. Peterson, 62, has had a prosthetic right eye since 1982. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion Mr. Peterson has sufficient vision to perform the driving tasks required to operate a commercial vehicle as he has been doing with one eye since 1982." Mr. Peterson reported that he has driven straight trucks for 45 years, accumulating 1.8 million miles and tractor-trailer combinations for 45 years, accumulating 1.8 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bernard J. Phillips

Mr. Phillips, 67, has had longstanding corneal scar in his left eye due to an injury 45 years ago. The corrected visual acuity in his right eye is 20/20 and in his left eye, 20/80. Following an examination in 2010, his optometrist noted, "In my opinion he has sufficient central and peripheral vision to continue to safely perform the tasks needed to operate a commercial vehicle." Mr. Phillips reported that he has driven tractor-trailer combinations for 43 years, accumulating 5.3 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 14 mph.

Michael J. Roberts

Mr. Roberts, 32, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Based upon my examination and his visual result tests, in my opinion, Mike has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Roberts reported that he has driven straight trucks for 15 years, accumulating 750,000 miles and tractor-trailer combinations for 6 years, accumulating 270,000 miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Alvaro F. Rodriguez

Mr. Rodriguez, 48, has had complete loss of vision in his left eye since childhood. The visual acuity in his right eye is 20/25 and in his left eye, light perception only. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Rodriquez reported that he has driven straight trucks for 9 years, accumulating 540,000 miles and tractor-trailer combinations for 9 months, accumulating 120,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bobby W. Sawyers

Mr. Sawyers, 55, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "It is my medical opinion that he has sufficient vision to operate a commercial vehicle." Mr. Sawyers reported that he has driven straight trucks for 10 years, accumulating 560,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lynn R. Schraeder

Mr. Schraeder, 42, has had a prosthetic left eye since birth. The visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "Patient has sufficient vision to perform driving tasks of commercial vehicle." Mr. Schraeder reported that he has driven tractor-trailer combinations for 26 years, accumulating 936,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John R. Shaver

Mr. Shaver, 57, has had traumatic neuropathy in his left eye since childhood due to an injury. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/5/200. Following an examination in 2010, his ophthalmologist noted, "Mr. Shaver has sufficient vision to perform driving tasks that is required to operate a commercial vehicle." Mr. Shaver reported that he has driven straight trucks for 41 years, accumulating 2.3 million miles. He holds a Class M operator's license from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Myron A. Smith

Mr. Smith, 57, has had complete loss of vision in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/20 and in his left eye, no light perception. Following an examination in 2010, his optometrist noted, "In my opinion, the patient's right eye is healthy, stable, and has adequate vision acuity and peripheral vision to operate a commercial vehicle." Mr. Smith reported that he has driven straight trucks for 40 years, accumulating 160,000 miles and tractor-trailer combinations for 2 years, accumulating 10,000 miles. He holds a Class D operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no

convictions for moving violations in a CMV.

Ricky L. Watts

Mr. Watts, 49, has had macular scarring in his left eye since 2002. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "He meets the requirements of the State of Florida to be able to drive safely, and I see no reason for him to have any visual hindrance to interstate commercial driving." Mr. Watts reported that he has driven tractor-trailer combinations for 24 years, accumulating 1.8 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows one crash, for which he was cited, and one conviction for a moving violation in a CMV; careless driving.

Cameron R. Whitford

Mr. Whitford, 50, has had a prosthetic right eye since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "Cameron Whitford in my opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Whitford reported that he has driven straight trucks for 6 years, accumulating 240,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Olen L. Williams, Jr.

Mr. Williams, 59, has had ischemic optic neuropathy in his left eye since 2003. The best corrected visual acuity in his right eye is 20/25 and in his left eye, count-finger vision. Following an examination in 2010, his optometrist noted, "In my opinion Mr. Williams has sufficient vision to operate any commercial motor vehicle safely and efficiently." Mr. Williams reported that he has driven tractor-trailer combinations for 34 years, accumulating 5.1 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and one conviction for a moving violation. He exceeded the speed limit by 10 mph.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business January 13, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: December 6, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31263 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 103 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 103 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 11 applicants lacked sufficient driving experience during the 3-year period prior to the date of their applications:

Tonny Bailey
Charles J. Dawber
Richard C. Dickinson
Harold L. Elders
Randall S. Grauer
Darrell A. Harmon
Thomas W. Keel, Jr.
Jay Rider
Wesley A. Roberson
David M. Taylor
David M. Wcisel

The following 7 applicants had no experience operating a CMV:

Floyd Aldridge
Stanly J. Baumann
Janie Burford
William Chisley
William Cusano
Shelby B. Richardson
Keith M.Vanderhyde

The following 24 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Dwight D. Andersen
William M. Bell
Barry Bunker
John P. Chuda
David L. Ellis
Darrel E. Graumann
Ronald Hutchins
James Jaramillo
Kenneth P. Littlefield
Ricardo A. Montano
George Edward Mulherrin III
Mark Paugh
James Perusse
Larry Robins
Stanley W. Rowden
Clayton Slone
Michael R. Spieth
Troy M. Standifer
Alan D. Strain
Ronald R. Sumpter
George G. Ulferts, Jr.
Michael S. Westervelt
Michael P. Witkowski
Brian P. Wunn

The following 6 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Ronald C. Ashley
John E. Cahall
Anthony Chastain
Terrance J. Hurley
Allen L. Segotta
Kevin Weaver

The following 18 applicants did not have sufficient driving experience during the past 3 years under normal highway operating conditions:

Raymond W. Anderson
Andres Castanon, Jr.
Dickie R. Clough
Scott A. Cole
Richard W. Futrell
Carlos R. Galarza
Steve Garrett
Marc D. Groszkrueger
Darris Hardwidge
Shawn M. Hebert
Milan Jokic
Douglas Jones
Wayne A. LeClaire
Christopher J. McCulla
Darrell Rogers
Karl H. Strangfeld
Jacob E. Wadewitz
Stephen H. Ward

The following 3 applicants had more than 2 commercial motor vehicle violations during the application process. Each applicant is only allowed 2 moving citations:

Wesley M. Creamer
Gregory C. Simmons
Christopher J. Van Dyke

One applicant, William E. Woodhouse, has other medical conditions making him unqualified under Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13).

Two applicants, Shorty Ellis and Charles J. Kruggel, had commercial driver's license suspensions during the 3-year review period for moving violations. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, James F. Partin, did not have verifiable proof of commercial driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

The following 5 applicants were denied for miscellaneous/multiple reasons:

Samuel Golden
David W. Herbert
Matthew B. Lairamore
Gerald Lord
John Thomas White, Jr.

The following 16 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Anthony Benally
Larry D. Cooper
Sid L. Crumpton
Gerald Davis
Eric N. Fitzgerald
Larry D. Cooper
Craig R. Gross
Ray O. Howell
Ervin A. Kope
Fernando M. Magana
Ignacio V. Maldonado
Richard G. Myers
Gaylon Nelson
Brian J. Ruzalski
Travis Stroming
Todd M. Sucharda
Scott M. Tommen

One applicant, Thomas D. Laws, was issued a medical certificate for 3 months. Applicants with a medical certificate valid for less than 6 months do not meet the exemption program eligibility criteria.

The following 7 applicants drove interstate while restricted to intrastate driving:

John Gallagher
Derrick A. Hardy
John F. Murphy
Steven R. Parker
Jay L. Pendergas
Mohammad Suhail
Michael Watters

Finally, one applicant, Wilford Mendoza, will not be driving interstate, interstate commerce, or not required to carry a DOT medical card.

Issued on: December 6, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31267 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0386]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before January 13, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0386 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 17 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Richard B. Angus

Mr. Angus, age 55, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Angus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A operator's license from Wisconsin.

James T. Bezold

Mr. Bezold, 34, has had ITDM since 2003. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Bezold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

Allen C. Cornelius

Mr. Cornelius, 53, has had ITDM since age 9. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cornelius meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Delaware.

Eugene M. Johnson

Mr. Johnson, 58, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B Commercial Drivers License from New York.

Michael A. McHenry

Mr. McHenry, 52, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. McHenry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Steven L. Meredith

Mr. Meredith, 37, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Meredith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Gabriel Moreno

Mr. Moreno, 30, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Moreno meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Gregory S. Myers

Mr. Myers, 52, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Myers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Scott A. Newell

Mr. Newell, 50, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Newell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Richard D. Peterson

Mr. Peterson, 61, has had ITDM since approximately 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Peterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Rudolph Q. Redd

Mr. Redd, 49, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Redd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Chad A. Sanders

Mr. Sanders, 35, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sanders meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Mark A. Sawyer

Mr. Sawyer, 35, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sawyer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Isaac Singleton

Mr. Singleton, 55, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Singleton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Missouri.

Doris A. Tiberio

Ms. Tiberio, 42, has had ITDM since 2008. Her endocrinologist examined her in 2010 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of her diabetes using insulin; and is able to drive a CMV safely. Ms. Tiberio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2010 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from New York.

Gordon E. Toland

Mr. Toland, 69, has had ITDM since January 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Toland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Raymond M. Wallace, Jr.

Mr. Wallace, 49, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Wallace meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441) [1]. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: November 24, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31265 Filed 12–13–10; 8:45 am]

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2000–8203; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0266; FMCSA–2008–0292]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal

Motor Carrier Safety Regulations for 41 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 8, 2010. Comments must be received on or before January 13, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket FMCSA–1998–3637; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2000–8203; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0266; FMCSA–2008–0292, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 41 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 41 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Henry W. Adams
Timothy S. Ballard
Larry W. Barnes
Delbert R. Bays
Timothy D. Carle
Donald O. Clopton
Ronald W. Garner
Paul A. Gregerson
Benjamin P. Hall
Herman Hicks
Donald R. Hiltz
Nelson V. Jaramillo
Larry D. Johnson
Frank L. Langston
Bruce J. Lewis
John L. Lolley
Bruce T. Loughary
Kenny Y. Louie
Demetrio Lozano
Wayne R. Mantela
Kenneth D. May
Michael W. McCann
Carl M. McIntire
Tommy L. McKnight
Charles D. Messier
Duffy P. Metrejean, Jr.
Gordon L. Nathan
Bernice R. Parnell
Stephen P. Preslopsky
Kevin L. Quastad
Melinda V. Salas
Patrick W. Shea
Jayland R. Siebers
Christopher G. Strand
Charles R. Sylvester
Wade D. Taylor
David Vallier
Roy F. Varnado, Jr.
Michael J. Welle
Patricia A. White
Rick A. Young

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 41 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR

54519; 65 FR 20245; 65 FR 57230; 67 FR 57266; 69 FR 52741; 71 FR 66217; 73 FR 74565; 65 FR 33406; 69 FR 64810; 65 FR 45817; 65 FR 77066; 67 FR 71610; 65 FR 77069; 69 FR 33997; 69 FR 61292; 71 FR 55820; 73 FR 65009; 69 FR 53493; 69 FR 62741; 71 FR 62147; 73 FR 60398; 69 FR 62742; 71 FR 62148; 73 FR 61925; 73 FR 35194; 73 FR 48273; 73 FR 38497; 73 FR 51689; 73 FR 63047; 73 FR 61922). Each of these 41 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 13, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 41 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 1, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31261 Filed 12–13–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2007–26653; FMCSA–2008–0231]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 9 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 3, 2011. Comments must be received on or before January 13, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2007–26653; FMCSA–2008–0231, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR

391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 9 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 9 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert W. Brown
David D. Bungori, Jr.
Robert Clarke
David R. Cox
John B. Gregory
Gary T. Hicks
Robert T. Hill
John C. McLaughlin
Larry D. Wedekind

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 9 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 20245; 65 FR 57230; 67 FR 71610; 69 FR 64810; 71 FR 66217; 73 FR 75806; 65 FR 45817; 65 FR 77066; 67 FR 71610; 69 FR 64810; 72 FR 184; 73 FR 75806; 67 FR 46016; 67 FR 57267; 69 FR 51346; 71 FR 50970; 73 FR 75806; 69 FR 53493; 69 FR 62742; 73 FR 75806; 72 FR 8417; 72 FR 36099; 67 FR 46016; 73 FR 46973; 73 FR 54888). Each of these 9 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 13, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 9 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 6, 2010.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2010–31259 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0328]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 14, 2010. The exemptions expire on December 14, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On October 15, 2010, FMCSA published a notice of receipt of Federal diabetes exemption applications from thirty-two individuals and requested comments from the public (75 FR 63536). The public comment period closed on November 15, 2010 and one comment was received.

FMCSA has evaluated the eligibility of the twenty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-seven applicants have had ITDM over a range of 1 to 21 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 15, 2010, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Richard Bruehl and Christopher Gary Chegas and were in favor of granting Federal diabetes exemptions to these individuals.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the twenty-seven exemption applications, FMCSA exempts, Juan C. Araoz Cespedes, William V. Barbrie, Kerry W. Blackwell, Mark S. Braddom, Mike G. Brambila, Matthew T. Brown, Richard G. Bruehl, John P. Catalano, Travis A. Chandler, Christopher G. Chegas, Gary J. Dionne, Thomas C. Donahue, Joseph G. Greatens, Marlin K. Johnson, George Long, Jr., Cary C. McAlister, Dennis P. Miller, Robert F. Minacapelli, Joe E. L. Radabaugh, Raul F. Sanchez, Enrique E. Santiago, Thomas A. Schmitt, Leo A. Schmitz, Ben D. Shelton, Jr., Marlon J. Vanderheiden, Nestor P. Vargas, Jr., and Harold A. Wendt from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and

objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 1, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2010–31276 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted facility.

SUMMARY: Section 5334(h) of the Federal Transit Laws, as codified, 49 U.S.C. 5301, *et. seq.,* permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the City of Charlottesville (City) intends to transfer a facility and land located at 315 4th Street, NW., Charlottesville, Virginia to the Charlottesville Facilities Maintenance Division of Public Works. The facility and land sit within a secure Public Works Yard and any other acquiring agency would need access to use this property.

DATES: *Effective Date:* Any Federal agency interested in acquiring the facility must notify the FTA Region III office of its interest by January 7, 2011.

ADDRESSES: Interested parties should notify the Regional Office by writing to Letitia Thompson, Regional Administrator, Federal Transit Administration, 1760 Market Street, Suite 500, Philadelphia, PA, 19103.

FOR FURTHER INFORMATION CONTACT: Jay M. Fox, Regional Counsel, (215) 656–7258.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(h) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(1).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(h)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the facility further described below. Any Federal agency interested in acquiring the affected facility should promptly notify the FTA. If no Federal agency is interested in acquiring the existing facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(h)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The facility is a former bus operations and maintenance building situated on an approximately 41,245 square foot City-owned parcel, and is located at 315 4th Street, NW., in Charlottesville, Virginia. The building is within an area zoned M1 for light industrial use. The immediate area consists of residential, commercial and light industrial properties. The facility was previously used for transit bus operations and maintenance. The facility is a flex-type building which includes a front office and/or administration section and a large attached multi-purpose shop or warehouse rear section, for a total building coverage of approximately 8,000 square feet. The facility resides on a roughly triangular shaped parcel consisting of perimeter dimensions of 134 feet on its east side, 514 feet on its south side, 0 feet on its west side and 508 feet on its north side. The entire facility is contained within the fenced and secured City of Charlottesville Public Works Yard, and includes no street frontage. The north side of the facility is bounded by the Southern Railway embankment and it is slightly inclined and above-grade in relation to the adjoining Public Works Yard. The railway embankment to the north of the buildings is steep, wooded, and at an elevation approximately 40 feet higher relative to the paved areas.

The building improvements consist of concrete foundations, basic concrete slab floors, enameled metal side walls, sloped metal roof with gutters and downspouts and various entry doors and glass windows. The front office section has dimensions of 20 feet wide and 100 feet long for a total enclosed ground floor area of 2,000 square feet. The interior includes work areas, four individual offices, a utility room, a break area, two lavatory and shower rooms, small closets and storage rooms. The rear building section has exterior dimensions of 60 feet wide by 100 feet long with ground floor coverage of 6,000 square feet. The space is generally open, but includes a partitioned storage area of approximately 6,700 square feet of ground floor area with an additional mezzanine level of approximately 500 square feet. The rear building section has a concrete slab floor, exposed metal sidewalls and six large metal vehicular size roll-up doors. Miscellaneous site improvements include approximately 23,000 square feet of asphalt surfaced vehicular parking and maneuvering areas and assorted small unpaved areas. The general condition of the building appears in fair to good overall condition from an architectural and structural standpoint and is approximately 33 years old.

Issued on December 9, 2010.

Letitia A, Thompson,

Regional Administrator.

[FR Doc. 2010–31374 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC). The meeting will be held on January 6, 2011, from 12:30 p.m. to 5 p.m., and January 7, 2011, from 8 a.m. to 12 p.m. in the MetroCenter Auditorium Conference Room, 101 Eighth Street, Oakland, California.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-chartered on February 7, 2010, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

Following is the meeting's preliminary agenda. January 6: (1) Opening Remarks by Dr. Joseph Sussman, Committee Chairman; (2) Welcome Remarks by Dr. Robert Bertini, Deputy Administrator, RITA; (3) Discussion of the ITSPAC's Report and Mode of Operations; and (4) The Platform Approach and IntelliDrive SM Discussion. January 7: (1) Multimodalism Discussion; (2) Committee Mode of Operation Discussion (Continued); and (3) Summary and Wrap Up.

The meeting will be open to the public, but space will be available on a first-come, first-served basis. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Stephen Glasscock, the Committee Designated Federal Officer, at (202) 366–9126 no later than December 27, 2010.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue, SE., HOIT, Room E33–415, Washington, DC 20590 or faxed to (202) 493–2027. The JPO requests that written comments be submitted no later than December 27, 2010.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 8th day of December 2010.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2010–31313 Filed 12–13–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") called for the submission of Large Position Reports by those entities whose reportable positions in the 0–3/4% Treasury Notes of September 2013 equaled or exceeded $2 billion as of close of business December 8, 2010.

DATES: Large Position Reports must be received before noon Eastern Time on December 15, 2010.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistics Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena; Lee Grandy; or Kevin Hawkins; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on December 9, 2010, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose reportable positions in the 0–3/4% Treasury Notes of September 2013 equaled or exceeded $2 billion as of the close of business Wednesday, December 8, 2010. Entities whose reportable positions in this note equaled or exceeded the $2 billion threshold must submit a report to the Federal Reserve Bank of New York. This call for Large Position Reports is a test pursuant to the Department's large position reporting rules under the Government Securities Act regulations. Entities with positions in this note below $2 billion are not required to file reports. Large Position Reports must be received by the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York before noon Eastern Time on Wednesday, December 15, 2010, and must include the required positions and administrative information. The reports may be faxed to (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 0–3/4% Treasury Notes of September 2013, Series AC–2013, have a CUSIP number of 912828 NY 2, a STRIPS principal component CUSIP number of 912820 WR 4, and a maturity date of September 15, 2013.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR Part 420, are available at the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at Public Debt on (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at (212) 720–8220.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Mary J. Miller,

Assistant Secretary for Financial Markets.

[FR Doc. 2010–31405 Filed 12–10–10; 11:15 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0568]

Agency Information Collection (Submission of School Catalog to the State Approving Agency) 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. 3501–21), 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 and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0568" in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–0966, FAX (202) 273–0443 or e-mail: *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0568)."

SUPPLEMENTARY INFORMATION:

Title: Submission of School Catalog to the State Approving Agency.

OMB Control Number: 2900–0568.

Type of Review: Extension of a previously approved collection.

Abstract: Accredited and nonaccredited educational institutions, with the exceptions of elementary and secondary schools, must submit copies of their catalog to the State approving agency when applying for approval of a new course. State approval agencies use the catalog to determine what courses can be approved for VA training. VA pays educational assistance to veterans, persons on active duty or reservists, and eligible persons pursuing an approved program of education. Educational assistance is not payable when claimants pursue unapproved courses.

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 October 6, 2010, at pages 61859–61860.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 2,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31269 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0654]

Agency Information Collection (Annual Certification of Veteran Status and Veteran-Relatives) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0654" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0654."

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of Veteran Status and Veteran-Relatives, VA Form 20–0344.

OMB Control Number: 2900–0654.

Type of Review: Extension of a currently approved collection.

Abstract: VBA employees, non-VBA employees in VBA space and Veteran Service Organization employees who have access to VA's benefit records complete VA Form 20–0344. The individuals are required to provide personal identifying information on themselves and any veteran relatives, in order for VA to identify and protect benefit records. VA uses the information collected to determine which benefit records require special handling to guard against fraud, conflict of interest, improper influence etc. by VA and non–VA employees.

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 October 6, 2010, at page 61858.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,834 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 14,000.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31270 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through

http://www.Regulations.gov or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0216" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0216."

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 21–601 is use to determine a claimant's entitlement to accrued benefits that was due to a deceased veteran but not paid prior to the veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however if there are no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the veteran's last illness and burial expenses.

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 October 4, 2010, at page 61248.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,300 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,600.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31272 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Agency Information Collection (Declaration of Status of Dependents) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0043" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0043."

SUPPLEMENTARY INFORMATION:

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to obtain information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility and rate of payment for veterans and surviving spouses who may be entitled to an additional allowance for dependents.

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 October 4, 2010, at page 61247.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 226,000.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31273 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection (Pension Claim Questionnaire for Farm Income) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0095" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0095."

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

OMB Control Number: 2900–0095.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4165 is used to gather information necessary to determine a claimant's countable annual income and available assets due to farm operations. Farm income is not necessarily received on a weekly or monthly basis, and farm operating expenses must be considered in determining a claimant's eligibility to income-based benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2010, at pages 61248–61249.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,038 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,075.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31274 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Agency Information Collection (Request for Employment Information in Connection With Claim for Disability Benefits) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0065" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0065."

SUPPLEMENTARY INFORMATION:

Title: Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

OMB Control Number: 2900–0065.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4192 is used to request employment information from a claimant's employer. The collected data is used to determine the claimant's eligibility for increased disability benefits based on unemployability.

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 October 4, 2010, at page 61251.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 60,000.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31275 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Gravesite Reservation Survey (2 Year); Correction

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on December 7, 2010, that contained errors. The notice incorrectly identified the responsible VA organization. This document corrects that error by removing in two places "Veterans Benefits Administration" and adding, in each place, "National Cemetery Administration".

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–7485.

Correction

In FR Doc. 2010–30554, published on December 7, 2010, at 75 FR 76082, make the following correction. On page 76082, in the first column, at the Agency heading and in the Summary, remove in both places "Veterans Benefits Administration" and add, in each place, "National Cemetery Administration".

Dated: December 8, 2010.

Gloria P. Armstrong,

Federal Register Liaison Officer, Department of Veterans Affairs.

[FR Doc. 2010–31299 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection (Statement of Dependency of Parent(s)) 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 January 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235,

Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0089" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@.va.gov.* Please refer to "OMB Control No. 2900–0089."

SUPPLEMENTARY INFORMATION:

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans receiving compensation benefits based on 30 percent or higher for service-connected injuries and depends on his or her parent(s) for support complete VA Form 21–509 to report income and dependency information. Surviving parents of deceased veterans are required to establish dependency only if they are seeking death compensation. Death compensation is payable when a veteran died on active duty or due to service-connected disabilities prior to January 1, 1957, or died between May 1, 1957 and January 1, 1972 while the veteran's waiver of U.S. Government Life Insurance was in effect. The data collected will be used to determine the dependent parent(s) eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2010, at pages 61251–61252.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 8,000.

Dated: December 8, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31277 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0675]

VetBiz Vendor Information Pages Verification Program; Correction

AGENCY: Center for Veterans Enterprise, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on December 7, 2010, that contained an error. The notice incorrectly identified the responsible VA organization. This document corrects that error by removing "Veterans Benefits Administration" and adding, in its place, "Center for Veterans Enterprise".

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–7485.

Correction

In FR Doc. 2010–30550, published on December 7, 2010, at 75 FR 76080, make the following correction. On page 76080, in the first column, at the Agency heading, remove "Veterans Benefits Administration" and add, in its place, "Center for Veterans Enterprise".

Dated: December 8, 2010.

Gloria P. Armstrong,

Federal Register Liaison Officer, Department of Veterans Affairs.

[FR Doc. 2010–31300 Filed 12–13–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
December 14, 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 Santa Ana Sucker; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0072; 92210–1117–0000–B4]

RIN 1018–AW23

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for Santa Ana sucker (*Catostomus santaanae*) under the Endangered Species Act of 1973, as amended. In total, approximately 9,331 acres (3,776 hectares) of habitat in the Santa Ana River in San Bernardino, Riverside, and Orange Counties and the San Gabriel River and Big Tujunga Creek in Los Angeles County in southern California fall within the boundaries of the critical habitat designation. This final revised designation constitutes an overall increase of approximately 1,026 acres (415 hectares) from the 2005 designation of critical habitat for Santa Ana sucker.

DATES: This rule becomes effective on January 13, 2011.

ADDRESSES: This final rule and the associated final 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) 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 and designation of revised critical habitat for Santa Ana sucker in this final rule. In the proposed rule (74 FR 65056; December 9, 2009) and the document that made available the draft economic analysis (DEA) (75 FR 38441; July 2, 2010), we stated that there was new information on the distribution of Santa Ana sucker and its habitat within the Santa Ana River that we did not discuss in the 2005 final critical habitat designation for this species (70 FR 425; January 4, 2005). As a result of public comments on this new information, we are providing clarification of this information in the Habitat and Geographic Range and Status sections of this final rule. Additionally, we incorporated information from recent surveys in the Santa Ana River (*see* Geographic Range and Status section) and new information on the hydrology and flow regime of the Santa Ana River (*see* Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring section). No new information pertaining to the species' description, life history, or ecology was received following the 2009 proposed revised rule and the document that made available the DEA. For more information on Santa Ana sucker, refer to the final listing rule published in the **Federal Register** on April 12, 2000 (65 FR 19686); the designation and revision of critical habitat published in the **Federal Register** on February 26, 2004 (69 FR 8839), and on January 4, 2005 (70 FR 425), respectively; the proposed revised critical habitat published in the **Federal Register** on December 9, 2009 (74 FR 65056); and the document that made available the DEA published in the **Federal Register** on July 2, 2010 (75 FR 38441).

Habitat

As discussed in detail in the Habitat section of the proposed revised critical habitat rule (74 FR 65056; December 9, 2009), Santa Ana sucker requires various substrate types throughout different stages of its life. The presence of coarse substrates, including gravel, cobble, and a mixture of gravel or cobble with sand, and a combination of shallow riffle areas and deeper runs and pools provide optimal stream conditions (Haglund *et al.* 2001, p. 60; Haglund and Baskin 2003, p. 55). Areas of shifting sandy substrates are less suitable for development of algae, an important food source for suckers (Saiki *et al.* 2007, p. 98). Therefore, an integrated water system that contains and provides the appropriate quantity of coarse substrates such as gravel, larger cobbles, or boulders that provide the space for reproductive development and growth of algae as a primary food source is important for a viable population of Santa Ana suckers.

Saiki *et al.* (2007, p. 98) indicates that the San Gabriel River supports higher body condition Santa Ana suckers (as described by their higher length-weight relationship) and greater availability of various habitat types than the Santa Ana River. They state that the San Gabriel River generally contains a higher abundance of Santa Ana suckers and larger individuals, which may be attributed to more suitable habitat characters such as cooler water temperature, intermediate water velocities, and commonality of pools and riffles with coarser bottom substrates, all of which may contribute to a better functioning system and more suitable habitat for Santa Ana suckers (Saiki *et al.* 2007, pp. 99–100).

In the San Gabriel River, there are some distinct differences between the three forks of the river (north, west, and east), which seem to correlate with both fish abundance and life stage occupancy (Tennant 2006, pp. 4–5, 9). Overall, the water condition (*i.e.,* lower temperature, lower specific conductance, and lower turbidity) and habitat available in the San Gabriel River system appear to be primary reasons that Santa Ana suckers are in higher abundance and better condition compared to those in the Santa Ana River, although other variables (*i.e.,* stream width or depth) may also influence the species' abundance and condition. For example, in the Santa Ana River, the predominate riparian vegetation is the nonnative species *Arundo donax* (giant reed). In Big Tujunga Creek, *A. donax* can be common in the lower reaches (Baskin and Haglund 1999, p. 11; Saiki 2000, pp. 62–80). In the San Gabriel River, this nonnative plant is rarely found, and the riparian vegetation consists of primarily native vegetation or may be bare due to the steeper, mountainous terrain (Saiki 2000, pp. 18–19; Saiki *et al.* 2007, p. 90). Native riparian vegetation provides cover and shelter from predators, which is essential for juvenile and adult Santa Ana suckers (*see* Primary Constituent Elements—Cover and Shelter and Primary Constituent Elements for Santa Ana Sucker below). *Arundo donax* is an aquatic plant in the genus of perennial reed-like grasses (Poaceae) and is often found growing along lakes, streams, and other wetted areas. Compared to other riparian vegetation, it is known to use excessive amounts of water to supply its exceptionally high growth rates (Bell 1997, p. 104) and could crowd out native riparian vegetation or possibly lower the water table (Zembal and Hoffman 2000, p. 66). In areas where *A.*

donax is common, flows may become diminished and sandy pools may form. Slow-moving flows and formation of pools are preferred habitat for nonnative predators such as largemouth bass (*Micropterus salmoides*) and green sunfish (*Lepomis cyanellus*), which have been suggested to prey heavily on Santa Ana suckers. The effects of *A. donax* presence may negatively affect Santa Ana sucker by altering the instream habitat and, may also provide habitat for nonnative predators. However, these types of impacts would need to be evaluated within the context of potential threats to the Santa Ana sucker.

The unmodified and unpolluted habitat in the San Gabriel River supports what appears to be a healthier and more viable population of Santa Ana sucker. Habitat assessments conducted throughout the Big Tujunga Creek indicate that the habitat suitability is variable throughout the system; however, the river does contain areas that are suitable for all Santa Ana sucker life stages (LACDPW 2009, Google Earth kmz file). It is likely that because of the variability in habitat suitability, the density of Santa Ana suckers in the Big Tujunga Creek is patchy and often low (Ecorp Consulting 2010a, p. 5; Haglund and Baskin 2010, pp. 5–6).

Santa Ana sucker habitat may be impacted as a result of wildfires. Impacts associated with wildfires may occur immediately or may not become apparent until much later. Immediate impacts may include the loss of upland and riparian vegetation and creation of roads for fire-fighting, which may allow greater access to streambeds and facilitate increased Off Highway Vehicle (OHV) use, resulting in further habitat degradation (USGS 2009, p. 7). Excessive debris flows and changes to water quality are anticipated to occur during seasonal rains over the next several years in the Big Tujunga Creek and surrounding San Gabriel Mountains (USGS 2009, p. 7). Anticipated post-fire impacts to streams within the critical habitat designation for Santa Ana sucker include ash and debris deposition that may physically alter streambeds and pools, increased scouring of riparian and aquatic vegetation, and increased water temperature from the short-term loss of canopy shading (USFS 2009, p. 5). Post-fire impacts to water quality (such as increased turbidity) are also anticipated along with release and mobilization of toxic chemicals such as gas, oil, and building materials from burned structures and their contents (USFS 2009, p. 6). The impacts associated with post-fire winter flows include but are not limited to changes in sediment composition, high flows that flush Santa Ana suckers into unsuitable habitats, and changes in water quality (such as increased turbidity and the introduction of chemicals from debris and fire retardant).

Recreational uses of streams may pose significant impacts to Santa Ana sucker habitat. Throughout the drainage systems where Santa Ana suckers persist, there are varying levels of recreational use. On U.S. Forest Service lands, recreational pressures may be considerable. Permanent or intermittent dams are frequently created for recreational purposes, such as those used for suction dredging or bathing. These dams may degrade instream and bank habitat, decrease water quality by increasing turbidity (affect PCE 4), disrupt sediment transport (affect PCEs 1 and 2), impede upstream movement, degrade habitat by slowing water velocities (affect PCE 3), increase water temperatures (affect PCE 5), and encourage excessive growth of algae (Ally 2003, p. 3). In addition, presumably, since water depths increase and velocities decrease, these areas may harbor nonnative predators (Ally 2003, p. 1; Chambers Group 2004, p. 6–4). Recreational residences located within the riparian area of the San Gabriel River and Big Tujunga Creek may impact Santa Ana sucker because of the improperly functioning septic systems at these residences which can degrade water quality conditions by increasing water turbidity (PCE 4) as a result of the increased nutrient loads in the water (USFS 2007, p. 18), which lead to excessive algal growth.

Geographic Range and Status

As discussed in detail in the Geographic Range and Status section of the proposed revised rule (74 FR 65056; December 9, 2009), genetic introgression (when a hybrid breeds with one of the parent species) has been detected in both Santa Ana sucker and Owens sucker (*Catostomus fumeiventris*) within the Santa Clara River (Ferguson 2009, p. 1; Chabot *et al.* 2009, p. 24), indicating that hybridization between these two species has occurred. Moyle (2002, p. 184) and Chabot *et al.* (2009, p. 1) recently described hybridization of Santa Ana sucker with Owens sucker in the lower Santa Clara River in the vicinity of Fillmore and Sespe Creek. As stated in the proposed revised critical habitat rule (74 FR 65056; December 9, 2009), a genetic analysis of the populations in all four watersheds would provide information on the status of the fish throughout the range, including whether the Santa Clara population is native, introduced, or hybridized. However, this analysis has not been completed to date. Researcher and species' expert opinions on the status of the population in the Santa Clara River vary widely. Additional research is needed to determine the impact and extent of hybridization on genetically pure Santa Ana sucker in the Santa Clara River. Given the lack of new genetic information to help us determine whether Santa Ana suckers in the Santa Clara River are native or introduced, as well as a lack of information on the impact and extent of hybridization on genetically pure Santa Ana sucker, we continue to adhere to our 2000 decision not to include the Santa Clara River population of the Santa Ana sucker as part of the listed entity. Therefore, the Santa Clara River area was not included in the proposed revision to critical habitat or this final rule.

The Santa Ana sucker is considered a listed species in the Los Angeles, San Gabriel, and Santa Ana River drainages (Service 2000, pp. 19686–19687). Additionally, the listing rule states that Arroyo Tesquesquite, Sunnyslope Creek, Anza Park Drain, and the lower outlet of Hidden Valley Drain are used for spawning and nurseries (Service 2000, p. 19687), and therefore Santa Ana sucker in those areas are considered part of the listed entity. The historical survey records for this species are not considered complete, and the precise areas occupied by the species are difficult to determine with certainty because not all areas were surveyed exhaustively and distribution literature states that the Los Angeles, San Gabriel, and Santa Ana River drainages as a whole were occupied (Moyle 2002, p. 183; Greenfield *et al.* 1970, p. 166; Smith 1966, pp. 53–56). In particular, the upper limit of habitat occupied by the Santa Ana sucker within each of the Los Angeles, San Gabriel, and Santa Ana River drainages is difficult to determine. However, as we note in our analysis of criteria used to define critical habitat (*see* Criteria Used To Identify Critical Habitat section below), Santa Ana suckers have not been observed in streams or rivers where the instream gradient exceeds 7 degrees. Even in areas where the stream gradient is less than 7 degrees, the upper limits of occupied habitat within the drainages likely have varied through time because of the dynamic nature of these drainage systems. Portions of streams may dry out in some years while the same area may become occupied by Santa Ana suckers in subsequent years due to the

presence of water (Baskin *et al.* 2005, pp. 1–2).

The current status of Santa Ana sucker in the Santa Ana River appears to be declining. In 2009, the lowest Santa Ana sucker density since sampling began in 2001was reported by the Santa Ana Sucker Conservation Program Team (Team). Although densities of Santa Ana sucker have been variable from year to year, the overall density trend in the Santa Ana River is decreasing (SMEA 2009, p. 2). Recent research conducted by Thompson *et al.* (2010, pp. 321–332) indicates that the areas in the Santa Ana River with the highest quality habitat (gravel and cobbles) available for adult, juvenile, and larval stages of Santa Ana sucker occur just downstream of Riverside Avenue near the Riverside–San Bernardino County line. Further, they believe Santa Ana sucker abundance is directly related to the abundance of cobbles and gravel and that the lower portion of the survey area contains little to no suitable substrates (Thompson *et al.* 2010, pp. 328–331). Monitoring and research results from both the Team (SMEA 2009, pp. 1–5) and Thompson *et al.* (2010, pp. 328–330) show that low abundance of suitable habitat is correlated with low Santa Ana sucker abundance, indicating that altered fluvial processes (*i.e.,* diminished transport of water and coarse sediments), lack of suitable substrate, and impediments to movement continue to fragment much of the current distribution of Santa Ana sucker in the Santa Ana River watershed.

Recent survey reports from the West Fork of the San Gabriel River indicate that there may be a decreasing trend in Santa Ana sucker population (Ecorp Inc. 2007, p. 9; Ecorp Inc. 2010b, p. 9). Monitoring of the West Fork of the San Gabriel River within and outside of the off-highway vehicle (OHV) area has indicated that Santa Ana sucker is generally more abundant at the control sites than in the OHV area (Haglund and Baskin 2002, pp. 9–15; Ecorp Inc. 2007, p. 9; Ecorp Inc. 2010b, p. 9). However, during the 2009 monitoring period, very low numbers of Santa Ana suckers and hundreds of nonnative predators were captured at all sites within the study area (Ecorp Inc. 2010b, p. 9). The report postulates that the flood basin of the San Gabriel Dam was full and flooded into areas where Santa Ana suckers are normally present; however, water quality measurements do not indicate any measureable change (Ecorp Inc. 2010b, p. 7). It is possible that the operations of the Cogswell and San Gabriel Dams have impacted the habitat suitability for Santa Ana sucker, and, in turn, abundance has decreased in the West Fork of the San Gabriel River. More information is needed to evaluate the status of Santa Ana sucker in the West Fork of the San Gabriel River.

Previous Federal Actions

Santa Ana sucker was listed as a threatened species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) on April 12, 2000 (65 FR 19686), in the Los Angeles River basin, San Gabriel River basin, and Santa Ana River basin. A fourth population in the Santa Clara River was not listed because it was presumed to be introduced into that watershed. Critical habitat was designated on January 4, 2005 (70 FR 425).

On November 15, 2007, California Trout, Inc., the California–Nevada Chapter of the American Fisheries Society, the Center for Biological Diversity, and the Friends of the River filed suit against the Service alleging the 2005 final designation of critical habitat violated provisions of the Act and Administrative Procedure Act [(*California Trout, Inc., et al.,* v. *United States Fish and Wildlife, et al.,* Case No. 07–CV–05798 (N.D. Cal.) *transferred* Case No. CV 08–4811 (C.D. Cal.)]. We entered into a stipulated settlement agreement with plaintiffs that was approved by the district court on January 21, 2009.

The stipulated agreement required that we submit a proposed revised critical habitat for the Santa Ana sucker to the **Federal Register** by December 1, 2009, and a final revised critical habitat by December 1, 2010. On December 9, 2009, we published in the **Federal Register** a proposed revised critical habitat for the Santa Ana sucker (74 FR 65056). On July 2, 2010, we published a notice in the **Federal Register** reopening the comment period on the proposed rule and making available the DEA (75 FR 38441). With this final rule, we are submitting a final revised critical habitat designation to the **Federal Register** by December 1, 2010, in accordance with the stipulated agreement. For additional information, please *see* the Previous Federal Actions section of the proposed rule (74 FR 65056; December 9, 2009).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) That may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, 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, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) 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 private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the landowner'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 essential to 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 those areas 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 we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all 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 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, habitat conservation plans (HCPs), or other species conservation planning efforts if 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 the 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 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, and 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 laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We derive the specific physical and biological features for Santa Ana sucker from the biological needs of this species as described in the Critical Habitat section of the proposed rule to designate critical habitat for Santa Ana sucker, which published in the **Federal Register** on December 9, 2009 (74 FR 65056).

Based on the needs and our current knowledge of the life-history, biology, and ecology of the species and the habitat requirements for sustaining the essential life history functions of the species, we determined that Santa Ana sucker's physical and biological features consist of flowing stream habitat (*see* Primary Constituent Elements section for further discussion). However, some portions of this habitat may experience significant reductions in, or an absence of, surface flows during certain portions of the year (such as during summer months) or under certain conditions (such as during severe droughts or when artificial sources of water are temporarily suspended). Some areas that we consider essential to the conservation of Santa Ana sucker may not experience flows except during major storms events. However, these areas are critically important components of naturally occurring hydrologic and geologic processes because they provide a connected hydrologic system within the historical range of this species. We have attempted to capture the dynamic nature and importance of these processes in identifying the habitat upon which Santa Ana sucker depends.

Habitats That Are Representative of the Historic Geographical and Ecological Distribution of the Species

Santa Ana sucker inhabits flowing streams, and has not been collected from reservoirs (Swift 2001, p. 15; Moyle 2002, p. 184). Water depths and velocities, as well as bed substrates, vary over the reaches of these streams creating various habitat features including:

1. Moderate currents over a uniform, unbroken stream bottom (*i.e.,* runs);
2. Water flowing over gravel and cobble substrates that causes ripples to form on the surface of the water (*i.e.,* riffles); and
3. Deep water areas created by submerged boulders where water is cool and relatively still (*i.e.,* pools).

Streams in southern California are subject to periodic, severe flooding that alters channel configuration, instream habitat conditions, and vegetation structure (Moyle 2002, p. 183). Hence, as stream conditions change, the characteristics of stream and bank habitats and their suitability for Santa Ana sucker change, influencing the distribution of the fish over time. Therefore, even stream reaches where flows may periodically be interrupted or dewatered become essential during periods of high flows to allow Santa

Ana suckers to move between other habitat areas necessary for breeding, feeding, and sheltering.

Gravel beds in shallow, but clear, flowing stream reaches are needed for spawning. Shallow areas with sandy substrates and overhanging vegetation are needed to support larvae and fry. Juvenile and adult Santa Ana suckers require deeper pools of water for foraging, shelter during storms, and cover.

Santa Ana sucker prefers cool water temperatures but has been found in waters between 59 and 82 °Fahrenheit (F) (15 and 28 °Celsius (C)) in the Santa Ana River (Swift 2001, p. 18). Cooler water temperatures are only maintained in some areas by the upwelling of cooler groundwater, tributary flows, or shade from overhanging vegetation. Overhanging and instream vegetation are also needed for the development of an aquatic invertebrate community to supply food for adult suckers as well as for protective cover, and shade, which reduces water temperature during summer and fall months. Therefore, a complex and integrated stream system is needed that: (1) Encompasses sand, gravel, cobble, and rock substrates; (2) harbors diverse bed morphologies found in deep canyons and alluvial floodplains; (3) provides varying water depths and velocities; (4) contains tributaries that provide fish with areas of refuge (refugia) from predators and during floods and that can also provide suitable breeding habitat; and (5) harbors sources of coarse sediment for renewal of substrate in occupied areas. The primary constituent elements (PCEs; *see* Primary Constituent Elements for Santa Ana Sucker section for detailed discussion) and the resulting physical and biological features essential to the conservation of Santa Ana sucker are derived from studies of this species' habitat, ecology, and life history as described below, in the Background section of the proposed revised rule published in the **Federal Register** on December 9, 2009 (74 FR 65056), in the final listing rule published in the **Federal Register** on April 12, 2000 (65 FR 19686), in the final critical habitat designation published in the **Federal Register** on February 26, 2004 (69 FR 8839), and in the final revised critical habitat designation published in the **Federal Register** on January 4, 2005 (70 FR 425).

Space for Individual and Population Growth and for Normal Behavior

Santa Ana suckers use various water depths, depending on their life-history stage and activity, and do not occupy all reaches of their habitat at any one time (Saiki 2000, p. 19; Haglund and Baskin 2003, p. 53). Larval- and early-stage juvenile Santa Ana suckers prefer the shallow margins of streams in water of 2 to 4 inches (in) (5 to 10 centimeters (cm) in depth; as fish mature, they move into deeper water. Adults prefer deep pools for feeding and seeking refuge, riffles of varying depths for spawning, and riffles and runs of varying depths for movement between pools (Haglund *et al.* 2003, p. 102). For example, in the Santa Ana River, adult Santa Ana suckers have been found in diverse habitat areas, including shallow runs of less than 4 in (10 cm) in depth, in flowing water up to 5 feet (ft) (150 cm) deep (Saiki 2000, p. 19; Swift 2001, p. 66), and in pools 6 to 10 ft (200 to 300 cm) deep (Allen 2004). They have been found in similarly varying water depths in the San Gabriel River (Saiki 2000, p. 48), and Saiki speculates that their capture in these various depths is reflective of their ability to take advantage of a variety of habitat conditions (2000, p. 25). Flows within occupied habitat areas may occasionally become very shallow due to seasonal reductions in flow volumes or be interrupted as a result of dam operations or releases from wastewater treatment plants (such as in the Santa Ana River) in some portions of a stream reach. When stream depth is significantly reduced, deep pools become a critically important refuge for fish.

Surface water flows must be present within the stream, but water velocities where Santa Ana suckers occur can vary from slight to swift (Haglund and Baskin 2003, p. 2). Larvae and fry congregate exclusively in almost-still waters, not moving into swifter currents until they have matured into later juvenile stages (Swift 2001, pp. 17–18). Swift (2001, p. 61) suggests that juvenile fish prefer areas with less water-velocity than do adults because they can expend less energy maintaining their position in the stream. Adult and juvenile Santa Ana suckers in the San Gabriel River have been found in waters with bottom velocities ranging from 0.17 to 0.51 ft per second (0.05 and 0.15 m per second) and mid-column velocities reaching 1.95 ft per second (0.6 m per second) (Haglund and Baskin 2002, pp. 38–39). Haglund and Baskin (2003, pp. 39 and 53) concluded that there was no evident pattern in the locations Santa Ana suckers selected relative to water velocity and suggested that they preferentially seek out locations that provide the best combination of habitat parameters. In the Santa Ana River, Santa Ana suckers have been found in areas with water velocities of up to 2.4 ft per second (0.74 m per second) where wastewater discharges and channelization of the river bed increase water velocity (Saiki 2000, pp. 18–19).

Stream beds containing the mosaic of rock, cobble, and gravel preferred by Santa Ana suckers are most prevalent in the San Gabriel River (Saiki 2000, pp. 18–19). Within the Santa Ana River, shifting sands are the primary substrate constituent upstream of the Prado Basin. In the Santa Ana River bed, substrates containing at least 10 percent gravel, cobble, and rock were documented for a distance of 7 mi (12.3 km) downstream from the Rialto Drain in 1999 and 2000 (Swift 2001, pp. 4, 68–75). Habitat assessments conducted between 2006 and 2008 indicated that these substrates fluctuated from 2.6 to 6.0 mi (4.2 to 9.6 km) downstream of the Rialto Drain (Thompson *et al.* 2010, p. 328).

The distribution of Santa Ana suckers across streams varies depending upon bed conditions and stream depth. Santa Ana suckers within the San Gabriel River are often found mid-channel adjacent to submerged cobble, boulders, or manmade structures such as culverts. In the Santa Ana River where the streambed is sandier, they are rarely found mid-channel, but rather adjacent to shoreline areas near rooted vegetation (Saiki 2000, pp. 25, 27). Where preferred habitat conditions are absent, Santa Ana suckers make use of available habitats that provide some of the same functions provided by preferred habitats (Saiki 2000, p. 19).

The distribution of Santa Ana suckers is also likely dependent on instream gradient. While several authors have acknowledged that this species cannot access high gradient areas, we are not aware of any research quantifying the maximum slope passable by Santa Ana suckers. In an attempt to estimate the maximum slope passable by the species, we used GIS to analyze the slopes associated with Santa Ana sucker occurrence polygons and points in our database for the Santa Ana River, San Gabriel River, and Big Tujunga Creek. Based on our analysis, Santa Ana suckers have not been found in areas where the instream slope exceeds 7 degrees. This could be due to the species' inability to swim up these higher gradients or due to the lack of suitable habitat in these areas as a result of higher water velocity and a subsequent lack of suitable spawning and feeding substrates or both. Also, the probability of encountering vertical barriers (such as waterfalls) increases as the overall slope across a given distance increases; therefore, even if habitat is suitable upstream, it may be inaccessible to the species. However,

more extensive analysis is needed to determine the gradient limitations of the species.

A comparative analysis of suckers within the Santa Ana and San Gabriel Rivers revealed that only two cohorts are generally present within the Santa Ana River, compared with three in the San Gabriel River, indicating that few individual suckers live beyond their second year of life in the Santa Ana River (Saiki 2000, p. 13). No investigations have occurred to determine the relative lifespan or fecundity of Santa Ana suckers as they relate to habitat conditions. However, overall habitat conditions for Santa Ana suckers are generally better in the San Gabriel River than in the Santa Ana River, which is reflected in the overall greater abundance of fish and their better body condition in the San Gabriel River (Saiki 2000, pp. 18–28).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Suckers (Family Catostomidae) are primarily bottom feeders, sucking up algae, small invertebrates, and organic detritus from gravel, cobble, rock, and other hard surfaces (Moyle 2002, p. 179). Forage for adult Santa Ana suckers is also found in pools (Allen 2003, p. 6). Riparian vegetation and emergent aquatic vegetation provide additional sources of detritus and aquatic invertebrates such as insects (Leidy *et al.* 2001, p. 5–2). Insects may provide a high energy source of food for adult Santa Ana suckers (Saiki 2000, p. 23). In a comparative analysis of Santa Ana suckers in the Santa Ana and San Gabriel Rivers, Saiki (2000, pp. 27, 98) found that body condition (length-weight relationship) of Santa Ana suckers in the San Gabriel River was better than that of fish in the Santa Ana River, possibly due to a greater abundance of food resources (including algae and insects) found on the rocky substrate in the San Gabriel River relative to the sandy substrate in the Santa Ana River.

Although the specific tolerances to water quality variables have not been evaluated for Santa Ana sucker, water temperature, dissolved oxygen content, and turbidity (such as excessive detritus in the water column or protracted suspension of fine-grained sediments) are all important aspects of water quality that affect the physiology of fish (California Regional Water Quality Control Board (CRWQCB) 1995, pp. 4–1—4–15). This species has been found in waters between 59 and 82 °F (15 and 28 °C) in the Santa Ana River (Swift 2001, p. 18). Swift (2001, p. 34) states that although a lethal limit for water temperature is unknown, water temperatures much above 86 °F (30 °C) likely limit distribution and movement of this species. Santa Ana suckers are generally more abundant in the cooler waters of the San Gabriel River than they are in the warmer waters of the Santa Ana River (Saiki 2000, pp. 27–28). Researchers conclude that in addition to having poor habitat conditions such as sandy substrate and lack of instream cover, areas of the Santa Ana River may be devoid of Santa Ana suckers due to higher water temperatures (Chadwick and Associates, Inc. 1992, p. 37).

Adequate dissolved oxygen is necessary for aquatic life and as water warms, its concentration of dissolved oxygen drops, stressing fish (CRWQCB 1995, p. 4–3). In general, waters occupied by Santa Ana suckers are high in dissolved oxygen (Saiki 2000, pp. 18–19).

Santa Ana suckers are more abundant in clear rather than in turbid (cloudy or hazy) water conditions (Saiki 2000, pp. 28, 52; 2007, p. 95). This is most likely because suspended sediments interrupt light penetration through the water column, causing a reduction in algal growth and thus limiting the primary food source of Santa Ana sucker. However, while Santa Ana suckers likely avoid turbid waters when possible, they have been documented in turbid conditions on occasion (Haglund *et al.* 2002, p. 11). One measurement of turbidity is Nephelometric Turbidity Units (NTU), where turbidity level of 1.0 NTU equals 1 milligram of particulate per liter of water. Saiki *et al.* (2007, pp. 95–96) found that Santa Ana suckers were more abundant in the San Gabriel River where turbidity averaged 5.9 NTUs (ranging from 4.3 to 8.2 NTUs), and less abundant but not absent in more turbid areas of the Santa Ana River where turbidity averaged 29 NTUs (ranging from 10.1 to 83.4 NTUs). However, Santa Ana suckers have been found in the Santa Ana River in an area where turbidity was measured between 85 and 112 NTUs (Baskin and Haglund 2001, p. 6). Saiki (2000, p. 25) speculates that fish occur under less-than-optimal ambient conditions because they are using whatever habitat is available to them and cites these conditions as a possible reason for reduced abundance of Santa Ana suckers in the Santa Ana River relative to their abundance in the San Gabriel River.

Multiple wastewater treatment plants discharge into the Santa Ana River and its tributaries and account for most of the dry-season flows within the river (CRWQCB 1995, pp. 1–7). The City of San Bernardino Municipal Water District's Rapid Infiltration and Extraction Facility, Rialto Treatment Plant, and the City of Riverside Regional Water Quality Control Plant all discharge into the Santa Ana River. As a result of rising groundwater, nonpoint source urban runoff, and these wastewater discharges, perennial flows are maintained from the vicinity of the Rialto Drain and downstream. Although these discharges contain contaminants not found in natural runoff, there is no evidence that the concentrations of regulated compounds found in Santa Ana suckers in this river exceed mean concentrations found in freshwater fish in other areas of the United States (Saiki 2000, p. 24). However, research has indicated that anthropogenic chemicals introduced into riverine systems may have lasting negative impacts on fish reproductive success (Service 2008, p. 3). The specific impacts of residual chemicals in discharged treated wastewater (such as inorganic compounds, hydrocarbons, solvents, steroids, and hormones) are the subject of investigation for Santa Ana suckers (Service 2008, p. 2).

Cover or Shelter

Instream emergent and overhanging riparian vegetation along the banks of stream courses provide shade, shelter, and cover for fry, juvenile, and adult Santa Ana suckers. Shading is very important to Santa Ana suckers that inhabit shallow waters because it reduces water temperatures during periods of high summer ambient temperatures. A complex stream system including tributaries that contain submerged boulders, deep pools, and undercut banks provides cover and shelter for juvenile and adult Santa Ana suckers (Saiki *et al.* 2007, p. 99; Moyle *et al.* 1995, p. 202). Tributaries may provide important shallow-water refugia for larvae and fry from larger, predatory fish and act as refugia for juvenile and adult Santa Ana suckers during storms.

Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring

Adult Santa Ana suckers spawn over gravel beds in flowing water (riffles) where the female deposits the eggs in fine gravel substrate. Substrate collected from two spawning locations in tributaries to the Santa Ana River consisted of gravel-sized particles ranging in diameter from 0.04 to 1.6 in (1.0 to 41.5 mm) (Haglund *et al.* 2001, p. 47). The presence of appropriately sized substrate allows for water flow around eggs to prevent sediment from depositing on and smothering the eggs. Eggs deposited on sand or silt are likely

to be washed downstream or be smothered. In addition to appropriate substrate, adequate water velocities are necessary to oxygenate eggs. Observations of Santa Ana sucker spawning have been reported in streams with bottom velocities of 0.65 and 0.77 ft per second (0.20 and 0.23 m per second) (Haglund *et al.* 2003, p. 63).

Once emerged from the eggs, Santa Ana sucker larvae congregate in shallow, slow-moving waters from 1 to 5.5 in (3 to 14 cm) deep over very soft sand or mud substrate (Swift 2001, p. 17; Haglund *et al.* 2002, pp. 69–71; Haglund *et al.* 2003, p. 11). This type of habitat is usually found along the margins of streams in proximity to emergent vegetation. Fry are found almost exclusively found in edgewater habitats over silt or sand in water depths of less than 7 in (17 cm) where there is little measurable flow; Haglund and Baskin (2003, p. 47) speculate this reduces access by larger predatory fish and, because shallow waters are warmer, may increase the growth rates of developing suckers. Juvenile fish move away from edgewater habitats and congregate at the interface of the almost-still waters at the adjacent bank-edge and the main stream flows (Swift 2001, pp. 17–18). By the end of their first summer, juvenile Santa Ana suckers move into deeper water habitats with adults, presumably because they are large enough to compete with adult suckers for forage (Swift 2001, p. 18).

Tributaries may provide essential spawning habitat for the Santa Ana sucker, particularly in the Santa Ana River (Chadwick and Associates, Inc. 1992, p. 49; Chadwick Ecological Consultants, Inc. 1996, p. 16; Haglund *et al.* 2002, pp. 54–60). An abundance of juvenile fish has been recorded in multiple tributaries in the Santa Ana River (such as the Tequesquite Arroyo and the Evans and Anza drains), and, hence, these have been considered possible spawning sites (Chadwick and Associates, Inc. 1992, p. 49). However, Swift (2001, p. 26) concluded that the species may be attracted to tributaries due to the relatively colder water temperatures found there. He stated that most tributaries to the Santa Ana River lack either suitable substrates or water velocities to support successful spawning. Swift (2001, p. 26) considered that only the Rialto Drain and Sunnyslope Creek provided habitat conditions suitable to support spawning. These sites are two of the few remaining areas containing gravel beds, and management may be required to maintain substrate conditions over time (Orange County Water District (OCWD) 2009, pp. 6–4—6–5).

In the hydrologically altered systems in which Santa Ana suckers exist, tributaries provide another essential function through contribution of water and coarse sediments into the mainstem of rivers. In typical unaltered stream systems periodic high flow events not only remove fine sand and silt that have covered up coarse sediments that are essential for breeding and foraging of Santa Ana sucker, they also deliver and replenish coarse sediments (*i.e.,* gravel and cobble) to occupied areas from upstream sources. Historical records indicate that the upper Santa Ana River above Seven Oaks Dam was a principle contributor of sediment to the lower reaches of the Santa Ana River (Humphrey *et al.* 2004, p. 3). However, much of the input of gravel and cobble substrate to the lower reaches of the river has decreased since the construction and operation of the Seven Oaks Dam in the upper Santa Ana River. Therefore, tributaries are of even greater importance to ensure flow velocities that clear out silt and other fine sediments from occupied areas, and to replenish essential coarse sediment to the lower reaches of the Santa Ana River. A sediment transport study of the Santa Ana River (Humphrey *et al.* 2004, p. 2) indicates that historically the upper Santa Ana River (above Seven Oaks Dam), City Creek, Plunge Creek, and Mill Creek were significant contributors of coarse sediment to the occupied reaches of the Santa Ana River. However, currently City Creek and Mill Creek are the remaining contributors of coarse sediment into the occupied reaches of the Santa Ana River since the coarse sediment that was historically delivered by the upper Santa Ana River has been trapped behind Seven Oaks Dam and Plunge Creek now contains a settling basin that has been modified for mining. Therefore, these two tributaries are the only remaining significant sources of essential coarse sediment into the mainstem of the Santa Ana River below the Seven Oaks Dam, which supplies coarse sediment downstream to the occupied reaches of the river.

Presumably there has been a reduction in transported cobble and gravel from the upper Santa Ana River because periodic high flow events have been controlled by Seven Oaks Dam, which has also trapped coarse sediment behind it. However, there has not been a similar reduction in fine sediments, such as silt and sand, to the lower reaches of the Santa Ana River (Humphrey *et al.* 2004, p. 5; Warrick and Rubin 2007, p. 3). Gravel and cobbles are essential coarse sediments for Santa Ana sucker spawning habitat (Moyle 2002, pp. 182–185). Fine sand and silt may be deposited on top of suitable coarse spawning sediment because flows have declined due to the altered fluvial process in the Santa Ana River. Tributaries and lower order streams (upstream areas) provide a source of water and coarse sediments that are transported downstream (to higher order streams) where the presence of water and coarse sediments are essential to the conservation of the species. Therefore, flows to clear out fine sand and silt from suitable spawning substrate (*i.e.,* gravel and cobble) and flows to transport suitable materials from upstream sources for maintenance of spawning substrate are essential to the conservation of Santa Ana sucker.

In the Santa Ana River, Humphrey *et al.* (2004, p. 7) states a critical flow of water of 4,000 cubic feet per second (cfs) or more is necessary to transport gravel and cobbles downstream and lower velocity flows (500–4,000 cfs) have the ability to move silt and other fine sediment that accumulates on top of suitable spawning substrates. The critical velocity necessary to move gravel and cobbles is variable depending on the conditions and location within the system. For example, during a test release of water from behind Seven Oaks Dam of approximately 2,500 cfs, boulder-sized rocks were observed moving within several hundred feet of the plunge pool (Wood 2010, pers. comm.). United States Geological Survey gauging stations along the Santa Ana River and City Creek indicate that there are flows sufficient to clear out fine sand and silt, and also flows that reach approximately 4,000 cfs and above that would deliver essential gravel and cobble substrates from upstream sources to downstream to occupied areas. These coarse sediments are a component of the physical and biological features essential to the conservation of the species (*see* Primary Constituent Elements for the Santa Ana Sucker below). In all three of the watersheds where Santa Ana sucker persists, the existence of dams has regulated flows and trapped sediments from being transported downstream. Therefore, sources of water and coarse sediments and the transport of these materials to occupied areas to create and maintain habitat conditions suitable for Santa Ana sucker breeding and foraging within these tributaries and lower order streams is essential to the conservation of the species.

Primary Constituent Elements (PCEs) for Santa Ana Sucker

Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area occupied by Santa Ana sucker at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. The physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the species. We are designating critical habitat in areas within the geographical area that were occupied by the species at the time of listing that continue to be occupied, and that contain the PCEs in the quantity and spatial arrangement to support life-history functions essential to the conservation of the species. We are also designating areas outside the geographical area occupied by the species at the time of listing that are not occupied but are essential for the conservation of the species. *See* Criteria Used To Identify Critical Habitat section below for a discussion of the species' geographic range.

We believe conservation of Santa Ana sucker is dependent upon multiple factors, including the conservation and management of areas to maintain suitable ecological functions where existing populations survive and reproduce. The areas we are designating as critical habitat provide some or all of the physical or biological features essential for the conservation of this species. Based on the best available information, the PCEs essential to the conservation of Santa Ana sucker are the following:

1. A functioning hydrological system within the historical geographic range of Santa Ana sucker that experiences peaks and ebbs in the water volume (either naturally or regulated) that encompasses areas that provide or contain sources of water and coarse sediment necessary to maintain all life stages of the species, including adults, juveniles, larvae, and eggs, in the riverine environment;

2. Stream channel substrate consisting of a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins necessary to maintain various life stages of the species, including adults, juveniles, larvae, and eggs, in the riverine environment;

3. Water depths greater than 1.2 in (3 cm) and bottom water velocities greater than 0.01 ft per second (0.03 m per second);

4. Clear or only occasionally turbid water;

5. Water temperatures less than 86 °F (30 °C);

6. Instream habitat that includes food sources (such as zooplankton, phytoplankton, and aquatic invertebrates), and associated vegetation such as aquatic emergent vegetation and adjacent riparian vegetation to provide: (a) Shading to reduce water temperature when ambient temperatures are high, (b) shelter during periods of high water velocity, and (c) protective cover from predators; and

7. Areas within perennial stream courses that may be periodically dewatered, but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

All occupied units designated as critical habitat contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for Santa Ana sucker.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species and may require special management considerations or protection.

All areas included in this final critical habitat designation will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of Santa Ana sucker. Special management considerations or protection may be required to minimize habitat destruction, degradation, and fragmentation associated with the following threats, among others: Water diversion; alteration of stream channels and watersheds; reduction of water quantity associated with urban development and human recreational activities, including swimming, and construction and operation of golf courses; and OHV use. For discussion of the threats to Santa Ana sucker and its habitat, please *see* the Summary of Comments and Recommendations and Summary of Factors Affecting the Species sections of the final listing rule (65 FR 19686; April 12, 2000) and the Public Comments and Critical Habitat Unit Descriptions sections of the 2005 final critical habitat rule (70 FR 425; January 4, 2005). Please also *see* Critical Habitat Units section below for a discussion of the threats in each critical habitat unit.

In addition to the threats to Santa Ana sucker and its habitat described in the final listing and previous critical habitat rules, the physical and biological features essential to the conservation of Santa Ana sucker may require special management considerations or protection to minimize habitat destruction, degradation, and fragmentation associated with the construction of dams, the operation of recreational residences, the construction of road crossings and bridges across waterways, nonnative vegetation and predators, the impacts of wildfires to riparian and instream conditions, and the degradation of water quality.

Recreational Dams

Artificial manmade dams are often constructed from boulders, logs, and trash to create pools within these rivers for fishing, swimming, wading, and bathing (Ally 2003, p. 1; Chambers Group 2004, p. 6–4). The construction of these "recreational" dams degrades instream and possibly bank habitat, increases turbidity (PCE 4), disrupts sediment transport, and impedes upstream movement of Santa Ana suckers, especially during droughts (Ally 2003, pp. 1–3), thereby fragmenting habitat connectivity within occupied habitat. During the spawning season, these dams cause instream disruptions that can bury gravel beds (PCE 2) used for spawning (Ally 2003, p. 1). Recreational dams can also further degrade habitat by slowing water velocities (PCE 3), increasing water temperatures (PCE 5), and encouraging excessive growth of algae (Ally 2003, p. 3). In addition, presumably, because water depths increase and velocities decrease, these areas may harbor nonnative predators. Management activities that could ameliorate these threats include patrolling by enforcement officers or rangers throughout the accessible recreational areas within the critical habitat designation. Prevention of recreational dams will help protect the PCEs by ensuring the hydrologic system continues to function (PCE 1) by delivering cool, clear water with sufficient food sources (PCEs 2 through 6) that are essential to the conservation of Santa Ana sucker.

Recreational Residences

The U.S. Forest Service (USFS) issues special use permits for the operation and maintenance of private recreational residences within the boundaries of the

Angeles National Forest along Big Tujunga Creek and the North and West Forks of the San Gabriel River. Improperly functioning septic systems at these residences can degrade water quality conditions by increasing water turbidity (PCE 4) as a result of the increased nutrient loads in the water (USFS 2007, p. 18), which lead to excessive algal growth. Management activities that could ameliorate these threats include limiting the number of allowable recreational residences and requiring that septic systems are properly functioning within areas that are hydrologically connected to areas designated as critical habitat. Limiting the number of residences and ensuring the proper function of their septic systems will help protect PCE 4 by preventing additional nutrient loads from entering the water and increasing water turbidity (PCE 4) to the detriment of Santa Ana sucker.

Road Crossings and Bridges

Road crossings and bridges constructed across waterways can impact Santa Ana sucker by creating permanent or intermittent barriers to upstream movement and fragmenting connective corridors between areas of occupied habitat (PCE 7). Bridge footings and pier protections (such as concrete aprons that span the waterway) accelerate water velocities (PCE 3) and, in the absence of sediment in the water (PCE 2), scour sediments from the streambed immediately downstream. With sufficient scouring, the elevation of the downstream bed of the stream may become so low that Santa Ana suckers cannot swim upstream from that point; scouring can also create pools that favor predatory nonnative fish. Culverts constructed under road crossings can act as barriers to movement when a culvert becomes filled in with sediment, reducing the amount of water (PCE 1) and sediment (PCE 2) that could be transported downstream. Drop structures that function as a support for road crossings or bridges as a result of gradient changes within the river may also create a temporary barrier to water and sediment transport and Santa Ana sucker movement. The extent, however, to which these structures constitute barriers depends on the quantity of water flowing and sediment transport in a given year and over time. For example, sediment-filled culverts that create a barrier to movement one year may be passable in another year if high water flows remove trapped sediments. Road crossings and bridges can also impact the species by altering the hydrology of the system (PCE 1), rerouting water flow into less suitable habitat. Management activities that could ameliorate these threats include modifying culverts or drop structures to ensure the connective corridor is maintained through a gradient that is passable by water and sediment and Santa Ana suckers (*i.e.,* 7 degrees as described in the Criteria Used To Identify Critical Habitat section) within the critical habitat designation. Maintenance of these corridors (PCE 7) and ensuring a passable gradient (PCE 1) will help protect the PCEs (2 through 5) that are essential to the conservation of Santa Ana sucker.

Water and Sediment Transport or Removal

The transport of both water and sediment are essential components to the conservation of Santa Ana sucker (PCEs 1 through 5). The presence of sufficient water and appropriate sediment may be impacted by operations attributed, but not limited to, dams operation of hydroelectric power facilities, water diversion, sediment removal, or flood control activities. Natural flow regimes have inevitably been impacted in the Santa Ana River, Los Angeles River, and San Gabriel River basins as a result of alterations such as dams, diversions, channelization, or other flood control activities. The impacts to Santa Ana sucker and its habitat attributable to these activities have yet to be fully described or understood. However, as these activities continue, there appear to be impacts to Santa Ana sucker and its habitat through alteration of the hydrologic system and the function of the watershed as a whole. Recent research indicates that the presence of preferred substrates such as gravel and cobble in the Santa Ana River are less common at sites farther downstream compared to sites that are closer the Seven Oaks Dam (Thompson *et al.* 2010, p. 328). This is likely due to the presence of flowing water from the Rialto/RIX sewage treatment plant immediately upstream that clears out silt and fine sand and exposes gravel and cobbles; however, the flow diminishes downstream due to percolation. Therefore, in the occupied areas of the Santa Ana River, downstream areas contain less suitable habitat for Santa Ana sucker (Thompson *et al.* 2010, pp. 327–328).

The extant populations of Santa Ana suckers throughout the species' range are currently isolated from one another as a result of water diversions or dams that have likely resulted in their exclusion from suitable spawning and rearing habitat (Service 2000, p. 19693). Management activities that could ameliorate these threats throughout the species' range include removing or preventing channelization and restoring the river with its natural substrates and riparian vegetation, increasing flows into occupied areas by decreasing the amount of water contained by dams or removed from the hydrologic system, preventing mining activities that remove coarse sediments, and preventing further instream modifications from flood control activities throughout the critical habitat designation. Maintenance of the natural flow (PCEs 3, 4, and 5) and sediment transport (PCE 2) will help protect the PCEs that are essential to the conservation of Santa Ana sucker.

Off-Highway or Off-Road Vehicles (OHVs)

Throughout the designated critical habitat, OHV use occurs in authorized and unauthorized areas. We are aware of authorized OHV activity in the USFS's San Gabriel Canyon OHV Area at the junction of the East, North, and West Forks of the San Gabriel River. There have been reports of unauthorized OHV activity in the Santa Ana River, although the level of impact and frequency of use have not been quantified. However, the reach where the unauthorized OHV activities have been reported occurs just upstream of one of the remaining Santa Ana sucker populations (near Rialto/RIX; SAWPA 2010, p. 1–10). This area has recently been cleared of the nonnative plant, *Arundo donax,* which may have facilitated access for OHVs. The use of the river as an OHV recreational area may result in adverse effects to Santa Ana sucker by increasing turbidity (PCE 4); disrupting the physical structure of habitat for spawning, resting, and feeding (PCE 2); and introducing pollutants (such as oil and gas) into streams (PCE 4) (65 FR 19686; April 12, 2000). Management activities that could ameliorate these threats include patrolling by enforcement officers or rangers throughout the accessible recreational areas, providing signage to discourage access, or installing fencing where access is unauthorized within the critical habitat designation. Minimizing the impacts to the hydrologic system (PCE 1) and reducing the instream impacts (*i.e.,* increased turbidity (PCEs 2 and 4)) and impacts to instream and riparian vegetation (PCE 6) attributed to OHVs will help protect the PCEs that are essential to the conservation of Santa Ana sucker.

Nonnative Vegetation and Nonnative Predators

The presence of nonnative vegetation (such as *Arundo donax*) may alter the hydrology and provide habitat conditions preferred by nonnative predators (such as largemouth bass and green sunfish) in the Santa Ana River and Big Tujunga Creek, and possibly (but to a lesser degree) in the San Gabriel River. These impacts may include (but not be limited to) decreased flow rates (PCE 3), increased turbidity (PCE 4), increased presence of pools and lack of preferred habitat (PCE 2), and increased abundance of nonnative predators (Service unpublished information 2010b, pp. 24–25). However, these types of impacts would need to be evaluated within the context of potential threats to the Santa Ana sucker. If this potential threat is found to impact the species, management activities to ameliorate this threat could include removal of nonnative vegetation and predators.

Post-Wildfire Management

The Station Fire of 2009 (described in more detail in Critical Habitat Units—Unit 3: Big Tujunga and Haines Creeks section below) may have long-lasting impacts to the Big Tujunga and Haines Creeks. These impacts may include (but not be limited to) increased debris-flow and flow velocity (PCEs 3 and 6) due to the lack of vegetation and increased run-off, increased turbidity (PCE 4) from the residual ash in the area and increased flow speeds, and possible residual contaminants entering the system as a result of the firefighting retardant chemicals which can alter water chemistry. The loss of riparian vegetation is likely to increase water temperature in the river due to the lack of shading available to instream habitats (USFS 2009, pp. 5–6). Management activities that could ameliorate these threats include revegetation of upland and riparian areas to stabilize hillsides and riparian zones to prevent erosion, and removal of large debris within the critical habitat designation before winter rains commence. Revegetation of upland and riparian areas will decrease debris flow and stabilize soils (PCEs 2, 4, and 6), which will help protect the PCEs that are essential to the conservation of Santa Ana sucker.

Water Quality Degradation

Although specific water quality tolerances have not been evaluated for Santa Ana sucker, elevated water temperature, diminished dissolved, oxygen, elevated turbidity, elevated specific conductance, and presence of certain chemicals (such as pharmaceuticals or endocrine disrupting compounds) from treated wastewater may impact Santa Ana sucker. These impacts may affect the physical and biological features essential to the conservation of the Santa Ana sucker and may include (but not be limited to) increased water temperatures (PCE 5), increased turbidity (PCE 4), and changes in instream food sources (PCE 6) that may have long-lasting effects on individual and population growth (reproductive success) and other normal behaviors. Management activities that could ameliorate these threats include identification of thresholds and tolerance levels specifically for Santa Ana sucker, implementation of water quality standards or regulations throughout its range, and minimization of discharges of harmful chemicals into the watersheds. Water quality regulations that address Santa Ana sucker's water quality requirements (PCEs 4, 5, and 6) will help protect the PCEs that are essential to the conservation of Santa Ana sucker.

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)).

At the time Santa Ana sucker was listed in 2000, the geographical area occupied by the species was considered to include the Los Angeles, San Gabriel, and Santa Ana River basins (65 FR 19686; April 12, 2000). The listing rule details survey results that identify the following areas in each river basin as being within the geographical range occupied by the species: (1) The Santa Ana River basin including the Santa Ana River below Prado Dam, the Santa Ana River above Prado Dam to the City of Riverside, and the following tributaries: Tequesquite Arroyo, Sunnyslope Channel, and Anza Park Drain; (2) the San Gabriel River basin, including the West, North, and East forks of the San Gabriel River and Bear [Canyon] Creek, which is a tributary of the West Fork of the San Gabriel River; and (3) the Los Angeles River basin, including Big Tujunga Creek, between Big Tujunga Dam and Hansen Dam, and Haines Creek.

For the purposes of this final revised critical habitat designation for Santa Ana sucker, the geographical area occupied by the species at the time of listing is defined to include those areas specifically identified in the listing rule (65 FR 19686; April 12, 2000), and the following additional areas not specifically identified in the listing rule but documented to be occupied at the time of listing and documented to be currently occupied: (1) In the Santa Ana River system: Rialto Drain; and (2) in the San Gabriel River system: Big Mermaids Canyon Creek, West Fork of Bear Creek, Bichota Canyon Creek, Cattle Canyon Creek, and Cow Canyon Creek. The following areas were not specifically identified in the listing rule and are not currently occupied; they are therefore considered outside the geographical area occupied by the species at the time of listing: the upper Santa Ana River watershed, including City and Mill Creeks and the Santa Ana River (above La Cadena Drive in San Bernardino County to above Seven Oaks Dam), and the following three tributaries to Big Tujunga Creek: Gold Canyon, Delta Canyon, and Stone Canyon Creeks.

We are including in this final critical habitat designation all areas within the geographical area occupied by the listed Santa Ana sucker at the time of listing that also meet Criteria 1 through 3 below. These areas are all currently occupied. We are also including areas in this final critical habitat designation that were not within the geographical area occupied by the species at the time of listing and are not currently occupied but that are essential for the conservation of the species under Criteria 4 through 7 below. This final revised rule updates our 2005 final critical habitat designation for Santa Ana sucker with the best available data. For some areas that were analyzed in 2005, we have new information that led us to either add or remove an area from the proposed revised critical habitat designation and subsequently from this final rule.

For areas within the geographical area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following steps:

1. We mapped historical and current digital occurrence data for Santa Ana sucker in the form of polygons and points on the digital aerial photography using ArcMap 9.3.1 (ESRI 2009). Areas between occupancy polygons or points were assumed to be occupied if there are no significant instream barriers (such as dams, culverts, or drop structures) preventing further movement between occupied stream sections. We utilized imagery acquired in Spring 2008 at 1-ft (0.33-m) resolution for the

Santa Ana River Unit in Riverside County and imagery acquired in January 2006 at 1-ft (0.33-m) resolution for the San Gabriel and Big Tujunga units provided by the U.S. Geological Survey. We also utilized imagery acquired in Spring 2005 at 3.25-ft (1-m) resolution provided by the National Aerial Imagery Program (NAIP) for the Santa Ana River Unit in Orange County. The resolution of the imagery allowed us to detect the presence of instream barriers.

We recognize that the historical and recent collection records for this species are incomplete. River segments or small tributaries not included in this final designation may harbor small populations of Santa Ana sucker or may become occupied in the future.

2. Using aerial imagery, we delineated the lateral extent (width) of the final revised critical habitat associated with occupied areas to include areas that provide sufficient riverine and associated floodplain area for breeding, feeding, and sheltering of adult and juvenile Santa Ana suckers and for the habitat needs of larval stage fish. Given the dynamic nature of these streams and the seasonal variation of the quantity of flow and the location of stream channels in any given year, we delineated the lateral extent of the final revised critical habitat to encompass the entire floodplain up to the upper limit of riparian vegetation or to the edge of a permanent barrier (such as a levee). Areas within the lateral extent exhibit the PCEs because they contain: (a) A functioning hydrological system characterized by peaks and ebbs in the water volume that encompasses areas that provide or contain sources of water and coarse sediment (PCE 1); (b) complex channels (such as alluvial fans and braided channels) and a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins (PCE 2); and (c) adjacent riparian vegetation (PCE 6).

The presence of PCEs may be seasonally variable and sporadic in distribution because of the dynamic nature of these streams and seasonal variation of flows in these streams throughout the year. Areas that may be seasonally lacking in PCEs and contain marginal habitat were included if they are contiguous with areas containing one or more of the PCEs and contribute to the hydrologic and geologic processes essential to the ecological function of the system. These areas are essential to maintain connectivity (PCE 7) within populations, allow for species movement throughout the course of a given year, and allow for population expansion.

3. Using aerial imagery, we delineated the upstream and downstream extents of the final revised critical habitat for areas within the geographical area occupied at the time of listing using the nearest occurrence polygon or point to either the point of a natural or manmade barrier or to the point where the instream gradient exceeds a 7 degree slope, either of which would prevent further movement of Santa Ana sucker. While several authors have acknowledged that this species cannot access high-gradient areas, we are not aware of any research quantifying the maximum slope passable by Santa Ana sucker. Therefore, in an attempt to estimate the maximum slope passable by the species, we used GIS to analyze the slopes associated with Santa Ana sucker occurrence polygons and points in our database for the Santa Ana River, San Gabriel River, and Big Tujunga Creek. Based on our analysis, Santa Ana suckers have not been found in areas where the instream slope exceeds 7 degrees. In the absence of additional research on this subject, we made the assumption that a slope of 7 degrees constitutes the maximum instream gradient passable by Santa Ana sucker and applied this assumption when delineating the upstream extent of the final revised critical habitat in the San Gabriel River system (Big Mermaids Canyon Creek, Bear Canyon Creek, West Fork of Bear Creek, Bichota Canyon Creek, Cattle Canyon Creek, and Cow Canyon Creek).

As discussed in the Physical and Biological Features section above, the absence of the species in these high-gradient areas could be due to the species' inability to swim up these higher gradients or due to the lack of suitable habitat in these areas as a result of higher water velocity and a subsequent lack of suitable spawning and feeding substrates or both. Therefore, we assume these high-gradient (greater than 7 degrees) areas do not contain the physical and biological features essential to the conservation of the species.

4. For areas outside the geographical area occupied by the species at the time it was listed, we evaluated stream reaches to determine if additional occupied or unoccupied areas are essential for the conservation of this species and should be included in the final revised designation. We determined that certain areas outside the geographical area occupied by the species at the time it was listed are essential for the conservation of the species because they are areas that provide or contain sources of water and coarse sediment (PCE 1) necessary to maintain preferred substrate conditions (PCE 2) in occupied portions of the species' range.

a. For the San Gabriel River, we determined that the areas within the geographical area occupied by the species at the time of listing and currently occupied are adequate for the conservation of the species based on our current understanding of the species' requirements. However, as discussed in the Critical Habitat section above, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species, and that for this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

b. In the upper Santa Ana River Subunit (Subunit 1A), we determined that the following three areas outside the geographical area occupied by the species at the time of listing are essential for the conservation of the species: Mill Creek, City Creek, and the Santa Ana River from Tippecanoe Avenue to just below Seven Oaks Dam. Mill Creek has never been documented as being occupied by Santa Ana sucker. City Creek and the Santa Ana River above Tippecanoe Avenue are not currently occupied, but were historically occupied based on a 1982 California Natural Diversity Database record and a 1940 University of Michigan Museum of Zoology (UMMZ) Fish Collection database record, respectively.

We determined that the Santa Ana River above Tippecanoe Avenue, Mill Creek, and City Creek are essential for the conservation of the species because they are areas that provide or contain sources of water and coarse sediment (PCE 1) that may be transported downstream and are necessary to maintain preferred substrate (PCE 2) conditions in occupied portions in the Santa Ana River. Using aerial imagery, we determined that the Santa Ana River above Tippecanoe Avenue, Mill Creek, and City Creek have large, unimpeded watersheds based on the following morphological characteristics: (i) A wide floodplain area; (ii) the presence of complex channels (such as braided channels); and (iii) a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins (PCE 2). The area above Tippecanoe Avenue provides a source of water that is essential to the conservation of the species. Although the Seven Oaks Dam does regulate the flow of water downstream, it cannot

operate as a water holding or conservation facility without further consultation (Service 2002, p. 5; CRWQCB 2009, p. 24), and water must be passed through the dam. Water released from the dam is most important when winter storm water is transported downstream in high quantity and velocity. These flow events allow the river to meander through the floodplain and expose buried gravel and cobbles that are essential to the conservation of Santa Ana sucker. Given the extent to which the hydrology and the habitat of the occupied section of the Santa Ana River have been altered and degraded due to the construction and operation of flood control structures (such as Prado and Seven Oaks Dams) and operation of water treatment facilities, maintenance of the Santa Ana River (including areas above Tippecanoe Avenue), City Creek, and Mill Creek as pathways to transport storm and stream waters (PCE 1) and sediments necessary to maintain preferred substrates (PCE 2) to occupied portions of the Santa Ana River is essential for the conservation of the species.

c. In Big Tujunga Creek, we determined that the following unoccupied areas outside the geographical area occupied by the species at the time of listing are essential for the conservation of the species: Gold Canyon, Delta Canyon, and Stone Canyon Creeks. These areas provide sufficient quantities of stream and storm waters (PCE 1) necessary to transport sediments to maintain preferred substrate (PCE 2) conditions in occupied portions in Big Tujunga Creek. Using aerial imagery, we determined that Gold Canyon, Delta Canyon, and Stone Canyon Creeks have large, unimpeded watersheds flowing into Big Tujunga Creek, based on the following morphological characteristics: (i) A wide floodplain area; (ii) the presence of complex channels (such as braided channels); and (iii) a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins (PCE 2). Given the extent to which the hydrology and the habitat of the occupied section of Big Tujunga Creek have been altered and degraded due to the construction and operation of flood control structures, such as Big Tujunga and Hansen Dams, maintenance of Gold Canyon, Delta Canyon, and Stone Canyon Creeks as pathways to transport water (PCE 1) and sediments necessary to maintain preferred substrates (PCE 2) in Big Tujunga Creek is essential for the conservation of the species.

While we are not aware of any surveys for Santa Ana sucker conducted in these creeks, based on our calculation of maximum slope (*see* Criterion 3 above), it appears that the slope of Delta Canyon and Stone Canyon Creeks from near their confluence with Big Tujunga Creek is likely too steep to be passable by Santa Ana sucker. The slope of Gold Canyon Creek from approximately 0.49 mi (0.8 km) upstream from its confluence with Big Tujunga Creek also appears to be too steep to be passable by Santa Ana sucker.

5. Using aerial imagery, we delineated the lateral extent of final revised critical habitat in the Santa Ana River above Tippecanoe Avenue, and in City, Mill, Gold Canyon, Delta Canyon, and Stone Canyon Creeks, to include areas containing: (a) A wide floodplain area; (b) complex channels (such as alluvial fans and braided channels); and (c) a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins (PCE 2) needed to provide stream and storm waters (PCE 1) necessary to transport sediments to maintain preferred substrate conditions (PCE 2) in the downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively.

6. We delineated the upstream limits of final revised critical habitat in the Santa Ana River above Tippecanoe Avenue, and in City, Mill, Gold Canyon, Delta Canyon, and Stone Canyon Creeks, by identifying the upstream origin of sediment transport in these tributaries to provide stream and storm waters (PCE 1) necessary to transport sediments to maintain preferred substrate conditions (PCE 2) in the downstream occupied portions of the Santa Ana River and Big Tujunga Creek, respectively. Using aerial imagery, we determined the origin of sediment transport in each creek to be the upstream area where complex channels (such as alluvial and braided channels) containing a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins (PCE 2) are visible.

7. We delineated the upstream and downstream extents of the final revised critical habitat in historically occupied areas of City Creek and the Santa Ana River above Tippecanoe Avenue using the same methodology as described under Criterion 3 above by extending the boundary from the nearest occurrence polygon or point to either the point of a natural or manmade barrier or to the point where the instream gradient exceeds a 7 degree slope, either of which we have assumed prevents further movement of Santa Ana sucker.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical and biological features for Santa Ana sucker. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule are excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

In summary, we are designating as critical habitat lands that we determined were occupied at the time of listing and contain sufficient physical and biological features to support life-history functions essential to the conservation of the species and lands outside the geographical area occupied at the time of listing that we determined are essential for the conservation of Santa Ana sucker.

Summary of Changes From Previously Designated Critical Habitat

The areas designated as critical habitat in this final rule constitute a revision of the critical habitat for Santa Ana sucker we designated on January 4, 2005 (70 FR 425). In this revised rulemaking we:

1. Refined the primary constituent elements (PCEs) to more accurately define the physical and biological features that are essential to the conservation of Santa Ana sucker;

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. Reevaluated areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act; and

5. Added to, subtracted from, and revised those areas previously identified as essential to the conservation of Santa Ana sucker to accurately portray lands that meet the definition of critical habitat based on the best scientific data available. Table 1 provides an overview of the differences between 2004 and

2005 final critical habitat rules, 2009 proposed revised critical habitat, and this final critical habitat rule for Santa Ana sucker at the Unit and Subunit level.

The areas identified in this final rule constitute a revision of the areas designated as critical habitat for Santa Ana sucker on January 4, 2005 (70 FR 425). In the 2005 final rule, we designated 8,305 ac (3,361 ha) of critical habitat in Units 2 and 3 in Los Angeles County. In the 2005 final rule, we removed all of Subunit 1A (Northern Prado Basin; 3,535 ac (1,431 ha)) and Subunit 1B (Santa Ana Wash; 8,174 ac (3,308 ha)) in San Bernardino County from the critical habitat designation (*see* below for additional discussion), and excluded the remainder of Unit 1 (which totaled 15,414 ac (6,238 ha)) in San Bernardino, Riverside, and Orange Counties under section 4(b)(2) of the Act.

In the 2009 proposed revised rule, we proposed to designate a total of 9,605 ac (3,887 ha) in San Bernardino, Riverside, Orange, and Los Angeles Counties as critical habitat for Santa Ana sucker. In the subsequent document that made available the DEA (75 FR 38441; July 2, 2010), we proposed to designate an additional 38 ac (15.38 ha) in Subunit 1A as critical habitat for Santa Ana sucker. In this final rule, we are designating a total of 9,331 ac (3,776 ha) in Los Angeles, Orange, San Bernardino, and Riverside Counties. Table 1 below outlines the changes in areas in each Unit or Subunit between the 2004 and 2005 critical habitat designations and this revised critical habitat designation.

TABLE 1—CHANGES BETWEEN THE FEBRUARY 26, 2004, CRITICAL HABITAT DESIGNATION (2004 FCH); THE JANUARY 4, 2005, CRITICAL HABITAT DESIGNATION (2005 FCH); THE DECEMBER 9, 2009, PROPOSED CRITICAL HABITAT DESIGNATION (2009 PRCH); THE JULY 2, 2010, FEDERAL REGISTER DOCUMENT MAKING AVAILABLE THE DEA (2010 NOA); AND THIS FINAL REVISED CRITICAL HABITAT DESIGNATION (2010 FCH)

[Values in this table may not sum due to rounding; * indicates area that was not included in the critical habitat designation]

County	2004 fCH		2005 fCH		2009 prCH		2010 NOA		2010 fCH	
	Unit/ subunit	Area designated or essential	Unit/ subunit	Area designated or essential	Unit/ subunit	Area designated or essential	Unit/ subunit	Area designated or essential	Unit/ subunit	Area designated or essential
Los Angeles	3	3,655 ac (1,479 ha)	3	2,540 ac (1,028 ha)	3A	1,189 ac (481 ha)	3A	1,189 ac (481 ha)	3A	1,189 ac (481 ha)
					3B	44 ac (18 ha)	3B	44 ac (18 ha)	3B	44 ac (18 ha)
	2	5,765 ac (2,333 ha)	2	5,765 ac (2,333 ha)	2	1,000 ac (405 ha)	2	1,000 ac (405 ha)	2	1,000 ac (405 ha)
San Bernardino	1A	3,535 ac (1,431 ha)			1A	1,900 ac (768 ha)	1A	1,938 ac (784 ha)	1A	1,559 ac (631 ha)
	1B	8,174 ac (3,308 ha).								
San Bernardino and Riverside.	N/A	N/A	1	15,414 ac (6,238 ha)*	1B	4,704 ac (1,903 ha)	1B	4,704 ac (1,903 ha)	1B	4,771 ac (1,931 ha)
Riverside and Orange	N/A	N/A			1C	767 ac (311 ha)	1C	767 ac (311 ha)	1C	767 ac (311 ha)
Total Designated		21,129 ac (8,551 ha)		8,305 ac (3,361 ha)		9,605 ac (3,887 ha)		9,643 ac (3,902 ha)		9,331 ac (3,776 ha)

Summary of Changes From the 2005 Final Critical Habitat to This Final Critical Habitat Designation

As described below, some areas designated in the 2005 final rule are not being designated as critical habitat in this final rule. Also, some areas are designated as critical habitat in this final rule that were not designated in the 2005 final rule because we have subsequently concluded that these areas are essential to the conservation of the species. These changes resulted in an overall addition of 1,026 ac (415 ha) in this final rule compared to the January 4, 2005, final revised designation (70 FR 425) (Table 1). These differences primarily resulted from the following changes to all of the units included in this final revised critical habitat designation, as well as the unit-specific revisions discussed below.

1. Enhanced resolution of aerial imagery allowed us to improve our mapping methodology to more accurately define the critical habitat boundaries and to better represent those areas that possess the physical and biological features essential to the conservation of the species. In the 2005 final rule, we used a 100-meter grid to delineate critical habitat. In this final rule, we delineated areas that contain the PCEs using current aerial imagery (*see* Criteria Used To Identify Critical Habitat section). This revised mapping method resulted in a significant overall decrease in the areas deemed essential and included in the final revised critical habitat boundaries. However, even with more refined mapping methods, we acknowledge the possibility that, due to mapping, data, and resource constraints, there may be some undeveloped areas mapped as critical habitat that do not contain the PCEs.

2. We revised the criteria used to identify critical habitat in the Santa Ana River, the San Gabriel River, and Big Tujunga Creek. The revised criteria allowed us to more precisely delineate the upstream boundaries of areas determined to contain the physical and biological features essential to the conservation of the species. We described the criteria and methods we used to identify and delineate the areas that we are designating as critical habitat in more detail than we did in the 2005 critical habitat designation to ensure that the public better understands why the areas are being designated as critical habitat (*see* Criteria Used To Identify Critical Habitat section of this final rule for a detailed discussion).

3. We reevaluated areas included in the 2005 final critical habitat designation to determine if those areas contain the physical and biological features essential to the conservation of Santa Ana sucker or are otherwise essential for the conservation of the species. As a result, some areas designated as Santa Ana sucker critical habitat in 2005 were removed from the 2009 proposed revised rule and this final rule (as described below) because they do not contain the physical and biological features required by Santa Ana sucker and are not otherwise essential to the species' conservation.

Major revisions in each unit include the following:

Unit 1: Santa Ana River (San Bernardino, Riverside, and Orange Counties)

1. In the 2005 critical habitat rule, we excluded all of Unit 1 (15,414 ac (6,238 ha)) from final critical habitat under section 4(b)(2) of the Act. In this final rule, we are designating a total of 5,535 ac (2,241 ha) as critical habitat in Subunits 1B and 1C, which correspond roughly to Unit 1 in the 2005 final rule and not excluding any areas under section 4(b)(2) of the Act. The 9,879-ac (3,998-ha) difference between the area identified as Unit 1 in the 2005 final rule and Subunits 1B and 1C in this final rule is primarily due to the following revisions:

a. In the 2005 critical habitat rule, numerous tributaries and channels that drain into the Santa Ana River were

considered essential to the conservation of the species but excluded under section 4(b)(2) of the Act. In this final rule, we removed from Subunits 1B and 1C (the area roughly corresponding to Unit 1 in the 2005 final rule) the following tributaries and channels because these areas do not contain the physical and biological features essential to the conservation of the species (from North to South):

- 1.2 mi (1.9 km) urban drainage through Lake Evans;
- 1.3 mi (2.1 km) urban drainage through Hole Lake;
- 0.9 mi (1.4 km) urban drainage (north side of the Santa Ana River (SAR), east of Pedley);
- 2.3 mi (3.7 km) urban drainage (north side of SAR, west of Pedley);
- 1.0 mi (1.5 km) urban drainage up Lucretia Avenue;
- 0.3 mi (0.47 km) urban drainage up Norco Rd. near California Rehabilitation Center;
- 2.1 mi (3.4 km) of Temescal Wash north of Corona Municipal Airport;
- 0.9 mi (1.5 km) urban drainage north of Temescal Wash; and
- 1.0 mi (1.7 km) urban drainage south of Corona Municipal Airport.

b. In the 2005 critical habitat rule, the Prado Basin where Chino and Temescal Creeks and the Santa Ana River converge was considered essential to the conservation of the species, but we excluded this area under section 4(b)(2) of the Act. In this final rule, we are not designating 4,476 ac (1,811 ha) of the Prado Basin where Chino and Temescal Creeks and the Santa Ana River converge because these areas do not contain the physical and biological features essential to the conservation of the species.

2. In the 2005 critical habitat rule, we did not designate Subunit 1B (Santa Ana Wash; 8,174 ac (3,308 ha)) as critical habitat because we determined this area to be "nonessential." We revisited that determination in our 2009 proposed revised critical habitat rule and this final critical habitat designation and conclude that portions of the area identified as Subunit 1B in the 2005 rule are essential for the conservation of the Santa Ana sucker. We changed our conclusion because we believe the creeks and rivers in Subunit 1B provide stream and storm waters (PCE 1) required to transport sediments that are necessary to maintain preferred substrate (PCE 2) conditions in occupied portions of the Santa Ana River. These waters are critical to maintain habitat for populations of Santa Ana sucker in the Santa Ana River, one of only three geographical areas where the listed entity survives. Protecting existing habitat on which the Santa Ana River populations depend is essential for the recovery of this species. Based on our reevaluation of this area, we are designating 1,559 ac (631 ha) in City and Mill Creeks and the Santa Ana River (below Seven Oaks Dam) as part of Subunit 1A, which composed a portion of Subunit 1B in the 2005 final rule. Some portions of the Santa Ana Wash area identified as part of Subunit 1B in the 2005 rule do not contain the physical and biological features essential to the conservation of the species and are not otherwise essential for the conservation of the Santa Ana sucker, and we have not included them as part of Subunit 1A.

Unit 2: San Gabriel River (Los Angeles County)

1. In the 2005 critical habitat rule, we designated 5,765 ac (2,333 ha) as critical habitat in Unit 2. In this final rule, we are designating 1,000 ac (405 ha) as critical habitat in Unit 2 (area corresponds roughly to Unit 2 in the 2005 final rule). The 4,765-ac (1,928-ha) reduction in Unit 2 from the 2005 final rule is primarily due to the following revisions:

a. In this final rule, we removed the upstream sections of the following creeks/rivers (which were designated in the 2005 final rule), because our analysis indicates that the slope of these upstream sections exceeds 7 degrees; therefore, we determined these areas do not contain the physical and biological features essential to the conservation of the species (*see* Criterion 3 in the Criteria Used To Identify Critical Habitat section above for a detailed discussion of our slope calculations and assumptions):

- 2.9 mi (4.60 km) of Big Mermaids Canyon Creek;
- 0.5 mi (0.77 km) of Bear Canyon Creek;
- 0.4 mi (0.60 km) of West Fork of Bear Creek;
- 1.6 mi (2.61 km) of North Fork of the San Gabriel River;
- 0.1 mi (0.19 km) of Bichota Canyon Creek;
- 1.9 mi (3.07 km) of Cattle Canyon Creek; and
- 0.3 mi (0.42 km) of Cow Canyon Creek.

While these unoccupied upstream areas do provide pathways to transport water (PCE 1) and sediments necessary to maintain preferred substrates (PCE 2), we determined that the areas within the geographical area occupied by the species in the San Gabriel River at the time of listing and currently occupied are adequate for the conservation of the species in this portion of its range (*see* Criteria Used To Identify Critical Habitat above).

b. In this final rule, we removed the entire extent of Shoemaker Canyon Creek (0.99 mi (1.59 km)) that was designated in the 2005 final rule because based on our calculations, the slope of this creek exceeds 7 degrees; therefore, we determined this area does not contain the physical and biological features essential to the conservation of the species (*see* Criterion 3 in the Criteria Used To Identify Critical Habitat section above for a detailed discussion of our slope calculations and assumptions).

c. In this final rule, we removed the entire extent of Burro Canyon Creek (0.74 mi (1.19 km)) that was designated in the 2005 final rule because habitat in this creek has been degraded due the operation of a mine upstream and does not contain the physical and biological features essential to the conservation of the species.

2. We are extending the upstream boundary of the East Fork of the San Gabriel River approximately 0.85 mi (1.37 km) from the upstream end of an occurrence polygon to the point near the Bridge-of-No-Return. In the 2005 final rule, we acknowledged that this upstream area is essential to the conservation of Santa Ana sucker, but because the area had not been proposed as critical habitat or delineated on the map or the legal description for this unit, it was not included in the 2005 final rule (70 FR 425; January 4, 2005).

Unit 3: Big Tujunga Creek (Los Angeles County)

1. In the 2005 critical habitat rule, we designated 2,540 ac (1,028 ha) as critical habitat in Unit 3. In this final rule, we are designating 1,233 ac (499 ha) as critical habitat in two subunits, Subunits 3A and 3B, which correspond roughly to Unit 3 in the 2005 final rule. Subunit 3A contains the mainstem of Big Tujunga Creek from Hansen Dam to Big Tujunga Dam, and Subunit 3B contains three unoccupied tributaries to Big Tujunga Creek: Gold Canyon, Delta Canyon, and Stone Canyon Creeks. The 1,307-ac (529-ha) reduction in Unit 3 from the 2005 final rule is primarily due to the following revisions:

a. In this final rule, we removed an upstream 0.26-mi (0.42-km) section of Delta Canyon Creek (Subunit 3B) and an upstream 0.13-mi (0.21-km) section of Stone Canyon Creek (Subunit 3B), both designated in the 2005 final rule, because these areas appear to be above the origin of sediment transport in these creeks and not essential to the conservation of the species (*see* Criterion 7 in the Criteria Used To

Identify Critical Habitat section above for a discussion of origin of sediment transport).

b. We are designating additional portions of Gold Canyon Creek (Subunit 3B) by extending the upstream boundary of critical habitat in the creek by approximately 0.29 mi (0.47 km) from the 2005 final critical habitat boundary to capture the upstream origin of sediment transport for this creek, an area we determined is essential for the conservation of the species (*see* Criterion 7 in the Criteria Used To Identify Critical Habitat section above for a discussion of origin of sediment transport).

c. We are designating approximately 160 ac (65 ha) of the privately owned Angeles National Golf Club in Subunit 3A in this final rule. Specifically, we are designating only the alluvial floodplain and multiple low-flow channels that traverse the golf course. However, due to the scale of the habitat areas containing the PCEs within the golf course and the current GIS mapping techniques, we are unable to map precisely only those areas containing the physical and biological features essential to the conservation of the species. Therefore, the entire golf course is mapped as final critical habitat. Permanent structures and facilities associated with the golf course (such as buildings) and fairways and greens outside of the floodplain do not contain the PCEs and are therefore not considered critical habitat.

The majority of the Angeles National Golf Club area was not included in the 2005 final critical habitat designation. However, this area includes the alluvial floodplain and multiple low-flow channels that traverse the golf course, and lies between the confluence of Big Tujunga and Haines Creeks. Stream flow and storm waters from Big Tujunga Creek transport sediments necessary to maintain preferred substrate conditions (PCE 2) within Haines Creek. These waters flow through the golf course on an irregular basis (*i.e.,* in 2 of the 5 years since the course was opened). Both creeks discharge into occupied habitat downstream, including the Big Tujunga Mitigation Bank, a conserved habitat area, which supports Santa Ana sucker and two other native fishes. Therefore, we believe this area contains the features essential to the conservation of the species because it provides for sediment transport (PCE 2) into the downstream conserved habitat area.

Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation

Unit 1: Santa Ana River (San Bernardino, Riverside, and Orange Counties)

In the proposed critical habitat revision that published with the document that made available the DEA on July 2, 2010 (75 FR 38441), we added approximately 38 ac (15 ha) to Subunit 1A in a portion of Plunge Creek, a tributary of the Santa Ana River that is located in San Bernardino County upstream of the confluence of the Santa Ana River with City Creek, to serve as an area for possible reintroduction efforts. This area was proposed in response to public comment during the first comment period. Additionally, the portion of Subunit 1A located above Seven Oaks Dam was included in the 2009 proposed revised rule (74 FR 65056; December 9, 2009). In this final critical habitat designation, we conclude that these areas are not essential. We lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. In particular, we lack supporting information regarding the feasibility of introducing Santa Ana sucker at either location (such as water quality conditions, reliability of water flows, and presence of predatory and competing species). Furthermore, upstream movement of Santa Ana suckers from the Santa Ana River mainstem into Plunge Creek is precluded due to mining operations that make the habitat unsuitable for the fish (including a dry stretch of the creek), while such movement is also precluded into the upper Santa Ana River and Bear Creek because of the Seven Oaks Dam. Additionally, we lack a comprehensive conservation strategy for Santa Ana sucker. Therefore, we cannot conclude at this time that these areas are essential for the conservation of the species.

As discussed in the Critical Habitat section below, because any designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of a species, this critical habitat designation should not signal that habitat outside the designated area is unimportant or may not promote the recovery of Santa Ana sucker (*e.g.,* reintroduction sites). We plan to initiate development of a recovery plan in 2011, which may include the establishment of a recovery team that would seek the involvement of species experts, habitat experts, and stakeholders. We anticipate this recovery effort would evaluate the need for reintroduction and, if needed, evaluate these areas and other sites within the historical range of the species for potential recovery efforts.

In the proposed revised critical habitat rule (74 FR 65056; December 9, 2009) and for the document that made available the DEA (75 FR 38441; July 2, 2010), we misprinted area estimates of acreages by land owners in Unit 1. We have corrected this error, and acreages are correctly represented in Table 2 below and the textual descriptions of each Subunit in Unit 1 below.

In the proposed revised critical habitat rule (74 FR 65056; December 9, 2009) and document making available the DEA (75 FR 38441; July 2, 2010), we evaluated areas considered for exclusion under section 4(b)(2) of the Act in the Santa Ana River that are covered by the Santa Ana Sucker Conservation Program (SAS Conservation Program) and the Western Riverside County MSHCP, including identifying whether or not these areas are or are going to be conserved and managed for the benefit of Santa Ana sucker. In this rule, we determined whether the areas were already conserved and managed for the benefit of Santa Ana sucker, and analyzed, under section 4(b)(2) of the Act, whether the benefits of exclusion from the critical habitat designation outweigh the benefits of including these areas.

Final Critical Habitat Designation

We are designating three units as critical habitat for Santa Ana sucker. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat for Santa Ana sucker. Table 2 identifies the approximate area of each critical habitat unit by land ownership. These units replace the current critical habitat designation for Santa Ana sucker in 50 CFR 17.95(e). The critical habitat areas we describe below constitute our best assessment of (1) areas determined to be within the geographical area occupied by the species at the time of listing that contain the physical and biological features essential to the conservation of the species and which may require special management considerations or protection, and (2) areas that are not within the geographical area occupied by the species at the time of listing but that are essential for the conservation of the species (*see* Criteria Used To Identify Critical Habitat section above for a discussion of geographical area).

TABLE 2—AREA ESTIMATES (ACRES (AC) AND HECTARES (HA)) AND LAND OWNERSHIP FOR SANTA ANA SUCKER FINAL REVISED CRITICAL HABITAT

[Values in this table may not sum due to rounding]

Critical habitat unit	County	Land ownership			Total area
		Federal	State or local government	Private	
Unit 1: Santa Ana River					
Subunit 1A: Upper Santa Ana River.	San Bernardino	74 ac (30 ha)	95 ac (38 ha)	1,389 ac (562 ha)	1,559 ac (631 ha)
Subunit 1B: Santa Ana River.	San Bernardino and Riverside.	521 ac (211 ha)	2,854 ac (1,155 ha)	1,396 ac (565 ha)	4,771 ac (1,931 ha)
Subunit 1C: Lower Santa Ana River.	Riverside and Orange	0 ac (0 ha)	56 ac (23 ha)	711 ac (288 ac)	767 ac (311 ha)
	Unit 1 Total	595 ac (241ha)	3,006 ac (1,217ha)	3,496 ac (1,4l5ha)	7,097 ac (2,872ha)
Unit 2: San Gabriel River					
Unit 2: San Gabriel River.	Los Angeles	917 ac (371 ha)	0 ac (0 ha)	83 ac (34 ha)	1,000 ac (405 ha)
Unit 3: Big Tujunga Creek					
Subunit 3A: Big Tujunga and Haines Creeks.	Los Angeles	242 ac (98 ha)	0 ac (0 ha)	947 ac (383 ha)	1,189 ac (481 ha)
Subunit 3B: Gold, Delta, and Stone Creeks.	Los Angeles	44ac (18 ha)	0 ac (0 ha)	0 ac (0 ha)	44 ac (18 ha)
	Unit 3 Total	286 ac (116ha)	0 ac (0 ha)	947 ac (383 ha)	1,233 ac (499 ha)
	Total	1,798 ac (728 ha)	3,006 ac (1,217 ha)	4,526 ac (1,832 ha)	9,331 ac (3,776 ha)

Critical Habitat Units

Presented below are brief descriptions of all units and reasons why they meet the definition of critical habitat for Santa Ana sucker.

Unit 1: Santa Ana River

Unit 1 is located in San Bernardino, Riverside, and Orange Counties and consists of three subunits totaling 7,097 ac (2,872 ha) of Federal (U.S. Army Corps of Engineers and USFS), local government, and private land (Table 2). The purpose of this unit is to independently support a population of Santa Ana sucker in a functioning hydrologic system that provides suitable water quality, supply, and coarse sediment. One currently unoccupied subunit (Subunit 1A) provides essential sources of water and coarse sediment to occupied portions of the unit.

Subunit 1A: Upper Santa Ana River

Subunit 1A is located near the Cities of Highland, Mentone, and Redlands in San Bernardino County, California. This subunit includes: 7 mi (12 km) of City Creek (measured from its confluence with the Santa Ana River), 12 mi (19 km) of Mill Creek (measured from its confluence with the Santa Ana River), and 10 mi (17 km) of the Santa Ana River from below the Seven Oaks Dam to near Tippecanoe Avenue. The lower portion of the Santa Ana River below its confluence with City and Mill Creek is adjacent to urban development, while the upstream portions of City Creek and Mill Creek are in the San Bernardino National Forest. Lands in this subunit are under Federal (USFS and Bureau of Land Management (BLM)) (74 ac (111 ha)), State/Local (95 ac (38 ha)), and private (1,389 ac (562 ha)) ownership (Table 2).

Subunit 1A is outside the geographical area occupied by the species at the time of listing and is not currently occupied. While City Creek and the Santa Ana River above Tippecanoe Avenue are not currently occupied, these areas were historically occupied based on a 1982 California Natural Diversity Database record and a 1940 University of Michigan Museum of Zoology Fish Collection (UMMZ) database record, respectively, and City Creek currently provides suitable habitat conditions for Santa Ana sucker (OCWD 2009, pp. 5–71–5–76). Mill Creek is not known to be historically or currently occupied and does not provide suitable habitat conditions for Santa Ana sucker; however, we determined this area to be essential for the conservation of the species because of the process of water and coarse sediment transport that it provides. The Santa Ana River above Tippecanoe Avenue, Mill Creek, and City Creek provide stream and storm waters (PCE 1) which are necessary to transport coarse sediments necessary to maintain preferred substrate (PCE 2) conditions in occupied portions in the Santa Ana River and we determined that these areas are essential for the conservation of the species because of the process of water and coarse sediment transport that they it provide. The creation and operation of Seven Oaks Dam has regulated water flow and impeded the transport of coarse sediment. However, because the operation of Seven Oaks Dam, in coordination with Prado Dam downstream, is currently permitted for flood control operations only (operations only regulate flows throughout the year in an effort to

prevent catastrophic flow events downstream) and not for water storage purposes (Service 2002, pp. 3–6), the flow of water through the dam still provides water necessary for occupied reaches of the Santa Ana River downstream. Storing water for the purpose of water conservation (*i.e.,* diversions or storage for water sales) is not currently authorized, nor was proposed as a purpose for Seven Oaks Dam (Service 2002, p. 5). Although there has recently been a CRWQCB decision to allow up to 200,000 acre-feet to be diverted from the Seven Oaks Dam reservoir, this potential action has not been evaluated or approved by the Federal agencies involved. The CRWQCB stated that water conservation operations will be the responsibility of the water agency and the appropriate Federal agencies will need to be consulted before water can be diverted for water conservation (*i.e.,* sale) purposes (CRWQCB 2009, p. 23).

As stated above, this subunit is relatively unmodified compared to the other subunits in this unit, with the exception of the upper Santa Ana River that contains Seven Oaks Dam and the lower portion of City Creek that is adjacent to urbanized areas. The critical habitat designated in this subunit is threatened by impacts associated with, but not limited to, water diversion, dams, operation of hydro-electrical power facilities, or alteration of streambeds. We consider the magnitude of threats to be less severe than those in the lower watershed because the majority of the subunit is relatively unmodified and portions are within the San Bernardino National Forest. Nonetheless, we also recognize that active management and special management considerations or protection may be needed in this subunit (*see* Special Management Considerations or Protection section above).

Although areas of the Santa Ana River above South La Cadena Drive and some of its associated tributaries generally dry during the summer, portions of the upper Santa Ana River system (within San Bernardino County) have a higher gradient and a greater percentage of gravel and cobble substrate than the occupied areas that are downstream (Warrick and Rubin 2007, pp. 1–2). Santa Ana suckers spawn over gravel substrates, where their eggs can adhere to gravel before hatching into larvae. Flood events or high winter flows from upstream areas annually replenish this coarse substrate and clean sand and silt from it (Kondolf 1997, pp. 533–535). Additionally, Santa Ana suckers feed by scraping algae, insects, and detritus from gravel and cobble. Therefore, the spawning and feeding substrates (gravel and cobble) which are replenished by upstream sources are essential to the reproductive ability and development of Santa Ana suckers in the downstream occupied reaches (Kondolf 1997, pp. 533–535, 536–537). The section of the Santa Ana River from above Tippecanoe Avenue in San Bernardino, City Creek, and Mill Creek (although not currently occupied) have become particularly essential for the conservation of the species since the Seven Oaks Dam has reduced the transport of coarse sediment and altered the natural flow in the downstream, occupied areas of the Santa Ana River. They are in fact the primary sources of coarse sediment in the upper Santa Ana River watershed (PCE 2) and additionally are part of the Santa Ana River hydrologic system (PCE1), and assist in maintaining water quality (PCE 4) and temperature (PCE 5) to occupied reaches of the Santa Ana River; therefore, these areas are essential for the conservation of Santa Ana sucker (*see* Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring section above).

In our process of determining what areas meet the criteria of occupied critical habitat, it became apparent that habitat and hydrological modifications that have been occurring for many years in the Santa Ana River have decreased the areas suitable for occupation by the Santa Ana sucker (Moyle 2002, p. 184; Thompson *et al.* 2010, p. 330). The presence of two large dams operating in coordination have altered and will continue to alter the flow of water and coarse sediments in the Santa Ana River (Chang 2000, p. 3) that are necessary for essential life cycle processes of Santa Ana sucker. Specifically, the models used to predict the transport of sediment throughout the Santa Ana River and surveys have confirmed that sediment has been significantly degraded in the Santa Ana River from the E Street USGS gauge (#11059300) to the Metropolitan Water District crossing USGS gauge (#11066460) and deposited above and below these areas (Humphrey *et al.* 2004, pp. 6–7). The deposition and degradation of sediments throughout the Santa Ana River will eventually level the gradient of the Santa Ana River between the Seven Oaks and Prado Dams. This ongoing process, which modifies and degrades the Santa Ana sucker's habitat, highlights the importance of designating areas that provide for essential processes, such as water and coarse sediment transport to occupied areas downstream. Therefore, we have determined that City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue are essential for the conservation of the species because they provide for essential processes, such as water and coarse sediment transport.

Subunit 1B: Santa Ana River

Subunit 1B is located near the cities of Colton and Rialto in San Bernardino County and the cities of Riverside, Norco, and Corona in Riverside County, California. This subunit includes approximately 22 mi (35 km) of the mainstem of the Santa Ana River from near Tippecanoe Avenue in San Bernardino County to the Prado Dam and Flood Control Basin in Riverside County. This subunit also includes sections of the following tributaries (distances are measured from the mainstem of the Santa Ana River): 1,647 ft (502 m) of the Rialto Drain and 2,413 ft (736 m) Sunnyslope Creek. Lands within this subunit are under Federal (U.S. Army Corps of Engineers) (521 ac (211 ha)), State/Local (2,854 ac (1,155 ha)), and private (1,396 ac (565 ha)) ownership (Table 2).

Areas within this subunit are within the geographical area occupied by the species at the time of listing, most are currently occupied, and all contain physical and biological features essential to the conservation of the species and may require special management considerations or protection. An approximate 5.1-mile (8.1-km) portion of the Santa Ana River between La Cadena Drive and Tippecanoe Avenue within Subunit 1B is not currently occupied due the barrier to upstream dispersal at La Cadena Drive; however, this areas was considered occupied at the time of listing and is essential to the conservation of the species and contains sources of water and coarse sediment (PCE 1) essential to the conservation of Santa Ana sucker. This subunit has been heavily impacted by urban development and threats to Santa Ana sucker and its essential features in this subunit result from impacts associated with, but not limited to: Water diversion; dams; water quality impacts from non-point source and point source pollution (including untreated urban run-off and discharge of treated wastewater); and altered hydrology throughout the watershed (including alterations from instream barriers, construction of bridges, channelization, and other flood control structures). Special management considerations or protection may be needed in this subunit to protect its essential features (*see* Special Management Considerations or Protection section above).

Recent surveys found Santa Ana suckers at various locations in the mainstem of the Santa Ana River between the Rialto Drain and the Prado Dam (Baskin *et al.,* 2005, pp. 1–2; Swift 2009, pp. 1–3). Santa Ana suckers also occupy the Rialto Drain and Sunnyslope Creek at least during portions of the year (Chadwick Ecological Consultants, Inc. 1996, p. 9; Swift 2000, p. 8; Swift 2001, p. 45). At this time, the low-flow channel of the Santa Ana River has moved away from its confluence with Sunnyslope Creek, and accumulated sediments and vegetation are preventing access to this creek by Santa Ana suckers (OCWD 2009, pp. 5–31). However, a connection between the mainstem and Sunnyslope Channel will likely be reestablished following a high-flow event. Santa Ana suckers were found upstream of the Rialto Drain in the vicinity of the La Cadena Bridge drop-structure during spring-time flow releases from the Seven Oaks Dam in 2005 (Baskin *et al.* 2005, p. 1). However, the La Cadena Bridge drop-structure currently acts as a barrier to upstream migration at all flow levels. Rialto Drain and Sunnyslope Creek are the only tributaries to the Santa Ana River in this subunit where Santa Ana sucker spawning has been documented. However, the distribution of fry and juvenile fish observed in various locations within the mainstem is a strong indication that spawning areas other than the Rialto Drain and Sunnyslope Creek likely exist within the Santa Ana River.

In the mainstem of the Santa Ana River, dry-season flows are dependent primarily on discharges from tertiary wastewater treatment plants and upwelling of ground water within the Unit (CRWQCB 1995, pp. 1–4–1–8; Chadwick and Associates, Inc. 1992, p. 20), while storm-season flows are regulated by the upstream Seven Oaks Dam. The discharge of treated wastewater effluent maintains stream volume and velocity within the mainstem and the Rialto Drain to maintain habitat patches that support the riverine environment (PCE 1) necessary for Santa Ana sucker. However, it appears that these wastewater flows are not sufficient to deliver coarse sediment downstream (Thompson *et al.* 2010, pp. 327–328). The discharge of treated wastewater effluent along with the upwelling of groundwater also lowers instream water temperature to some extent in portions of the Santa Ana River (Chadwick and Associates, Inc. 1992, p. 26) (PCE 5), and rising groundwater in the Riverside Narrows feeds several small tributaries to the Santa Ana River, including the Sunnyslope Creek (CRWQCB 1995, pp. 1–4–1–8; Swift 2001, p. 3) (PCE 1). Rialto Drain and Sunnyslope Creek contain gravel and cobble substrate, with some sand accumulation along channel edges and deep pools, and a riparian overstory (PCEs 2 and 6). Therefore, these areas provide areas for spawning and rearing of fry and juvenile fish (PCE 1) and shallow-water refuge for Santa Ana suckers during storms and during periods of high ambient air temperatures (PCE 6). Almost all other tributaries to the Santa Ana River in this subunit have been channelized, and while these tributaries continue to provide some water and storm water flows to the mainstem, the majority of this water is untreated run-off from surrounding urban areas. Also, with the exception of their confluence with the mainstem, it appears these other tributaries to the Santa Ana River have been modified such that they no longer provide suitable habitat for the species.

In addition to reduced water quality and altered hydrology, habitat within this subunit has been impacted by the construction of several bridges spanning the Santa Ana River and grade-control structures that fragment habitat for Santa Ana sucker. Therefore, 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 associated with water diversion, alteration of stream channels and watersheds, and reduction of water quantity and quality associated with urban development. Please *see* Special Management Considerations or Protection section for further discussion of the threats to Santa Ana sucker habitat.

Subunit 1C: Lower Santa Ana River

Subunit 1C is located near the City of Corona in Riverside County and the cities of Anaheim and Yorba Linda in Orange County, California. This subunit includes approximately 10.7 mi (17.2 km) of the Santa Ana River mainstem from below the Prado Dam outlet in Riverside County to 0.6 mi (1.03 km) downstream of the State Route 90 (Imperial Highway) Bridge in Orange County. Tributaries to the Santa Ana River in this subunit may provide water and storm water flows necessary to maintain preferred substrate conditions in the occupied portion of the Santa Ana River (PCE 1). However, we do not currently have information on the extent of their contribution and therefore are not proposing any tributaries to the Santa Ana River in Subunit 1C as critical habitat. Lands within this subunit are under State/Local (56 ac (23 ha)) and private (711 ac (288 ha)) ownership (Table 2).

All areas in Subunit 1C are within the geographic area occupied by the species at the time of listing and contain the features essential to the conservation of the species and may require special management considerations or protection. This species has been found in the vicinity of the Gypsum Canyon Bridge, Weir Canyon drop structure, and the Imperial Highway overpass (Chadwick Ecological Consultants, Inc. 1996, p. 9; Swift 2000, pp. 15–20; Baskin and Haglund 2001, pp. 1–5). More recently Santa Ana suckers were collected just below Prado Dam (SMEA 2008, p. 1; Lovan 2010, pers. comm.).

This subunit has been heavily impacted by urban development and threats to Santa Ana sucker and its essential features in this subunit result from impacts associated with, but not limited to: Water diversion; dams; water quality impacts from non-point source and point source pollution (including untreated urban run-off and discharge of treated wastewater); and altered hydrology throughout the watershed (including alterations from instream barriers, construction of bridges, channelization, and other flood control structures). We also recognize that special management considerations or protection may be needed in this subunit to protect its essential features (*see* Special Management Considerations or Protection section above).

Upstream water flows to Subunit 1C are primarily maintained by releases from Prado Dam, a structure that has altered the hydrology of the system, resulting in fluctuating water (PCE 1) and sediment (PCE 2) releases. The numerous tributaries flowing into the Santa Ana River below Prado Dam appear to contribute little dry-season flow. Releases from Prado Dam maintain perennial stream flow in the Santa Ana River, which in turn maintains well-defined banks supporting native riparian vegetation (PCE 6) and deep pools (PCE 2). However, since the velocity is typically high, water released below the dam is often turbid. During storms, water containing fine sediments passes over or through a dam, and because sediments remain suspended within the reservoir pool for several months, downstream turbidity can be increased (PCE 4) (Ally 2004a, p. 36). Releases of turbid water could also degrade downstream foraging and spawning habitat if areas become covered by fine silts. The operation of Prado Dam also traps larger sediments therefore decreasing the deposition of

gravel and cobble needed to maintain spawning and foraging habitat below the dam.

In addition to reduced water quality and altered hydrology, habitat within this subunit has been impacted by the construction of several bridges spanning the Santa Ana River that have constricted or redirected the stream channel in many places. Therefore, 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 water diversion, alteration of stream channels and watersheds, and reduction of water quantity and quality associated with urban development. Please *see* the Special Management Considerations or Protection section of this final rule for discussion of the threats to the Santa Ana sucker habitat.

Unit 2: San Gabriel River

Unit 2 consists of the West, North, and East Forks of the San Gabriel River upstream of the San Gabriel Reservoir, in Los Angeles County, California. This unit includes 9.3 mi (14.9 km) of the West Fork downstream of Cogswell Dam to the San Gabriel Reservoir, 3.2 mi (5.2 km) of the North Fork upstream from the confluence with the West Fork, and 10.4 mi (16.7 km) of the East Fork downstream of the Bridge-of-No-Return to the San Gabriel Reservoir. This unit also includes sections of the following tributaries (distances are measured from the mainstem of the fork): 0.3 mi (0.5 km) of Big Mermaids Canyon Creek and 3.3 mi (5.3 km) Bear Canyon Creek, both tributaries of the West Fork; 0.2 mi (0.2 km) of the West Fork of Bear Canyon Creek, a tributary of Bear Canyon Creek; 1.5 mi (2.4 km) of Bichota Canyon Creek, a tributary of the North Fork; 3.8 mi (6.2 km) of Cattle Canyon Creek, a tributary of the East Fork; and 0.6 mi (0.9 km) of Cow Canyon Creek, a tributary of Cattle Canyon Creek. Lands within this unit are entirely within the Angeles National Forest and are under Federal (USFS) (917 ac (371 ha)) and private (83 ac (34 ha)) ownership (Table 2).

All areas in Unit 2 are within the geographical area occupied by the species at the time of listing, contain the features essential to the conservation of the species and may require special management considerations or protection. Unit 2 is the only unit designated as critical habitat that, overall, has a sediment transport and hydrological regime existing in a near-natural state. The function of Unit 2 is to independently support a population of Santa Ana sucker within a relatively intact watershed that provides good water quality and supply, and sediment transport. The Santa Ana suckers in this unit are the only extant population of the species that is not chronically exposed to urban runoff or tertiary-treated wastewater discharges. Additionally, this unit does not have a regulated water supply (with the exception of the West Fork of the San Gabriel River). However, threats to Santa Ana sucker and its essential features in this unit result from impacts associated with, but not limited to: Water diversion; dams; water quality impacts as a result of increased run-off due to a recent, intense wildfire event; and recreational use impacts from OHVs or other recreational uses on National Forest lands. We also recognize that special management considerations or protection may be needed in this subunit to protect its essential features (*see* Special Management Considerations or Protection section above).

In addition to surveys discussed in the listing rule (65 FR 19686; April 12, 2000) and in the previous designation of critical habitat for Santa Ana sucker (70 FR 425; January 4, 2005), additional surveys have documented Santa Ana suckers in the West, North, and East Forks of the San Gabriel River and the following tributaries: Big Mermaids Canyon, Bear Canyon, Bichota Canyon, Cattle Canyon, and Cow Canyon Creeks (Haglund and Baskin 1992, p. 32; O'Brien 2009a, pp. 2–3; Ally 2004b, pp. 8–9, 14–15, 22, 24–25, 28; Ally 2004c, pp. 9–10, 13–14, 16–17; Tennant 2004, pp. 5–8; Tennant 2006, p. 3). The West, North, and East Forks of the San Gabriel River have one of the most intact native freshwater fish faunas in Southern California (Haglund and Baskin 2003, p. 7), have good water quality, and appear to support the highest abundance of Santa Ana suckers within the species' range.

Natural water flow in the North and East forks, and the tributaries included in this unit, is unimpeded by large-scale dams. However, water flows in the West Fork of the San Gabriel River are affected by Cogswell Dam, a structure that has altered the hydrology of the system, resulting in fluctuating water (PCE 1) and sediment (PCE 2) releases. During its operational life, the Cogswell Reservoir has accumulated a large volume of sediment behind the dam that affects the quality of water released both through operations and unavoidable, uncontrolled leakage (Ally 2004a, p. 1). During the summer months, the only flow into the West Fork of the San Gabriel River is the result of leakage from the dam, and because flow velocities are low, sediments do not travel far downstream (Ally 2004a, p. 36). During storms, water containing fine sediments passes over or through the dam, and because sediments remain suspended within the reservoir pool for several months, downstream turbidity may be increased over usual conditions (PCE 4) (Ally 2004a, p. 36). Previous releases from Cogswell Dam containing more than 200,000 cubic yards (152,911 cubic meters) of silt and other sediment have severely impacted the habitat of the West Fork of the San Gabriel River and San Gabriel Reservoir (Drake 1988, p. 7; Haglund and Baskin 1992, p. 57; Moyle and Yoshiyama 1992, p. 204; Moyle *et al.* 1995, p. 203; Moyle 2002, p. 184). These rapid increases in flow volume and velocity along with sediment sluicing may disrupt Santa Ana sucker spawning and flush juvenile Santa Ana suckers into areas with unsuitable habitat.

Along with impacts associated with the operation of Cogswell Dam, habitat within Unit 2 has also been impacted by recreational activities, including OHV use and the construction of recreational dams. Authorized OHV activity occurs in the USFS's San Gabriel Canyon OHV Area at the junction of the East, North, and West Forks. The use of the river as an OHV recreational area may result in adverse effects to Santa Ana sucker by increasing turbidity (PCE 4); disrupting the physical structure of habitat for spawning, resting, and feeding (PCE 2); and introducing pollutants (such as oil and gas) into streams (PCE 4) (65 FR 19686; April 12, 2000). To minimize impacts to Santa Ana sucker from OHV use, the USFS has implemented protection measures (such as establishing designated stream crossings and limiting the number of stream crossings in the OHV area) (Service 2005b, p. 8). The construction of "recreational" dams degrades instream and possibly bank habitat, increases turbidity (PCE 4), and disrupts sediment transport. Over 500 recreational dams were found in 2001 and 2002 within a 7.1–mi (11.4–km) reach of the East Fork of the San Gabriel River (Ally 2001, p. 2; Ally 2003, pp. 1–2). Recreational dams are constructed on a frequent basis in the San Gabriel Canyon OHV Area in the North Fork of this river as well (USFS 2008, p. 6). Therefore, 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 associated with water diversion, alteration of stream channels and watersheds, and human recreational activities.

Unit 2 was not directly impacted by the 2009 Station Fire that burned approximately 161,000 ac (64,975 ha) of lands in the San Gabriel Mountains (USFS 2009, p. 4), although indirect impacts associated with post-fire debris flow and changes to water quality may have occurred or could occur in the future. Because this particular area did not burn in the Station Fire, it was not analyzed in the U.S. Geological Survey (USGS 2009) or USFS (2009) reports; however, the burned area is directly adjacent to the West Fork of the San Gabriel River and thus may have some impact to critical habitat. For additional information on this fire and its anticipated impacts, *see* the *Unit 3: Big Tujunga Creek* section below. Please *see* Special Management Considerations or Protection section of this final rule for discussion of the threats to Santa Ana sucker habitat.

Unit 3: Big Tujunga Creek

Unit 3 includes a total of 1,233 ac (499 ha) of land and consists of two subunits located in Los Angeles County, California. Lands within this unit are under Federal (USFS) (286 ac (116 ha)) and private (947 ac (384 ha)) ownership (Table 2). The purpose of this unit is to independently support a population of Santa Ana sucker in a functioning hydrologic system that provides suitable water quality and supply, and coarse sediments. One of the two subunits in Unit 3, Subunit 3B is outside of the geographic range occupied by the species at the time of listing but provides essential sources of water and sediment to the occupied subunit (3A) within the unit.

In August 2009, the Station Fire began and eventually burned approximately 161,000 ac (64,975 ha) of lands within the San Gabriel Mountains (USFS 2009, p. 4). The fire burned conifer forests, chaparral, and riparian vegetation in the stream corridors, including approximately 81 mi (130.36 km) of perennial channel and 572 mi (920.54 km) of intermittent stream beds (USFS 2009, p. 2). As a result of this fire, excessive debris flows and changes to water quality are anticipated to occur during seasonal rains over the next several years. The greatest potential for significant impacts resulting from elevated debris flows is anticipated in Big Tujunga Canyon, Pacoima Canyon, Arroyo Seco Canyon, the West Fork of the San Gabriel River, and Devil's Canyon (USFS 2009, p. 4). The estimated debris flow probability for a 3-hour duration, 1-year-reoccurence thunderstorm in the area impacted by the Station Fire indicates an 81 to 100 percent probability for impact to critical habitat in all of Unit 3 (USGS 2009, p. 9, Fig 3A). Anticipated post-fire impacts to streams within this unit include ash and debris deposition that may physically alter streambeds and pools, increased scouring of riparian and aquatic vegetation, and increased water temperature from the short-term loss of canopy shading (USFS 2009, p. 5). Changes to water quality (such as increased turbidity) are also anticipated from both post-fire impacts and from the release and mobilization of toxic chemicals such as gas, oil, and building materials as a result of burned structures and their contents (USFS 2009, p. 6). The USFS determined that the future combined impacts attributed to the Station Fire may lead to a temporary loss or reduction of suitable stream habitat and a localized risk of extirpation that may result in threatening the viability of Santa Ana sucker (USFS 2009, p. 7). Additionally, the loss of vegetation and creation of roads for firefighting may allow greater access to streambeds and facilitate increased OHV use, resulting in further habitat degradation (USGS 2009, p. 7).

Subunit 3A: Big Tujunga and Haines Creeks

Subunit 3A includes an approximately 13–mi (21–km) stretch of Big Tujunga Creek (a tributary of the Los Angeles River) between the Big Tujunga Dam and Reservoir and Hansen Dam and Flood Control Basin. This subunit also includes Haines Creek, a small stream within the floodplain of Big Tujunga Creek. The 1,189 ac (481 ha) of land within this subunit is under Federal (USFS) (242 ac (98 ha)) and private (947 ac (384 ha)) ownership (Table 2).

All areas of Subunit 3A are within the geographical area occupied by the species at the time of listing and contain the features essential to the conservation of the species which may require special management considerations or protection. This subunit has been heavily impacted by urban development. Threats to Santa Ana sucker and its essential features in this subunit result from impacts associated with, but not limited to: Water diversion; dams; Water quality impacts from non-point source and point source pollution (including untreated urban run-off and discharge of treated wastewater); and altered hydrology throughout the watershed (including alterations from instream barriers, construction of bridges, channelization and other flood control structures). We also recognize that special management considerations or protection will be required in this subunit to protect its essential features (*see* Special Management Considerations or Protection section above).

In addition to surveys cited in the listing rule (65 FR 19686; April 12, 2000) and in the previous designation of critical habitat for Santa Ana sucker (70 FR 425; January 4, 2005), other surveys have documented Santa Ana suckers in Big Tujunga Creek between Delta Flats and Vogel Flats (Haglund and Baskin 2001, pp. 2–4; O'Brien 2009b, p. 2), and in the Big Tujunga Wash Mitigation Bank, including Haines Creek (Chambers Group 2004, pp. 6–3, 6–4). There has been previous speculation that Big Tujunga Creek between the Big Tujunga Dam and Big Tujunga Canyon Road Bridge may no longer be occupied by Santa Ana sucker; however, recent surveys indicate that Santa Ana suckers are present in this area but in relatively low abundance (Haglund and Baskin 2010, pp. 17–18). Swift (2002, p. 3) speculates that streambed characteristics in three places upstream of Big Tujunga Canyon Road Bridge may prevent upstream movement or make movement possible only during rare high flow events. We currently consider this area occupied because Santa Ana suckers have been documented near and downstream of the Big Tujunga Canyon Road Bridge and because we do not have evidence of the existence of barriers permanently precluding upstream movement to the dam. The upstream sections of Big Tujunga Creek are also important for providing stream and storm waters necessary to transport coarse sediments to maintain preferred substrate conditions (PCE 2) for Santa Ana sucker in occupied areas downstream.

A section of Haines Creek upstream of the Foothill Bridge traverses the Angeles National Golf Course. This 160-ac (65 ha), privately-owned golf course lies between the confluence of Big Tujunga and Haines Creeks and includes the alluvial floodplain and multiple low-flow channels that traverse the golf course. Periodic high storm flows from the Big Tujunga Creek travel through the golf course into Haines Creek on an irregular basis and likely provide the only source of stream and storm waters necessary to transport coarse sediments (from Big Tujunga Creek) to maintain preferred substrate conditions (PCE 2) to the occupied portion of Haines Creek (Chambers Group 2004, p. 6–4). Therefore, the alluvial floodplain and multiple low-flow channels that traverse the golf course are essential to the conservation of the species because they provide the primary (and potentially the sole) source of stream and storm waters (PCEs 1, 4, and 7) downstream into the

Big Tujunga Wash Mitigation Bank that supports Santa Ana sucker (*see* Summary of Changes From Previously Designated Critical Habitat section above for more discussion of the area designated as critical habitat on the Angeles National Golf Course).

The upstream portion of this subunit is within the Angeles National Forest and is therefore not exposed to the effects of urbanization. However, the downstream portion of Big Tujunga Creek between the Oro Vista Bridge and Hansen Dam is adjacent to existing urban development south of the creek, which has altered water flows transporting coarse sediment (PCE 2) into the Big Tujunga Creek. Several tributaries (including the upper portion of Haines Creek) that flow into Big Tujunga Creek through the communities of Sunland and Tujunga have been channelized through urbanized areas for flood control purposes. This channelization has eliminated habitat for Santa Ana sucker, altered the hydrologic regime (PCE 1), and reduced the transport of sediments needed to maintain channel substrate conditions (PCE 2) in the occupied sections of Big Tujunga Creek.

Habitat in Subunit 3A has been altered due to the operation of the Big Tujunga Dam upstream and Hansen Dam downstream. All flows in the occupied reaches of Big Tujunga Creek are moderated by the operation of Big Tujunga Dam, which has eliminated flows along most of the creek during late summer and autumn of dry years (Palavido *et al.* 2008, p. 8), thereby reducing not only the amount of water (PCE 1) entering the system but also the amount of coarse sediment (PCE 2) being transported downstream. During these dry periods, Santa Ana suckers are restricted to an approximate 1-mi (1.6-km) section of the creek (Palavido *et al.* 2008, p. 8). At times, the creek can be reduced to a series of standing pools with only a trickle of flow between them (Swift 2002, p. 1), further isolating Santa Ana suckers (PCE 1). To minimize impacts to the species, a strategy is being developed with the objective of maintaining and enhancing Santa Ana sucker habitat within the lower Big Tujunga Creek (Mendez 2005, p. 1).

Habitat within this subunit has also been impacted by the construction of several bridges (such as the Foothill, Interstate-210, and Oro Vista bridges). The habitat that serves as a connective corridor (PCE 7) within both Big Tujunga Creek and Haines Creek as they flow under the Foothill and Interstate-210 bridges is often temporarily fragmented during periods of low flow (Swift 2006a, p. 2). Hence, sufficient water flow from the upstream dam is necessary to ensure water and coarse sediment transport to maintain the stream channel substrate conditions required by Santa Ana sucker in this area (PCEs 1, 2, and 7). 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 associated with water diversion, alteration of stream channels and watersheds, and human recreational activities. Please *see* Special Management Considerations or Protection section of the 2009 proposed rule and this final rule for discussion of the threats to Santa Ana sucker habitat.

Subunit 3B: Gold, Delta, and Stone Canyon Creeks

Subunit 3B consists of three tributaries to Big Tujunga Creek (measured from their confluence with the mainstem): A 1.89-mi (3.04-km) section of Gold Canyon Creek, a 0.79-mi (1.27-km) section of Delta Canyon Creek, and a 0.67-mi (1.08-km) section of Stone Canyon Creek. The 44 ac (18 ha) of land within this subunit is entirely within the Angeles National Forest and is entirely under Federal (USFS) ownership (Table 2).

The three tributaries in this Subunit 3B are not within the geographical range of the species occupied at the time of listing and are not currently occupied, but are included in this critical habitat designation because they contribute essential coarse sediments and flows to occupied habitats downstream (PCEs 1 and 2). This subunit has been impacted by urban development, although to a lesser extent than the mainstem of Big Tujunga Creek. Threats to the critical habitat designated in this subunit result from impacts associated with, but not limited to, water diversion, dams, and altered hydrology in the lower portion of the watershed. We also recognize that special management considerations or protection may be required in this subunit (*see* Special Management Considerations or Protection section above).

While we are not aware of any surveys for Santa Ana sucker conducted in Gold Canyon, Delta Canyon, or Stone Canyon Creeks, it appears that the slopes of Delta Canyon and Stone Canyon Creeks from near their confluence with Big Tujunga Creek are too steep to be passable by Santa Ana sucker. The slope of Gold Canyon Creek from approximately 0.49 mi (0.8 km) from its confluence with Big Tujunga Creek also appears to be too steep to be passable by Santa Ana sucker. Please *see* the Criteria Used To Identify Critical Habitat section of this final rule for a discussion of how we determined the slope within these creeks.

These tributaries are particularly essential for the conservation of the species given the extent to which the hydrology and the habitat of the downstream occupied section of Big Tujunga Creek has been altered and degraded due to the construction and operation of Big Tujunga Dam. These creeks are essential for the conservation of the species because they provide and transport coarse sediment (PCE 2) and convey stream flows and flood waters (PCE 1) necessary to maintain habitat conditions for the downstream occupied areas of Big Tujunga Creek. The areas of these creeks at their confluence with Big Tujunga Creek also provide protective areas for juvenile Santa Ana suckers during high flow events, during periods of high ambient temperatures, and from predators (PCEs 1 and 6).

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 courts of appeals for the Fifth and Ninth Circuits 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 or the ability of the PCEs to be functionally established in the area) to serve its intended conservation role for the species.

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the

requirements of section 7(a)(2) of the Act through our issuance of:

1. A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

2. A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, USFS and BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow USFS and BLM the opportunity to make "not likely to adversely affect" determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The USFS and BLM must ensure staff are properly trained, and both agencies are required to submit monitoring reports to the Service to determine if the procedures are being implemented properly and effects to endangered species and their habitats are being properly evaluated. As a result, we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

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 sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect Santa Ana sucker 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 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 continue to serve its intended conservation role for the species, or would retain those physical and biological features essential for the conservation of the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features or the area itself to an extent that appreciably reduces the conservation value of critical habitat for Santa Ana sucker. 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.

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 Santa Ana sucker include, but are not limited to:

1. Actions that would alter the hydrology to a degree that appreciably reduces the value of the critical habitat for either the survival or the recovery of the species. Such activities could include, but are not limited to, impoundment, channelization, water diversion, removal of water from waterways, construction, licensing, relicensing, and operation of dams or other water impoundments. Effects of these activities may include (but are not necessarily limited to) reducing the suitable space for individual and population growth and for normal behavior; reducing or changing sites for breeding, reproduction, and rearing (or development) of offspring; removing cover and shelter necessary for Santa Ana sucker by reducing the availability of suitable habitat for reproduction and survival; decreasing food sources; increasing water temperatures; and facilitating predation by nonnative species.

2. Actions that would significantly alter water quality to a degree that appreciably reduces the value of the critical habitat for either the survival or the recovery of the species. Such activities could include, but are not limited to, release of excess nutrients or heated effluents into the surface water or connected groundwater at a point source or by dispersed release (nonpoint). Effects of these activities may include (but are not necessarily limited to) reduction in the quality of the food, water, light, minerals, or other nutritional or physiological requirements necessary for Santa Ana sucker by changing the nutrient or chemical composition of the river; introduction of chemicals that may influence reproductive success; and nutrient changes that result in food source changes that are not suitable for Santa Ana sucker.

3. Actions that would significantly increase sediment deposition within the stream channel to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are

not limited to, excessive sedimentation from road construction; timber harvest; off-road vehicle use; residential, commercial, and industrial development; and various other watershed and floodplain disturbances. Effects of these activities may include (but are not necessarily limited to) reducing of the suitable space for individual and population growth and for normal behavior; reducing or changing sites for breeding, reproduction, and rearing (or development) of offspring; removing cover and shelter necessary for Santa Ana sucker by depositing fine sediment on top of the instream mosaic of substrates and scouring of instream vegetation; decreasing food sources; and increasing turbidity, resulting in unsuitable habitat conditions for Santa Ana sucker.

4. Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining and other removal of substrate, and destruction of riparian vegetation. Effects of these activities may include (but are not necessarily limited to) reducing the suitable space for individual and population growth and for normal behavior; reducing or changing sites for breeding, reproduction, and rearing (or development) of offspring; reducing the quality of the food, water, light, minerals, or other nutritional or physiological requirements; removing cover and shelter necessary for Santa Ana sucker by depositing fine sediment on top of the instream mosaic of substrates and scouring of instream vegetation; decreasing food sources; increasing water temperatures; and facilitating predation by nonnative species.

5. Actions that would facilitate the introduction, spread, or augmentation of nonnative aquatic species in critical habitat to a degree that appreciably reduces the value of the critical habitat for both the long-term survival and recovery of the species. Such activities could include, but are not limited to, the stocking of fish for sport or recreation, biological control, or other purposes; aquaculture; and construction and operation of canals. Effects of these activities may include (but are not necessarily limited to) reducing the suitable space for individual and population growth and for normal behavior and reducing or changing sites for breeding, reproduction, and rearing (or development) of offspring necessary for Santa Ana sucker by modifying the physical and biological elements of the habitat such that they are preferred by nonnative predators, which would increase predation risk to Santa Ana sucker.

Exemptions

Application of Section 4(a)(3) of the Act

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for Santa Ana sucker under section 4(a)(3)(B)(i) of the Act. For more information regarding the exemption of Department of Defense lands, *see* the Application of Section 4(a)(3) of the Act section of the proposed rule (74 FR 65056; December 9, 2009).

Exclusions

Application of Section 4(b)(2) of the Act

In the proposed revised critical habitat rule (74 FR 65056; December 9, 2009) and document that made available the DEA (75 FR 38441; July 2, 2010), we announced that we were considering for exclusion under section 4(b)(2) of the Act lands in the Santa Ana River watershed covered by the Santa Ana sucker (SAS) Conservation Program and the Western Riverside County MSHCP. These areas include 5,471 ac (2,214 ha) covered by the SAS Conservation Program (Subunit 1B (Santa Ana River) and Subunit 1C (Lower Santa Ana River)) and 3,048 ac (1,234 ha) owned by or under the jurisdiction of the Western Riverside County MSHCP permittees (Subunit 1B (Santa Ana River) and portions of Subunit 1C (Lower Santa Ana River)). Under section 4(b)(2) of the Act, the Secretary may exercise his discretion to exclude a specific area from critical habitat designation if the determination is made that the benefits of excluding the area outweigh the benefits of inclusion. We have declined to exercise our delegated discretion to exclude any areas from final critical habitat designation. The following discussion describes our rationale.

Description of Western Riverside County Multiple Species Conservation Program (Western Riverside County MSHCP) and the Santa Ana Sucker Conservation Program (SAS Conservation Program)

The areas considered for exclusion in Subunits 1B and 1C fall either within the SAS Conservation Program or the Western Riverside County MSHCP plan areas. Some of the permittees of the Western Riverside County MSHCP are also participants in the SAS Conservation Program, which preceded the development of the Western Riverside County MSHCP. The Western Riverside County MSHCP also relies, in part, on the SAS Conservation Program to address flood control and routine maintenance operations within these subunits. Routine maintenance and operational activities in the Santa Ana River that are undertaken by permittees of the Western Riverside County MSHCP are not "covered activities" in the Western Riverside County MSHCP's plan. Because of the relationship and reliance of the Western Riverside MSHCP and SAS Conservation Program on one another and their concurrent jurisdiction over the same geographical area, we are conducting a single exclusion analysis for the area considered for exclusion in Subunits 1B and 1C.

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP with 22 participating permittees encompassing about 1.26 million ac (510,000 ha) in western Riverside County. Over the 75-year term of the permit, the permittees will implement conservation measures for 146 "covered species'," including Santa Ana sucker. For Santa Ana sucker, the Western Riverside County MSHCP specifically identifies conservation objectives to: (1) Provide long-term conservation for the species, (2) develop a management and monitoring plan for the species, and (3) mitigate for impacts to Santa Ana sucker habitat that are associated with permittee activities (Dudek and Associates, Inc. 2003, pp. 6–24, F–19–F–20; Service 2004c, p. 258) (*see* the document making available the DEA (75 FR 38441; July 2, 2010) for additional description of the Western Riverside County MSHCP). Permittees implement the above conservation measures for Santa Ana sucker over the 75-year permit term. Despite these planned conservation measures, results

from recent surveys and research efforts indicate that the status of Santa Ana sucker and its available habitat have continued to decline in the portions of the Santa Ana River covered by the plan since the plan's approval in 2004 (SMEA 2009, pp. 1–4; Thompson *et al.* 2010, pp. 321–332; *see also* Geographic Range and Status and *Rationale for Including the Western Riverside County MSHCP and SAS Conservation Program in this Final Critical Habitat Designation* sections).

The Santa Ana Sucker Conservation Program (SAS Conservation Program) was developed over a 10-year period through a multi-agency partnership of Federal, State, and local government agencies and the private sector. The Program encourages a river-wide approach to Santa Ana sucker conservation through the development and implementation of a regional maintenance program (Team 2009, p. 1–1). The SAS Conservation Program encompasses the Santa Ana River and the lower reaches of its tributaries extending generally from Tippecanoe Avenue in San Bernardino County to Chapman Avenue in Orange County (SAWPA 2008, pp. 13–18). To facilitate permitting for routine maintenance activities along the Santa Ana River, the current participants of the SAS Conservation Program jointly applied for a Regional General Permit from the U.S. Army Corps of Engineers (ACOE) under the Clean Water Act (33 U.S.C. 1251 *et seq.*); however, to date this permit has not been issued and consultation under section 7 of the Act to evaluate the effects of the permit on Santa Ana sucker has not been completed. The participants' unified approach to their maintenance activities aims to avoid and minimize impacts to the Santa Ana sucker and its habitat. The SAS Conservation Program has completed various conservation actions including: (1) A draft video to educate staff and contractors on Santa Ana sucker and its habitat; (2) research and studies on Santa Ana sucker distribution, movement, spawning, impacts from nonnative predators, fish health, and water quality and habitat suitability and its influence on Santa Ana sucker distribution (Saiki 2000, pp. 1–117; Swift 2001, pp. 1–94; Thompson *et al.* 2010, pp. 321–332); and (3) annual demographic monitoring since 2000.

Rationale for Including the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation

We analyzed the benefits of including lands covered by the Western Riverside County MSHCP and the SAS Conservation Program in the final designation and the benefits of excluding those lands from the designation. The plan and program have established valuable partnerships that are intended to implement conservation actions for Santa Ana sucker. However, in conducting our evaluation of the conservation benefits to Santa Ana sucker and its essential habitat that have resulted to date from these partnerships, we did not conclude that the benefits of excluding Subunits 1B and 1C from critical habitat outweigh the benefits of inclusion. In any case, given the conservation status of the Santa Ana sucker, we are not exercising our delegated discretion to exclude any lands under section 4(b)(2) of the Act in this final critical habitat rule.

There are significant regulatory and educational benefits to critical habitat designation in Subunits 1B and 1C (compared to no critical habitat designation). When reviewing the Western Riverside County MSHCP under section 10 of the Act, we conducted an analysis of conservation for Santa Ana sucker afforded by the plan and anticipated that (over the term of the permit) up to 443 ac (179 ha) of Santa Ana sucker habitat may be impacted within the plan area (Service 2004c, p. 260) and 3,480 ac (1,408 ha) of Santa Ana sucker habitat may be conserved (Service 2004c, p. 256). However, since the permit was issued in 2004, no essential habitat for the Santa Ana sucker has been conserved under the plan. With regard to the SAS Conservation Program, which has been in existence for over 10 years, we note that the routine operations and maintenance activities of program participants along and within the Santa Ana River and its tributaries in Subunits 1B and 1C that may adversely affect the Santa Ana sucker and its habitat were to be addressed through consultation under section 7 of the Act with the ACOE. However, while the SAS Conservation Program's partnership remains strong, formal consultation under section 7 has not yet been completed because specific conservation actions as well as the scope of routine maintenance and flood control operations and planned future activities by the participating entities have not yet been adequately defined. As a consequence, the implementation of conservation measures by SAS Conservation Program participants intended to ensure the compatibility of their activities with protection of Santa Ana sucker and its essential habitat, and additional on-the-ground conservation measures proposed to conserve the Santa Ana sucker, have not yet occurred or been fully evaluated as to their effectiveness.

In addition, a public comment received from the Riverside County Flood Control District (RCFCD 2010, p. 1) in response to the 2009 proposed revised critical habitat designation, states that there are potential projects within the Santa Ana River that are not included as "covered activities" in the Western Riverside County MSHCP nor within the list of routine maintenance and other activities in the biological assessment submitted to the Service by the SAS Conservation Program in conjunction with anticipated section 7 consultation between the Service and ACOE on the program. These potential projects include rehabilitation and future flood control projects. The projects and their potential effects have not been included in or analyzed as part of the Western Riverside County MSHCP or the SAS Conservation Program.

The principal 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, and the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including Santa Ana sucker), 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 on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on 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.

We anticipate that a Federal nexus for section 7 consultation (with the ACOE under the Clean Water Act) exists for most activities in subunits 1B and 1C within the Western Riverside County MSHCP and SAS Conservation Program areas. Designation of these two subunits as critical habitat would enable us to carefully review proposed activities affecting essential Santa Ana sucker habitat along and within the Santa Ana River to ensure that it is not destroyed or adversely modified. We acknowledge that any protections provided by critical habitat that are redundant with protections already in place on lands proposed for designation would reduce the regulatory benefit of their inclusion in critical habitat. Protections provided by HCPs or other conservation and management, may prevent the destruction or adverse modification of habitat to the same or greater extent as would the consultation provisions under section 7(a) of the Act for critical habitat. We recognize that the SAS Conservation Program and Western Riverside County MSHCP are expected to provide conservation benefits to the Santa Ana sucker and its essential habitat in Subunits 1B and 1C over the long term. However, protection of essential habitat for the Santa Ana sucker in Subunits 1B and 1C is not yet in place under the SAS Conservation Program or the Western Riverside County MSHCP. Recent surveys and research indicate the status of Santa Ana sucker and the status of its habitat continue to decline throughout the Santa Ana River system (SMEA 2009, pp. 1–4; Thompson *et al.* 2010, pp. 321–332; *see also* Geographic Range and Status section. Annual population monitoring conducted since 2001 by participants of the SAS Conservation Program indicates a decreasing trend in density of Santa Ana sucker at repeatedly surveyed locations, with 2009 showing the lowest density since monitoring began (SMEA 2009, p. 2). Additionally, surveys conducted between 2006 and 2008 of available habitat for Santa Ana sucker between the La Cadena Drive Bridge crossing and I–15 (including areas that overlap with lands covered by the Western Riverside County MSHCP and SAS Conservation Program) indicate that downstream habitats are less suitable than upstream habitats near La Cadena Drive for Santa Ana sucker because of the lack of coarse substrate (*i.e.,* cobble and gravel) (Thompson *et al.* 2010, p. 321). Results of monitoring conducted by San Marino Environmental Associates (SMEA) (2009, p. 4) and Thompson *et al.* (2010, p. 321) also indicate that Santa Ana sucker are patchily distributed within the known occupied habitat areas and that this distribution varies seasonally throughout the mid- and lower-reaches of the Santa Ana River (*see also* Habitat, Geographic Range and Status, and Physical and Biological Features sections of the 2009 proposed revised rule and this final rule). Because protection of essential habitat for Santa Ana sucker is not yet in place under the Western Riverside MSHCP or under the SAS Conservation Plan, and we expect a Federal nexus for most activities affecting essential Santa Ana sucker habitat in Subunits 1B and 1C, we believe designation of these subunits will provide a significant regulatory benefit for the Santa Ana sucker.

Designating critical habitat also can be beneficial because the process of proposing critical habitat provides the opportunity for peer review and public comment on areas we propose to designate as critical habitat, our criteria to assess those lands, potential impacts from the proposal, and information on the taxon itself. We believe the designation of critical habitat may generally provide previously unavailable information to the public. Public education regarding the potential conservation value of an area may also help focus conservation and management efforts on areas of high conservation value for certain species. Information about the Santa Ana sucker and its habitat that reaches a wide audience, including parties concerned about and engaged in conservation activities, is valuable because the public may not be aware of Santa Ana sucker occurrences that have not been conserved or are not being managed.

We acknowledge that educational information regarding the importance of the Santa Ana sucker has been presented to the public through development and implementation of the Western Riverside County MSHCP. However, this critical habitat rule provides more specific information regarding essential habitat for Santa Ana sucker in Subunits 1B and 1C and can focus future conservation efforts under the plan as well as future conservation efforts under the SAS Conservation Program on protection of these areas. As stated above, there appear to be potential projects planned in the Santa Ana River that were not previously anticipated or evaluated as part of the Western Riverside County MSHCP (RCFCD 2010, p. 1) and have not been identified in the SAS Conservation Program that have the potential to adversely impact essential habitat where Santa Ana sucker occurs. These future projects may reflect a lack of public awareness regarding the commitments outlined in the Western Riverside MSHCP (Dudek and Associates, Inc. 2003, pp. 6–24, F–19–20) and evaluated in the associated biological opinion (Service 2004c, p. 258). We have also received reports of unauthorized OHV use in the Santa Ana River in areas under the jurisdiction of the Western Riverside County MSHCP (Beehler 2010, pers. comm.) that we have determined to be essential to the conservation of Santa Ana sucker. From the extent of the usage, it appears that local law enforcement may not be aware of the potential impacts to this area. We believe that including areas in this Santa Ana sucker final critical habitat designation where these non-covered or unauthorized activities are currently taking place or may occur will provide valuable information to the permittees, local jurisdictions, SAS Conservation Program participants, and the general public regarding the importance of protecting the physical and biological features essential to the conservation of Santa Ana sucker in Subunits 1B and 1C. We consider this a significant educational benefit of designating these areas.

The designation of critical habitat will provide significant regulatory and educational benefits that we believe will complement the conservation and recovery actions expected under the Western Riverside County MSHP and SAS Conservation Program. Designating critical habitat throughout the Santa Ana River in Subunits 1B and 1C will ensure: (1) An impact analysis for projects with a Federal nexus (through both a jeopardy analysis directed specifically at Santa Ana sucker and an adverse modification analysis directed specifically at designated critical habitat) is conducted; and (2) information will be provided to the local jurisdictions and the general public regarding the dynamic nature of the system, including the effects of hydrological alterations and modifications that influence the transport of water and coarse substrates (*see* Physical and Biological Features and Criteria Used To Identify Critical Habitat sections for detailed discussion), and the importance of the physical and biological features essential to the conservation of Santa Ana sucker.

The designation of Santa Ana sucker critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (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 sensitive habitat that could otherwise be missed in the review process for these other environmental laws. In the case of CEQA, this could be of benefit, since CEQA may require additional review of projects that may affect critical habitat and protection of essential habitat if its destruction would constitute a significant environmental effect. The benefit would likely be minor in the case of NEPA, because NEPA does not require project proponents to protect sensitive habitat. We believe there would be some ancillary benefits under other laws of critical habitat designation in Subunits 1B and 1C because the species and its essential habitat are not currently conserved in these areas.

Although there are significant regulatory and educational benefits and additional ancillary benefits of including Subunits 1B and 1C in critical habitat, there are also significant partnership benefits that would result from exclusion of these lands. As discussed in detail in the proposed revised critical habitat designation (74 FR 65056; December 9, 2009) and document making available the DEA (75 FR 38441; July 2, 2010), because many landowners, local jurisdictions, and others view designation of their lands as critical habitat unfavorably, the exclusion of essential habitat areas covered by the Western Riverside MSHCP and SAS Conservation Program would help to maintain and strengthen our partnerships with plan participants and also encourage new voluntary partnerships that could benefit Santa Ana sucker. The maintenance of existing partnerships and the creation of new partnerships to conserve the Santa Ana sucker constitutes a significant benefit of exclusion of Subunits 1B and 1C from designation.

We recognize and appreciate the partnerships we have established through development and continued implementation of the Western Riverside MSHCP and SAS Conservation Program. However, the ultimate value of excluding lands from critical habitat in order to maintain existing and encourage future partnerships is the conservation for listed species and their habitat derived from such partnerships. While we acknowledge that measures to conserve Santa Ana sucker under the Western Riverside MSHCP are to be implemented over the life of the plan, to date, no habitat lands have been conserved. Existing unauthorized uses (OHV use) are occurring within essential habitat, and future activities that are not covered by the plan are contemplated that could adversely affect the Santa Ana sucker and its essential habitat. With regard to the SAS Conservation Program, section 7 consultation under the Act to evaluate routine maintenance and other operations and future projects in the Santa Ana River planned by program participants has not yet been completed, and on-the-ground conservation actions anticipated under the program have yet to be put into place. We also believe that additional measures directed at the protection of the physical and biological features essential to the conservation of the species that are not directly addressed by either the Western Riverside County MSHCP or the SAS Conservation Program may be needed to ensure that the species will persist and recover within the Santa Ana River.

In light of these circumstances, coupled with the current declining status of the species and its habitat in the Santa Ana River, we have not concluded that the partnership benefits of excluding Subunits 1B and 1C outweigh the regulatory and educational benefits afforded under section 7 of the Act as a consequence of designating critical habitat in these areas (as future projects are analyzed on a project-by-project basis).

Summary of Rationale for Including Areas Covered by the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation

Although conservation measures from the Western Riverside County MSHCP and SAS Conservation Program are expected to benefit the Santa Ana sucker and its habitat, we believe the critical habitat designation will assist in achieving additional conservation not currently provided under the plan or program. Under most circumstances, a Federal nexus is expected (most likely with ACOE) for projects occurring within the boundary of the final revised critical habitat designation. The presence of a Federal nexus provides an opportunity for an additional regulatory review under section 7 of the Act that focuses on the specific physical and biological features and habitat essential for the conservation of the species. While we believe that the benefits of excluding lands from critical habitat designation may outweigh any regulatory and educational benefits of inclusion when the lands are already managed and conserved in perpetuity for the benefit of a listed species, neither the Western Riverside County MSHCP nor the SAS Conservation Program have established any conserved areas for the benefit of the Santa Ana sucker, and activities under the SAS Conservation Program are not currently managed to benefit the Santa Ana sucker and its habitat.

Because on-the-ground management and conservation measures for the Santa Ana sucker are not yet in place and the status of the species and its habitat have continued to decline, the benefits afforded by the critical habitat designation are not redundant with existing protections afforded by the listing of the species or under the Western Riverside County MSHCP or the SAS Conservation Program. We recognize that significant benefits would be realized by forgoing designation of critical habitat within the jurisdiction of the Western Riverside County MSHCP and SAS Conservation Program, including encouragement of continued collaboration and cooperation with stakeholders and partners, and encouragement of the development of additional HCPs and other conservation plans in the future that contribute to the recovery of federally listed species (benefits of exclusion). However, in reviewing the specific circumstances of Santa Ana sucker, we have not concluded that the partnership benefits of excluding Subunits 1B and 1C outweigh the regulatory and educational benefits afforded under section 7 of the Act as a consequence of designating critical habitat in these areas. In any case, given the conservation status of the Santa Ana sucker, we did not exercise our delegated discretion to exclude lands within Subunits 1B and 1C that are covered by the Western Riverside County MSHCP or within the jurisdiction of the SAS Conservation Program. Our determination not to exercise our delegated discretion to exclude Subunits 1B and 1C from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Economic Analysis

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. Following publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of

the designation. The DEA (dated June 8, 2010) was made available for public review and comment from July 2, 2010, to August 2, 2010 (75 FR 38441). Substantive comments and information received on the DEA are summarized in the Summary of Comments and Recommendations section below and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed a final economic analysis (FEA) (Industrial Economics, Incorporated (IEC) 2010b) of the critical habitat designation that updates the DEA by removing impacts that were not considered probable or likely to occur and appropriately adjusts impacts in response to additional information.

In the July 2, 2010, **Federal Register** notice for reopening the comment period for proposed rule and noticing the availability of the DEA (75 FR 38441) for Santa Ana sucker, there were several errors associated with potential economic costs associated with the DEA. We have subsequently developed a FEA and correctly identified potential economic impacts of the final critical habitat designation

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for Santa Ana sucker; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The economic analysis uses the historical record to inform its assessment of potential future impacts of critical habitat and forecasts both baseline and incremental impacts likely to occur during the 20 year period following the designation of critical habitat. This period was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. However, for water management activities we used a 25-year time frame because water planning is conducted on a 25-year scale (IEC 2010b, p. ES–5).

The FEA addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA also measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The primary purpose of the economic analysis is to estimate the potential incremental economic impacts associated with the designation of critical habitat for Santa Ana sucker. This information is intended to assist the Service in considering whether to exercise our delegated discretion to exclude any particular areas from critical habitat designation under section 4(b)(2) of the Act.

Conservation efforts related to water management constitute the majority of total incremental costs (more than 99 percent) in areas of revised critical habitat. Transportation projects, residential and commercial development, and projected administrative costs make up the remaining incremental impacts (IEC 2010b, p. ES–2). The total future incremental impacts are estimated to be $22.3 to $702 million ($1.8 to $56.3 million annualized) in present value terms using a 7 percent discount rate over the next 20 years (2011 to 2030) in areas proposed as revised critical habitat (IEC 2010b, p. ES–5).

Exhibit 3–1 of the FEA presents the estimated incremental costs to water management activities expected from the critical habitat designation (IEC 2010b, pp. 3–3—3–4). These costs are estimated using two scenarios, a High End Scenario and a Low End Scenario. Under the Low End Scenario, costs comprise anticipated conservation efforts for the species, including anticipated biological monitoring and survey costs, as well as other species protection efforts. These costs are attributed primarily to Subunit 1A, which is not considered to be currently occupied by Santa Ana sucker. The analysis also calculates a High End Scenario, which recognizes that there is some potential for critical habitat to result in a need for water management agencies to divert less water than currently used or planned to be used. Under this scenario, the analysis quantifies the value of water potentially made inaccessible by conservation requirements for Santa Ana sucker critical habitat designation. The majority of costs for both scenarios are associated with two proposed projects within the unoccupied Subunit 1A (Supplemental Water Supply Project at Seven Oaks Dam and the San Bernardino Municipal Water Department Water Factory Project). The substantial incremental costs within Subunit 1A are attributed to conservations efforts related to water management activities, particularly the replacement of water supplies that may be affected by the designation of critical habitat IEC 2010, p. ES–2). We believe the economic impact or incremental cost attributed to Subunit 1A in the FEA is likely inflated for two reasons:

First, many of the future projects the FEA assumes will be affected by the designation of Subunit 1A would affect Santa Ana sucker and its habitat downstream in the currently occupied range of the Santa Ana River watershed (Subunits 1B and 1C) whether Subunit 1A is designated as critical habitat or not. The area covered by Subunit 1A is a primary source of coarse sediment in the upper Santa Ana River watershed, is a part of the Santa Ana River hydrologic system, and assists in maintaining water quality and temperature to downstream occupied reaches of the Santa Ana River. Because this area is essential to maintain the Santa Ana sucker downstream in the Santa Ana River watershed, it is very likely that the projects cited in the FEA would be determined to "affect" Santa Ana sucker downstream triggering a duty to consult under section 7 of the Act and that modifications or restrictions on the projects would be necessary (1) to avoid jeopardy to Santa Ana sucker, and (2) to minimize take of Santa Ana sucker regardless of whether critical habitat is designated in Subunit 1A. Therefore, we believe that the incremental cost reported by the FEA and attributed to Subunit 1A substantially overstates the actual cost associated with the critical habitat designation of this Subunit. Regardless of the designation of critical

habitat in Subunit 1A, projects (in Subunit 1A) could incur costs as a result of the duty to avoid jeopardy to Santa Ana sucker or adverse modification of Santa Ana sucker's critical habitat in Subunits 1B and 1C in future section 7 consultations. These downstream occupied areas (Subunit 1B and 1C) would be considered part of the action area for projects that occur in Subunit 1A because activities in Subunit 1A are likely to affect Santa Ana sucker and the hydrologic system downstream. Thus, even absent critical habitat designation in Subunit 1A, some of the costs attributable to the section 7 consultation for a project in Subunit 1A (which are reported as incremental by the FEA) are more accurately attributed to Subunits 1B and 1C either as baseline costs resulting from the duty to comply with the jeopardy standard of section 7(a)(2) of the Act or as incremental costs resulting from the separate section 7(a)(2) duty to avoid adverse modification of critical habitat designated in these Subunits.

Second, although the High End Scenario for incremental costs reported in the DEA and FEA assumes that rights to water in Subunit 1A will be completely eliminated as a result of the critical habitat designation, we anticipate that some portion of the water diversions proposed or currently occurring can be accommodated consistent with the conservation measures necessary for Santa Ana sucker. As a part of the section 7 consultation procedure under the Act, for projects that would likely jeopardize a listed species or adversely modify designated critical habitat of a listed species, we usually are able to identify reasonable and prudent alternatives to avoid these outcomes. In our experience it is highly unlikely that Federal projects would be halted completely as a result of the critical habitat designation.

In the case of Santa Ana sucker in the Santa Ana River, a single, integrated water system (including the area delineated by Subunit 1A and the processes it provides) is essential for the conservation of the species. Any future impact to the Santa Ana River watershed that may divert water supplies from the river or impact delivery of water or coarse sediments downstream would likely require section 7 consultation under the Act whether or not Subunit 1A is designated, because those activities would affect habitat conditions downstream that support Santa Ana sucker in occupied Subunits 1B and 1C. We also believe it is unlikely that future consultations involving Subunit 1A would preclude future water-related projects in this area. Therefore we believe that a significant portion of the costs identified as incremental to the designation of Subunit 1A would occur even in the absence of designation of the area as critical habitat and that such costs are overstated because they assume no development would occur in the area.

Even assuming that substantial economic and other impacts will result from designation of Subunit 1A as discussed in the FEA and in comments submitted on the proposed rule and DEA, given the conservation status of the Santa Ana sucker, we did not exclude this area from critical habitat designation under section 4(b)(2) of the Act. As discussed earlier in the Critical Habitat Units Subunit 1A: Upper Santa Ana River section, this subunit is essential for the conservation of the species because it provides for essential processes, such as the transport of stream and storm waters that deliver coarse sediments necessary to maintain the habitat conditions essential to the survival and the recovery of the population of Santa Ana sucker downstream, which is one of only three extant populations in the three watersheds where the species naturally occurs.

The FEA described above determined the baseline and incremental impacts of Santa Ana sucker critical habitat based on the 2009 proposed critical habitat designation (74 FR 65056, December 9, 2009) and the document that made available the DEA (75 FR 38441, July 2, 2010). As described above we have removed from the final critical habitat designation the areas of Plunge Creek and the Santa Ana River above Seven Oaks Dam (*see* Critical Habitat Units—Subunit 1A: Upper Santa Ana River section above). In light of the removal of these areas from the designation, we re-calculated the economic analysis to accurately represent the areas that are included in this final critical habitat designation. The memorandum to the FEA estimates that removal of the areas results in a decrease in incremental costs of $8.03 to $251 million, or $648,000 to $20.1 million on an annualized basis, in present value terms using a 7 percent discount rate (IEC 2010c, pp. 3–4). These costs consist of changes to water supply, development, and administrative impacts. The total future incremental costs in areas designated as revised critical habitat are estimated to be $14.3 to $450 million ($1.18 to $36.2 million annualized) in present value terms using a 7 percent discount rate (IEC 2010c, pp. 3–4). As discussed above, we believe that a significant portion of these costs would occur in the absence of designation of critical habitat and thus are more appropriately considered baseline costs and that the costs are overstated because the analysis assumes no development would occur in Subunit 1A.

After consideration of the impacts under section 4(b)(2) of the Act, we did not exercise our delegated discretion to exclude any areas from the final critical habitat designation based on the economic impacts. Our determination not to exercise our delegated discretion to exclude any areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

The final economic analysis and memorandum to the FEA is available at *http://www.regulations.gov* or upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for Santa Ana sucker during two comment periods. The first comment period, associated with the publication of the proposed rule (74 FR 65056; December 9, 2009), opened on December 9, 2009, and closed on February 8, 2010. We also requested comments on the proposed critical habitat designation and associated DEA during a comment period that opened July 2, 2010, and closed on August 2, 2010 (75 FR 38441; July 2, 2010). Two public hearings were conducted on July 21, 2010, in Corona, California. All verbal and written comments from these hearings have been incorporated into our response to comments below. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Congressional Inquiries

We received six congressional inquiries regarding the designation of critical habitat for Santa Ana sucker. These congressional parties requested

that we consider all economic impacts attributed to the designation of critical habitat. Our final economic analysis addresses information that was submitted and identifies the economic impacts attributed to the designation of critical habitat. The FEA and memorandum to the FEA are available for public review at *http://www.regulations.gov.*

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles pertinent to the species. We received responses from three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for Santa Ana sucker. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions that we incorporated into the rule to improve this final critical habitat designation. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment 1: Two peer reviewers were supportive of the proposed revised critical habitat rule. They believe the rule was well supported by publications in scientific literature, corresponded with data from species and area experts, and included scientifically sound assumptions and analyses. They also stated the proposed revised critical habitat rule did a thorough and accurate job of delineating areas most important for recovery of Santa Ana sucker.

Our Response: We appreciate the peer reviewers' critical review. We considered all new information received during the comment periods with equal thoroughness and accuracy, and anticipate an improved and equally high quality final revised critical habitat designation.

Comment 2: One peer reviewer concurred with our analysis of the primary threats to Santa Ana sucker and description of the PCEs.

Our Response: We appreciate the peer reviewer's critical review.

Comment 3: Two peer reviewers concurred with our decision not to list the Santa Clara River population of Santa Ana sucker, while a third peer reviewer stated the Santa Clara River population should be discussed further. The third peer reviewer stated that although the downstream population may hybridize with Owens sucker, there is an area upstream protected from genetic exchange with Owens suckers. Additionally, the third peer reviewer stated there is no evidence of Santa Ana sucker introduction into the Santa Clara River; it is only an absence in early collections that leads to the conclusion of introduction. Although not specifically stated, the third peer reviewer seemed to imply they believed the upstream area should have been proposed as critical habitat.

Our Response: We appreciate all three of the peer reviewers' critical reviews and concern for conservation of a genetically pure Santa Ana sucker population. More information on the Santa Clara River population of Santa Ana sucker can be found in the 2000 listing rule (65 FR 19686; April 12, 2000) and the proposed revised critical habitat designation (74 FR 65056; December 9, 2009). Our decision to not list the Santa Clara River population of Santa Ana sucker was made in the 2000 listing rule (65 FR 19686; April 12, 2000) and reiterated again in the 2009 proposed revised critical habitat designation (74 FR 65056; December 9, 2009). We considered all areas potentially occupied by populations of Santa Ana sucker for proposal as revised critical habitat. Moyle (2002) and Chabot *et al.* (2009) have documented hybridization of Santa Ana suckers with Owens suckers in the Santa Clara River watershed. While we agree there is no documentation that Santa Ana suckers were introduced to the Santa Clara River (Service 2000, p. 19687), the information in our files indicates populations in this area are not genetically pure (*see* Geographic Range and Status section above). We do not agree that there is an upstream area in the Santa Clara River protected from genetic exchange with Owens suckers; the dry gap in the upper watershed is not a permanent barrier to dispersal. Therefore, we determined that the Santa Clara River population is not part of the taxonomic entity listed under the Act and did not designate areas in this river as revised critical habitat. For more information on this subject, *see* the 2000 listing rule (65 FR 19686; April 12, 2000), the proposed revised critical habitat (74 FR 65056; December 9, 2009), and the Background section of this rule above.

Comment 4: One peer reviewer concurred with our inclusion of City and Mill Creek in Subunit 1A as a source of gravel, cobble, and seasonal flows. The peer reviewer agrees that these substrates have decreased after the construction of Seven Oaks Dam in the upper Santa Ana River.

Our Response: We agree with the peer reviewer. Historically, the upper Santa Ana River above Seven Oaks Dam was a principle contributor of coarse sediments to the lower portions of the Santa Ana River (Humphrey *et al.* 2004, p. 3). However, since the construction of the Seven Oaks Dam in the upper Santa Ana River, the amount of coarse sediment contribution attributed to this reach has declined. Tributaries (*i.e.,* City Creek, Mill Creek, and Plunge Creek) in the upper watershed that feed into the Santa Ana River below the Seven Oaks Dam now contribute a majority of the coarse sediment to the lower reaches of the Santa Ana River (Humphrey *et al.* 2004, pp. 1–8). Studies indicate approximately 4,000 cubic feet per second (cfs) of water flow is necessary to carry gravel and cobble (Humphrey *et al.* 2004, p. 7). The USGS hydrologic flow data indicate that flows in both City and Mill Creek are sufficient to carry gravel and cobble downstream to the Santa Ana River. The USGS streamflow gauges located in the mainstem of the Santa Ana River (at the E Street crossing in San Bernardino and at the Metropolitan Water District crossing in Riverside) show peak flows above the critical water velocity necessary to carry gravel and cobbles. This indicates that gravel and cobbles that are available from the upper tributaries are transported to the currently occupied middle and lower reaches of the Santa Ana River. Because the delivery of suitable coarse sediments (cobble and gravel) is essential to the survival and recovery of Santa Ana sucker, we designate City and Mill Creek as final revised critical habitat in this rule.

Comment 5: Two peer reviewers concurred that the rationale for selecting City Creek and Santa Ana River above Seven Oaks Dam for reintroduction was sound; however, they expressed concerns regarding the management actions required to address existing barrier impacts and the potential success of Santa Ana sucker reintroduction. They stated that the habitat appears suitable; however, the one documented historical Santa Ana Sucker record in City Creek may indicate marginal success of the species at this location in the past. They believe further consideration is necessary before any reintroduction effort begins to determine suitability for Santa Ana suckers.

Our Response: We agree there are relatively few historical Santa Ana sucker records in City Creek and the

upper watershed of the Santa Ana River. To our knowledge, the study conducted by the Orange County Water District (OCWD 2009) provides the most recent and comprehensive reconnaissance data available. This study was conducted specifically to determine the most suitable habitats for Santa Ana sucker reintroduction. The study qualitatively evaluated habitat suitability and threat presence at each location, ranked each location (OCWD 2009, p. 6–2), and recommended the areas most likely to support viable populations (OCWD 2009, pp. 6–5–6–6). In this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that the areas were historically occupied by the species and lack sufficient information to support a determination that the areas are needed for the species' recovery. In particular, we lack supporting information regarding the feasibility of introducing the sucker at either location (such as water quality conditions, reliability of water flows, and presence of predatory and competing species). However, we plan to initiate development of a draft recovery plan in 2011, which may include the establishment of a recovery team that would seek the involvement of species experts, habitat experts, and stakeholders. We anticipate this recovery effort would evaluate the need for reintroduction and, if needed, evaluate these areas and other sites within the historical range of the species for potential recovery efforts.

Comment 6: Two peer reviewers expressed concern regarding the Santa Ana sucker population in Subunit 1B. They stated tertiary-treated water discharge is the primary source of water in this reach of the Santa Ana River and they believe this may impact Santa Ana sucker. They cited Jenkins *et al.*'s (2009) study evaluating the impact of estrogen-disrupting compounds (EDCs) on reproductive performance of male western mosquitofish (*Gambusia affinis*) as evidence that additional species-specific studies, including monitoring and EDCs, should be conducted to determine effects on Santa Ana sucker.

Our Response: We agree with the peer reviewer that tertiary-treated wastewater discharge is the primary source of water in this reach of the Santa Ana River especially during dry periods of the year. Therefore, the quantity and the quality of the water are important in this subunit. We agree that understanding and preventing potential negative effects of EDCs in tertiary-treated water on Santa Ana suckers is a priority. We were a cooperator and funded portions of the study referred to by the peer reviewer (Jenkins *et al.* 2009). This study indicates that presence of EDCs result in impaired reproductive and endocrine function in western mosquitofish (*Gambusia* spp.), and could present a threat to Santa Ana suckers that inhabit the same waters (Service 2008, pp. 1–3; Jenkins *et al.* 2009, pp. 1–40; Service unpublished information 2010b, p. 24). Therefore, we believe that the threat of EDCs to Santa Ana sucker may have long-lasting impacts to the species and warrants further study (Service unpublished information 2010b, p. 24). Conventional pollutants may be a concern as well, and we are working with the USGS and others to further evaluate the contaminant sensitivity of Santa Ana sucker (Service 2008, p. 2). We will use results from these environmental contaminants investigations to work with the discharger, California Regional Water Quality Control Board, and the U.S. Environmental Protection Agency to prevent adverse impacts to water quality where Santa Ana suckers are present.

In March 2007, the Service launched an initiative focused on the environmental and public health impacts of improper disposal of unused medications. We partnered with the American Pharmacists Association and the Pharmaceutical Research and Manufacturers of America to launch this special campaign, SMARxT Disposal, to inform people of ways to dispose of unwanted and unused medications in a safe and environmentally protective manner. This is one of many actions that could be taken to help address EDCs in tertiary-treated water. The nationwide campaign to educate the public regarding the threat posed by dissolved medication to all fish and wildlife, including Santa Ana sucker, is one action contributing to fish and wildlife species' conservation.

Comment 7: One peer reviewer stated that the section 4(b)(2) exclusion being considered by the Secretary based on the SAS Conservation Program in Subunits 1B and 1C was appropriate if the participating parties maintain a high level of commitment to preservation and enhancement of Santa Ana sucker and its habitat.

Our Response: We appreciate the peer reviewer's analysis. We considered the relative benefits of including and excluding from critical habitat areas in Subunits 1B and 1C that are covered by the SAS Conservation Program (*see* Rationale For Including the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation section for a complete discussion of this determination). We did not conclude that the benefits of excluding these lands outweigh the benefits of their designation. Our determination not to exercise our delegated discretion to exclude Subunits 1B and 1C from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)). We recognize and appreciate the commitment of our partners in the SAR Conservation Program. We believe all partnerships are valuable and will continue to work with the participants of the SAS Conservation Program to meet the needs of the species and all stakeholders.

Comment 8: One peer reviewer expressed general agreement with our proposed revised critical habitat designation. In particular they were supportive of the inclusion of Subunit 1A.

Our Response: We appreciate the peer reviewer's critical review.

Comment 9: One peer reviewer stated that reintroduction of Santa Ana sucker above Seven Oaks Dam would be appropriate even though brown trout (*Salmo trutta*), a possible predator, is known to occur in the area. They stated other species of suckers are known to co-occur with this predator; therefore, Santa Ana suckers should also be able to co-exist with brown trout. The peer reviewer stated this action to reintroduce the species should increase the species' range and contribute to its recovery.

Our Response: We appreciate the peer reviewer's critical review and agree that brown trout presence does not preclude successful Santa Ana sucker reintroduction to unoccupied habitat. In this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comment 5 above and Summary of Changes From

2009 Proposed Critical Habitat to This Final Critical Habitat Designation section.

Comment 10: Two peer reviewers expressed support for including tributaries in the Santa Ana sucker critical habitat designation. They believe tributaries add habitat heterogeneity, provide refuge for young-of-year, and provide important areas for fish survival and reproduction because the floodplain of the mainstem may change through time (thus providing additional suitable habitat outside the mainstem of the river for Santa Ana suckers).

Our Response: We appreciate the peer reviewers' critical review and agree that tributaries are important for species' survival and recovery. We included tributaries of the Santa Ana River, San Gabriel River, and Big Tujunga Wash in this final revised critical habitat designation. These tributaries contain the physical and biological features essential to the conservation of the species. Additionally, some tributaries were also designated because they assist in providing coarse substrates (sand, gravel, cobbles) for maintenance of habitat for Santa Ana sucker (*see* Critical Habitat Units section above).

Comment 11: One peer reviewer concurred with the designation of the Santa Ana River and uninhabited tributaries of the San Gabriel and Big Tujunga areas as critical habitat because these areas contribute coarse sediments (gravel and cobbles) to the river and there is a correlation between the availability of coarse sediments and Santa Ana sucker abundance.

Our Response: We appreciate the peer reviewer's critical review and agree that transport coarse sediment is an essential habitat component of Santa Ana sucker population survival and recovery (*see* Background and Physical and Biological Features sections above).

Comment 12: One peer reviewer provided multiple examples of Santa Ana sucker abundance near tributaries and associated this with the addition of colder water to the mainstem of both the Santa Ana and San Gabriel Rivers. The reviewer also stated lower temperatures observed in the San Gabriel River contribute to the better condition of Santa Ana suckers within that watershed and decreased water temperatures should improve the condition of Santa Ana suckers in other portions of the species' range.

Our Response: We appreciate the peer reviewer's critical review and agree that lower temperatures increase Santa Ana sucker habitat suitability and may contribute to better condition as well (*see* Background and Physical and Biological Features section).

Comment 13: One peer reviewer critiqued three of our PCE definitions. First, the reviewer stated flow peaks and ebbs, whether natural or regulated, are not only generally important, but should mimic the variability of the natural hydrograph that occurs throughout the year. The reviewer also noted that Santa Ana sucker life stages are closely tied to these differences in flow regime during the year. Second, the peer reviewer stated that water depths in the range of 1.6 ft (0.5 m) to 5 ft (1.5 m) are important; stream areas deeper than this are rare, not typical of Santa Ana sucker habitat, and almost always a result of a created pool below drop structures or outfalls. Third, the peer reviewer stated that water temperatures below 86 °F (30 °C) are good, but they believe temperatures need to mimic natural temperatures so that Santa Ana sucker's physiological response is appropriate to favor survival.

Our Response: We understand the peer reviewer's emphasis on the importance of restoring habitat conditions to which the species is best adapted. The PCEs identified for Santa Ana sucker are not temporally or seasonally based; however, the PCEs incorporate and encompass the fluctuation that the peer reviewer describes as a result of seasonal flows. Under the Act and its implementing regulations, we are required to identify the physical and biological features within the geographical area occupied by Santa Ana sucker at the time of listing that are essential to the conservation of the species and which may require special management considerations or protection. The physical and biological features are those PCEs laid out in a specific spatial arrangement and quantity determined to be essential to the conservation of the species. We are designating critical habitat in areas within the geographical area that was occupied by the species at the time of listing that continue to be occupied today, and that contain the PCEs in the quantity and spatial arrangement to support life-history functions essential to the conservation of the species. We are also designating areas outside the geographical area occupied by the species at the time of listing that are not occupied but are essential for the conservation of the species (*see* Primary Constituent Elements for the Santa Ana Sucker section above).

Modification of suitable habitat and water availability has changed the flow regime in all watersheds occupied by Santa Ana suckers to some degree (*see* Critical Habitat Units section above). We agree that survival and recovery of Santa Ana sucker will require management of PCEs, in some cases to mimic historical conditions. However, PCEs describe essential, not historical or ideal, physical and biological features. Furthermore, to redefine PCEs to describe historical or ideal parameters would mean there would be no suitable habitats within the range of the species that currently contain PCEs. Therefore, based on our understanding of the PCEs and the other peer reviewers' support of the proposed PCEs, we have not revised the PCEs in this final rule to reflect the comments of this peer reviewer.

Comment 14: One peer reviewer stated that the following tributaries of the Santa Ana River should also be listed as occupied at the time of listing: Arroyo Tesquesquite, Sunnyslope Creek, Anza Park Drain, and the lower outlet of Hidden Valley Drain.

Our Response: The final listing rule states that protections are afforded to Santa Ana sucker by the Act in the Los Angeles, San Gabriel, and Santa Ana River drainages (65 FR 19686; April 12, 2000). The tributaries identified are within the Los Angeles, San Gabriel, and Santa Ana River drainages and considered occupied at the time of listing. Additionally, the listing rule states that the above-mentioned tributaries were used for spawning and nurseries (65 FR 19686; April 12, 2000), and are therefore considered part of the listed entity and considered currently occupied (*see* the Critical Habitat Units—Subunit 1B: Santa Ana River section above).

Comment 15: One peer reviewer stated that critical habitat designation in Haines Creek should be limited to the portion below Interstate 210 and downstream of the mitigation site where two ponds were created.

Our Response: The portion of Haines Creek above Interstate 210 was designated as revised critical habitat to capture necessary stream system connectivity, even if it is periodically dry (PCE 7). Moreover, this area likely provides the only source of stream and storm waters necessary to transport the coarse sediments that maintain preferred substrate conditions (PCE 2) in the Big Tujunga Wash Mitigation Bank downstream (Service 2009, p. 65073; Swift 2009, p. 1). Therefore, we believe the portion of Haines Creek above Interstate 210 meets the definition of critical habitat (*see* Critical Habitat section and our response to Comment 13 above).

Comment 16: One peer reviewer clarified Haines Creek water flow in the Big Tujunga floodplain originates in the

channelized, concrete-lined Haines Creek Channel that enters upstream from the Interstate 210 about 1 mi (1.61 km), and the only permanent habitat for Santa Ana suckers is downstream of Interstate 210.

Our Response: The area from which the peer reviewer asserts Haines Creek water flow originates was designated as critical habitat (Subunit 3A) for processes related to stream and storm water transport of preferred coarse sediments to downstream habitats (PCEs 1 and 2) (*see* the Critical Habitat Units—Subunit 3A: Big Tujunga and Haines Creeks section above).

Comment 17: One peer reviewer stated the recreational residences described in the proposed revised critical habitat rule may degrade water quality in the area and may result in dams that retain water for use in the event of fires. The peer reviewer is concerned about the illegal placement of these dams because they provide habitat for largemouth bass (*Micropterus salmoides*) that could increase the rate of predation on Santa Ana sucker.

Our Response: We appreciate the peer reviewer's concerns regarding the threat of recreational residences to Santa Ana sucker and its habitat. The USFS does issue special use permits for recreational residences within the forest; however, while they do not promote the building of recreational dams, they do not have a policy regarding the activity (L. Welch 2010, pers. comm.). In the proposed revised critical habitat designation (74 FR 65056; December 9, 2009), we described activities within the listed range of Santa Ana suckers contributing to the threats of habitat destruction, degradation, and fragmentation, including recreational residences and recreational use of the river (unauthorized creation of dams for bathing, fishing, or dredging). We acknowledge that activities associated with recreational residences may require special management to ensure that the PCEs necessary for the survival and recovery of Santa Ana sucker are maintained (74 FR 65064; December 9, 2009). We are unaware of the extent of river water use for extinguishing fires. We are aware that largemouth bass are significant predators of small fish and may prey on Santa Ana suckers (McGinnis 1984, p. 212). The designation of critical habitat will require the USFS to consult with the Service under section 7(a)(2) of the Act to ensure their actions will not result in jeopardy of the species or adverse modification of critical habitat. As such, the USFS will consider the impacts of their management actions on the physical and biological features essential to the conservation of Santa Ana sucker and may modify or mitigate actions to avoid jeopardy of Santa Ana sucker or adverse modification of critical habitat.

Comment 18: One peer reviewer concurred with our use of a maximum gradient of 7 degrees to distinguish impassable areas of a river unsuitable for Santa Ana suckers. However, they also stated this gradient may be less important than individual (manmade) barriers throughout the watershed.

Our Response: There are no previous studies to indicate what gradient is limiting for Santa Ana sucker. The 7 degree maximum gradient was determined by analyzing previous occurrence data and river gradient at those points. We evaluated the reaches of river that met the gradient qualification and then assessed the suitability of the habitat (*see* Criteria Used To Identify Critical Habitat section). We agree that impassable barriers such as permanent or inflatable dams and other drop structures in the river will present a barrier for fish passage. We recognize that some level of special management may be necessary to address these current and future threats to the physical and biological features essential to the conservation of the species (74 FR 65056; December 9, 2009).

Comment 19: One peer reviewer expressed concerns about OHV use in the Santa Ana River in the early 2000s occurring specifically from the Riverside Freeway to the RIX facility and Rialto Drain.

Our Response: We are aware that OHV use along the Santa Ana River is occurring and may impact Santa Ana sucker habitat. The area the peer reviewer mentioned does have signs posted that OHV use is not permitted. This area is within the jurisdiction of the both the SAS Conservation Program and Western Riverside County MSHCP, and OHV use in the area is prohibited. However, information indicates that measures provided under the plan and local law enforcement efforts may not be sufficient to deter unauthorized OHV use of the river in this area (Beehler 2010, pers. comm.). We included this area in the critical habitat designation and agree that it contains those physical and biological features essential to the conservation of the species that may require special management considerations or protection (*see* further discussion in the OHV discussion added to the Special Management Considerations or Protection section of this final rule).

Comment 20: One peer reviewer stated that although the SAS Conservation Program conducts monitoring at a number of locations within the Santa Ana River, a more comprehensive river-wide survey is needed to adequately assess the occupancy status of Santa Ana sucker throughout the Santa Ana River.

Our Response: We appreciate the peer reviewer's critical review and agree that a more comprehensive survey would help to guide recovery actions and determine Santa Ana suckers' rangewide status. However, we do not believe this information is necessary for our final revised critical habitat designation. We note that the goal of surveys conducted under the SAS Conservation Program is to provide information about the presence of Santa Ana sucker within the range of the program area; surveys conducted under the program are not intended to determine occupancy status throughout the species' range or even the entire Santa Ana River. The population monitoring that the SAS Conservation Program has undertaken since 2001 is only one of the activities that provides valuable information on the occupancy status and trends in population of Santa Ana sucker for this limited portion of the range. The SAS Conservation Program's objective is to provide for the conservation of Santa Ana sucker through development and implementation of a regional maintenance program for ongoing maintenance activities along the Santa Ana River. We believe the SAS Conservation Program provides valuable information on the status of Santa Ana sucker within the range of the Program's activities.

Federal Agency Comments

Comment 21: The U.S. Army Corps of Engineers (ACOE) expressed their concern that the critical habitat designation in the Santa Ana River above Seven Oaks Dam, below Prado Dam, and in the upper Prado Dam Basin may impact the ongoing construction, operation, and maintenance of several elements of the Santa Ana River Mainstem Flood Control Project (SARP). The commenter is concerned that the designation of critical habitat would place significant restrictions on the manner in which the operations and management work is performed and potentially affect the lives and property of millions of citizens. They are also concerned that the economic analysis did not consider the potential impacts of the critical habitat designation to SARP.

Our Response: The determination of whether activities or operations may adversely affect the areas designated as critical habitat for Santa Ana sucker would need to be evaluated on a project-specific basis by the Federal action agency and the Service. Consultation on existing or future Federal projects, if determined to be necessary, would be either reinitiated or initiated by the Federal action agency under section 7 of the Act. Section 7 also allows for emergency consultations in response to an act of God, disasters, casualties, national defense, or security emergencies (such as to expedite measures required to ensure human health and safety) (50 CFR 402.05). Emergency consultation procedures allow action agencies to incorporate endangered species concerns into their actions during the response to an emergency. If a Federal agency must take emergency action that may affect a listed species or critical habitat, the agency would contact the Service to identify actions that could be implemented to minimize take of listed species while responding to the emergency. The Service is very sensitive to the need to allow response efforts necessary to avoid imminent loss of human life or property. The Federal action agency would initiate formal consultation after the fact and provide necessary documentation to the Service for an after-the-fact biological opinion that documents the effects of the emergency response on listed species or critical habitat. Therefore, we do not believe delays due to section 7 consultation on flood control actions should pose a significant risk to human health and safety, and we did not exclude any areas from this final critical habitat designation on the basis of lengthy section 7 consultation on flood control actions. Additionally, the final economic analysis includes potential impacts to Federal and non-Federal projects (*see* Economic Analysis section above and our response to comments on the economic analysis below).

State Agency Comments

Comment 22: The California Department of Fish and Game (CDFG) identified additional areas that they believe would be suitable habitat for Santa Ana sucker reintroduction that we did not discuss specifically in the proposed revised critical habitat designation: Upper Santa Ana River to Heartbar Campground, Mill Creek and extending into Mountain Home Creek (near Forest Falls), Plunge Creek, Strawberry Creek, Lytle Creek, Cajon Creek, City Creek, Twin Creek, Santa Ana River from Gypsum Canyon Road to Weir Canyon, Aliso Creek, and San Jacinto Creek.

Our Response: We appreciate CDFG's comment letter and information that it provided; however, in this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these or any other areas are needed for the species' recovery. *See* response to Comments 5 and 9 above, and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section.

Comment 23: The CDFG expressed concern regarding habitat suitability in the upper Santa Ana River above Seven Oaks Dam and City Creek for possible reintroduction sites, as described in the proposed revised critical habitat rule. They stated the presence of brown trout would make these areas unsuitable for reintroduction, and that any program attempting to eradicate brown trout would conflict with recreational fishing.

Our Response: We appreciate CDFG's comment letter and information that it provided; however, in this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (upper Santa Ana River above Seven Oaks Dam or Plunge Creek; 74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comments 5, 9, and 22 above and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section.

Comment 24: The CDFG stated all the places mentioned as potential reintroduction sites in the Santa Ana River would require some management and monitoring because of the lack of connectivity between many of the tributaries and the Santa Ana River mainstem.

Our Response: We concur with the CDFG and recognize that any reintroduction areas would likely require active management for successful reintroduction and proliferation of Santa Ana suckers. We appreciate CDFG's comment letter and information that it provided; however, in this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comments 5, 9, 22, 23 above, and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation Section.

Comment 25: The CDFG stated there has been a reduction in coarse sediment transport as a result of the Prado Dam. They stated they are in favor of restoring sediment transport to the lower reaches of the Santa Ana River.

Our Response: We agree that the construction and operation of the Prado Dam has likely inhibited the transport of coarse sediments, such as gravel and cobble. We recognize the importance of cobble and gravel substrates that provide suitable habitat for Santa Ana sucker reproduction, feeding or forage, and shelter (PCE 2) (Service 2009, p. 65061). Diminished water and coarse sediment transport, and sediment removal, have been identified as a threat that may require special management (*see* Special Management Considerations or Protection section above). Special management actions may be necessary to replenish the lower reaches of the Santa Ana River with substrates necessary for the conservation of Santa Ana sucker (*i.e.,* gravel and cobble).

Other Comments

Comments Related To Subunit 1A

Comment 26: Ten commenters stated that Subunit 1A was determined to be not essential for the conservation of the Santa Ana sucker was excluded from the 2005 final critical habitat rule, and thus should also be excluded from this critical habitat designation. They also stated that Subunit 1A should be excluded because the economic burden to this area would be devastating if critical habitat is designated.

Our Response: The commenters did not provide any explanation or new scientific information supporting their assertion that Subunit 1A should be excluded from this final revised critical habitat designation because it is not essential for the conservation of the Santa Ana sucker. They simply noted

that Subunit 1A was excluded in the 2005 final critical habitat rule (*see* the Summary of Changes From Previous Critical Habitat—Unit 1: Santa Ana River section above for specific discussion). We considered all new scientific information acquired since the 2005 final critical habitat rule, used more specific PCEs and higher resolution mapping when determining critical habitat, and conducted a new analysis of considered exclusions. We concluded the Santa Ana River above Seven Oaks Dam and Plunge Creek, which were previously identified as critical habitat in Subunit 1A, do not meet the definition of critical habitat because we lack information indicating that these areas were historically occupied by the species and we lack sufficient information to support a determination that these areas are needed for the species' recovery. In particular, we lack supporting information at this time regarding the feasibility of introducing Santa Ana sucker at either location. Furthermore, upstream movement of Santa Ana suckers from the Santa Ana River mainstem is precluded into Plunge Creek and into the upper Santa Ana River and Bear Creek. Additionally, a comprehensive conservation strategy for Santa Ana sucker has not been developed, although efforts are underway for us to develop a recovery outline and recovery plan. Therefore, we cannot conclude at this time that these areas are essential for the conservation of the species. In this final designation, Subunit 1A now encompasses the mainstem of the Santa Ana River from Tippecanoe Avenue to below Seven Oaks Dam, and City Creek and Mill Creek from their confluence with the Santa Ana River. We determined that this area meets the definition of critical habitat for Santa Ana sucker and believe it is essential for the conservation of the species. This subunit also contains PCEs necessary for Santa Ana sucker is one of the only locations within Unit 1 that is outside the highly urbanized area, and contributes essential water sources and coarse sediments to the downstream occupied areas of the Santa Ana River (*see* the Critical Habitat Units—Subunit 1A: Upper Santa Ana River section for additional discussion).

The final economic analysis (FEA) indicates that designation of Subunit 1A could result in substantial economic costs, primarily resulting from restrictions on water diversions from the Santa Ana River. In the Economic Analysis section above, we point out that the "High End" scenario presented in the FEA and the estimate of economic costs submitted by commenters likely substantially overstate the economic costs attributable to the designation of Subunit 1A because they assume that all future water diversions, rather than a portion of such diversions, would be prevented. We anticipate that some portion of the water diversions proposed or currently occurring could be accommodated by and would be consistent with the conservation measures necessary for Santa Ana sucker. We also point out that, as the FEA acknowledges, future restrictions on water diversions from the Santa Ana River necessary to ensure that Subunit 1A serves its conservation function for the species (which is to provide the essential physical and biological features such as the transport of water and coarse sediments) would also likely be necessary to ensure the survival of Santa Ana sucker itself in occupied Subunits 1B and 1C downstream. Thus, in the particular circumstances presented here, which consist of a single, integrated water system—the Santa Ana River watershed—any potential future restrictions on the diversion of water supplies from the river would likely occur whether or not Subunit 1A is designated as critical habitat, because such restrictions would be necessary to provide the habitat conditions downstream that support Santa Ana sucker in occupied Subunits 1B and 1C.

Even assuming that substantial economic and other impacts will result from designation of Subunit 1A as discussed in the FEA and in comments submitted on the proposed rule and DEA, this area is not excluded under section 4(b)(2) of the Act. As discussed earlier in Critical Habitat Units Subunit 1A: Upper Santa Ana River, this subunit is essential for the conservation of the species because it provides for essential processes, such as the transport of stream and storm waters that deliver coarse sediments necessary to maintain the habitat conditions essential to the survival and the recovery of the population of Santa Ana suckers downstream, which is one of only three extant populations in the three watersheds where the species naturally occurs. Our determination not to exercise our delegated discretion to exclude Subunit 1A from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comment 27: Ten commenters believe the Santa Ana River mainstem above Seven Oaks Dam should not be designated as critical habitat because the proposed critical habitat rule was not based on the best available scientific data. One commenter stated that this area did not meet the definition of critical habitat because it was not historically occupied by Santa Ana suckers. This commenter provided Santa Ana sucker museum collection maps from near the Southern California Edison Powerhouse Number 3, immediately downstream from the site of the Seven Oaks Dam. The commenter suggested that if we do designate this area as critical habitat, it should be described as an "introduction" location as opposed to a "reintroduction" location in the final revised critical habitat designation.

Our Response: We agree with the commenters that Santa Ana sucker records do not exist upstream of Seven Oaks Dam; however, survey records for this species are not complete. As stated in the listing rule (65 FR 19686; April 12, 2000), we defined Santa Ana suckers' range to be rivers and large streams of the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino Counties (65 FR 19686; April 12, 2000). However, in this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comments 5, 9, 22, 23, 24 and 26 above, and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section.

Comment 28: Eleven commenters stated the upper Santa Ana River Wash, including the Santa Ana River above the Seven Oaks Dam, City Creek, and Plunge Creek, is unsuitable for Santa Ana suckers. They specifically stated that the following make the areas unsuitable for Santa Ana suckers: (1) Presence of brown trout, a possible predator; (2) conflicts with Southern California Edison diversion dams and powerhouses; (3) lack of PCEs; (4) only periodic presence of water in certain areas; (5) periodic suitability of water

quality; and (6) periodic inundation by flood waters. Additionally, the commenters state any reintroduction in this area is arbitrary and capricious, and, moreover, there is no recovery plan for the species to guide conservation efforts.

Our Response: In this final critical habitat designation, we are not including as critical habitat areas that were previously identified solely for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comments 5, 9, 22, 23, 24 and 26 above, and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section. We are, however, designating critical habitat in City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue because these areas are essential for the conservation of the Santa Ana sucker. They provide a source of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker (PCE 1) to downstream occupied areas, which is an essential physical and biological feature for Santa Ana sucker. We disagree with the commenters' suggestion that the reintroduction of Santa Ana suckers into the areas above Seven Oaks Dam and Plunge Creek is arbitrary and capricious. We based our revised proposed critical habitat designation (74FR 65056; December 9, 2009) on the study conducted by the Orange County Water District (OCWD 2009), which provides the most recent and comprehensive reconnaissance data available. This study was conducted specifically to determine the most suitable habitats for Santa Ana sucker reintroduction. The study qualitatively evaluated habitat suitability and threat presence at each location, ranked each location (OCWD 2009, p. 6–2), and recommended the areas most likely to support viable populations (OCWD 2009, pp. 6–5–6–6). However, at this time, we are not designating critical habitat solely for the purpose of reintroduction.

Comment 29: Six commenters stated that the "State Water Resources Control Board Decision 1649" (State Water Board's Decision 1649) determined the Santa Ana River upstream of Seven Oaks Dam is not essential for Santa Ana sucker; therefore, the commenters believe this area should not be designated as critical habitat.

Our Response: The commenters state that the State Water Board's Decision 1649, which was made in October 2009, followed the California Regional Water Quality Control Board's Santa Ana River Basin Plan (CRWQCB 2008), which does not list the upper Santa Ana River watershed in the Beneficial Use category based on presence of federally listed species under the Act (CRWQCB 2008, pp. 3–1—3–42). However, we anticipate that the CRWQCB will include this critical habitat designation in their evaluation when determining beneficial uses in future plans for the Santa Ana River basin. The commenters stated that the CRWQCB determined the area is "not essential." However, the CRWQCB language was not used in the context of critical habitat as defined under section 3 of the Act. "Critical habitat" is a term of art under the Act. A designation of critical habitat is made by the Service in accordance with the provisions of the Act and its implementing regulations. Critical habitat designation is not required under and is not governed by State law. When we conduct a critical habitat analysis, we use the best available scientific data to determine the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species which may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species (*see* Critical Habitat section above). The State Water Board is not charged with the legal responsibility to designate critical habitat, and Decision 1649 does not incorporate critical habitat as defined by the Act (as we did in the proposed revised critical habitat rule and in this final rule). Thus, any decision made by the State under State law regarding "essential" Santa Ana sucker habitat cannot supersede this Santa Ana sucker final critical habitat analysis and designation. We note that CRWQCB (2009, p. 23) decision 1649 specifically states that any analysis of impacts of potential water conservation operations (*i.e.,* diversion or holding for sale of water) on endangered species must be consulted on to the extent of the law to ensure all appropriate agencies have been consulted. Specific analysis of water diversions or holding (water conservation) as a result of the CRWQCB's decision on Santa Ana sucker and its essential habitat must be evaluated under section 7 of the Act. It is through section 7 consultation that we will evaluate the impacts of the proposed water diversion or conservation operations on Santa Ana sucker and its designated critical habitat.

As discussed in the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section, the Santa Ana River upstream of Seven Oaks Dam was determined not essential for the conservation of Santa Ana sucker, because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. Therefore, we are not designating the area above Seven Oaks Dam as critical habitat in this final rule.

Comment 30: Six commenters stated that the Santa Ana River mainstem from Seven Oaks Dam to Tippecanoe Avenue should not be designated as critical habitat because this area is not essential for the conservation of the species. They stated that the Service did not describe the particular function of the PCEs present in this portion of the river. They reference the proposed revised critical habitat rule regarding the description in the Subunit 1A: Upper Santa Ana River section that indicates the upstream reach provides spawning and feeding substrates (Service 2009, p. 65070). However, the commenters believe the Service did not clearly identify why this area was being designated as critical habitat, and, therefore, the Service should not designate this area without clearly stating why it is essential for the conservation of the species. They stated that this stretch of the river is an intermittent stream and according to Humphrey *et al.'*s (2004) report evaluating the proposed revised critical habitat, only Mill and City Creeks and other streams provide downstream sediments.

Our Response: The best available scientific data do not support the commenters' assertion that the Santa Ana River mainstem from Seven Oaks Dam to Tippecanoe Avenue does not meet the definition of critical habitat (*see* our response to Comment 28 above). USGS gauge data indicate that the area between Seven Oaks Dam and Tippecanoe Avenue supports high flows (above 4,000 cfs) that are frequent enough for transport of gravel and cobbles. Furthermore, even river reaches that are intermittently dry provide a connective corridor (when sufficient flows are present) for transport of coarse sediment (PCE 2) from City and Mill

Creeks and water from the Santa Ana River above Seven Oaks Dam (PCE 1). As stated in supporting documentation from the commenters' submission, the Santa Ana River above Seven Oaks Dam was historically a principle contributor of coarse sediment to the lower portions of the river. Currently, Mill and City Creeks are two of the main sediment contributors (Humphrey *et al.* 2004, pp. 2–3). A connected and integrated system that can deliver the necessary coarse sediments to the lower reaches is required for species' survival and recovery. We are designating critical habitat in City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue because these areas are essential for the conservation of the species; they provide a source of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker (PCE 1) to downstream occupied areas.

Comment 31: Six commenters believe the Service cited "new information" as the reasoning behind the proposed revisions to critical habitat, without clearly explaining what this "new information" was.

Our Response: We agree with the commenters and thus provide clarification and reiteration of this new information in the Background and Physical and Biological Features section above. The Summary of Changes From Previously Designated Critical Habitat section also describes specific revisions to the critical habitat designation and explanations of these changes.

Comment 32: Six commenters believe designation of critical habitat in Subunit 1A would contradict the State Water Resources Control Board's Decision 1649 to allow permitted water districts to divert up to approximately 200,000 acre-feet of water annually during storm events. They stated these water rights are a form of property, and critical habitat designation would likely constitute both a physical and regulatory "taking" of property that would require Government compensation under the Takings Clause.

Our Response: Regarding the relationship of the State Water Resources Control Board's Decision 1649 and this designation of revised critical habitat for the Santa Ana sucker, *see* our response to comment 29 above. We do not agree that critical habitat designation would constitute a physical and regulatory taking of property. The designation of critical habitat, in and of itself, has no legal effect on property rights and clearly does not effect a physical or regulatory "taking" of property. Critical habitat designation does not in and of itself affect or preclude property use; rather, it comes into play under section 7 of the Act when a proposed Federal action may adversely affect critical habitat. In the event an adverse finding is made in a section 7 consultation, the Service is required to identify any available reasonable and prudent project alternatives that would avoid adverse modification. The Act also incorporates procedures to exempt specific Federal actions from the mandates of section 7(a)(2) where irreconcilable conflicts exist. The Act contains thus contains several measures to reconcile the needs of listed species and their essential habitat with the needs of private or non-Federal landowners. The commenters' assertion that the designation of critical habitat for the Santa Ana sucker affects a regulatory or physical taking of private property is erroneous as a matter of law.

Comment 33: Nine commenters asserted City Creek should not be designated as critical habitat because it was excluded from the 2005 final critical habitat designation (70 FR 425; January 4, 2005). They also believe City Creek is currently unoccupied and does not provide a significant source of sediment to the Santa Ana River mainstem. Additionally, they stated the proposed revised critical habitat designation was improper for reintroduction because brown trout are present in the creek.

Our Response: The commenters did not provide any explanation or new information supporting their assertion that City Creek should be excluded from this final critical habitat designation, other than City Creek was not included in the 2005 final critical habitat rule as a policy decision to not include areas for maintenance of processes. We considered all new information acquired since the 2005 final critical habitat rule and conducted a new analysis of considered exclusions (*see* Exclusions section above). We determined this area meets the definition of critical habitat for Santa Ana sucker and believe the area and the process it provides are essential for the conservation of the species. This subunit not only contains the PCEs necessary to conserve Santa Ana sucker, it is one of the only locations within this unit that is outside the highly urbanized area. We are designating critical habitat in City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue because these areas are essential for the conservation of the species. They provide a source of water and coarse sediment, an essential physical and biological feature necessary to maintain all life stages of Santa Ana sucker (PCEs 1 and 2), in downstream occupied areas. Under section 3(5)(A)(ii) of the Act, critical habitat may include specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Comment 34: Six commenters believe if Mill and City Creeks are designated as critical habitat, the critical habitat designation must be seasonally limited to allow implementation of local projects that do not impact water and sediment flows.

Our Response: The definition of critical habitat does not allow for the designation of critical habitat on a temporal basis. Furthermore, critical habitat does not create a prohibition of activities. If the referenced temporally variable activities do not adversely affect habitat (*i.e.,* do not adversely impact water and sediment flows), then critical habitat should not have any regulatory effect on those activities (*see* Critical Habitat section above). The PCEs that we determined to be essential to the conservation of the species may not always be present in a single area at a single point in time; therefore, the dynamic nature of the system is represented by the PCEs and does not incorporate seasonality. *See also* responses to Comments 13 and 33 above for reasoning behind designating these areas.

Comment 35: One commenter stated that their current operations in City Creek and Santa Ana River include maintenance of the Inland Feeder and blow-off structures used to discharge water (approximately 50 acre-feet (61,67 cubic-meters)) into both rivers. They stated that these operations would not affect sediment transport in the watershed but may impact Santa Ana suckers if they were reintroduced into City Creek.

Our Response: We appreciate the information provided by the commenter. In this final critical habitat designation, we are not including as critical habitat areas that were previously identified for reintroduction purposes (74 FR 65056; December 9, 2009; 75 FR 38441; July 2, 2010). We now conclude that potential reintroduction areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. *See* response to Comments 5, 9, 22, 23, 24, 27, and 28 above, and Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section. We are, however, designating critical habitat in City

Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue because these areas are essential for the conservation of the Santa Ana sucker; they provide a source of water and coarse sediment necessary to maintain all life stages of the species (PCE 1) to downstream occupied areas, which is an essential physical and biological feature for Santa Ana sucker. City Creek and Mill Creek are also part of the functioning hydrologic system and assist in maintaining water quality and temperature to downstream occupied reaches of the Santa Ana River. Under section 3(5)(A)(ii) of the Act, critical habitat may include specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Therefore, we are designating City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue as critical habitat because they are essential for the conservation of the Santa Ana sucker. They provide a source of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker in currently occupied areas.

Comment 36: Four commenters believe that the designation of Mill Creek to preserve a fluvial process is unnecessary because this process will occur without the designation of critical habitat. Further, they stated that the designation of critical habitat does not create more water or coarse substrate, and they believe we need to have a foreseeable threat to the area or the process to justify the designation (otherwise the commenters believe the designation is arbitrary).

Our Response: We are designating Mill Creek as critical habitat for Santa Ana sucker because it is essential for the conservation of the Santa Ana sucker; it serves as a source of water and coarse sediment (PCEs 1 and 2) that will be transported to the downstream occupied areas (*see* the description of Critical Habitat Units—Subunit 1A: Upper Santa Ana River section above). Mill Creek has been documented as a significant source of coarse sediment (PCE 2) to the lower Santa Ana River (Humphrey *et al.* 2004, p. 2). Mill Creek also assists in maintaining water quality (PCE 4) and temperature (PCE 5) to occupied reaches downstream. The designation as critical habitat provides an opportunity for the Service to consult on Federal projects that may impact these physical and biological features essential to the conservation of the species. Therefore, we determined that Mill Creek meets the definition of critical habitat (*see* description of Unit 1: Santa Ana River under the Critical Habitat Units section above) and are designating approximately 12 mi (19.3 km) of Mill Creek as critical habitat as a source of water (PCE 1) and coarse sediment (PCE 2) necessary to maintain all life stages of Santa Ana sucker. Contrary to the commenters' suggestion, we are not required to identify a foreseeable threat to an essential habitat area or identify specific features essential to the conservation of the species to justify designation of areas, such as Mill Creek, that are outside the geographical area occupied by the species at the time of listing. We have concluded that even though this area is unoccupied, and was not occupied at the time of listing, it is essential for the conservation of Santa Ana sucker because it provides for the essential process of water and coarse sediment delivery to occupied downstream areas of the Santa Ana River.

Comment 37: One commenter believes that other and lower-order tributaries than those proposed as revised critical habitat should be evaluated for critical habitat designation specifically for the purposes of refugia from predators and locations for flood control and operation of hydroelectric power facilities.

Our Response: We did include tributaries within all three critical habitat units (*i.e.,* Sunnyslope Creek and Rialto Drain in the Santa Ana River, Bear Creek and Big Mermaids Canyon Creek in the San Gabriel River, and Delta Canyon Creek and Gold Canyon Creek in Big Tujunga Creek) that may provide refugia within occupied areas from predators, flood control, and operation of hydroelectric power facilities. *See* response to Comment 5, 9, 22, 23, 24, 27, 28, and 36 above, and the Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section.

Comment 38: One commenter stated that, in Subunit 1A, all facilities (and a buffer) associated with operation of hydroelectric power facilities or water delivery should be excluded from the final critical habitat designation because these areas do not provide PCEs at this time or in the future. Additionally, the commenter stated that designation of critical habitat may expose hydroelectric power facilities to take of Santa Ana suckers.

Our Response: We appreciate the commenter's concern that facilities associated with operation of hydroelectric power facilities or water delivery do not provide the PCEs necessary for the conservation of Santa Ana sucker. When designating critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures, because such lands lack essential features for Santa Ana sucker. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of all such developed lands. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final revised critical habitat are excluded by text in this final rule. Therefore, a Federal action involving the facilities mentioned by the commenter would not trigger section 7 consultation with respect to critical habitat; however, section 7 consultation would be necessary if operations of the facility impact the Santa Ana sucker or its habitat. If operations may impact the Santa Ana sucker, the Federal agency involved would be responsible for entering into consultation with the Service under section 7 of the Act.

We note that critical habitat designation is not relevant to the question of whether a proposed action may result in take of Santa Ana sucker. Unauthorized take of listed animal species is prohibited under section 9 of the Act. "Harm" as a form of take under the Act includes significant habitat modification that actually injures or kills a listed species by significantly affecting one or more of their essential behavioral patterns, such as breeding, feeding, or sheltering. Habitat modification that results in injury or death to a listed species is prohibited whether or not the habitat modified has been designated as critical habitat.

Comment 39: One commenter stated that we need to document a "real possibility" of extirpation of an entire area to justify the designation of critical habitat outside the geographic range of Santa Ana sucker at the time of listing.

Our Response: The commenter is incorrect. The definition of critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) That may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are

essential for the conservation of the species.

Documentation of the possibility of extirpation is not a requirement that must be met in order for areas to meet the definition of critical habitat. We are designating areas outside the geographical range of Santa Ana sucker at the time of listing in Subunit 1A because we have determined that such areas are essential for the conservation of the species.

Comments Related to the Santa Ana Sucker Conservation Program (SAS Conservation Program)

Comment 40: Eighteen commenters expressed support for exclusion of lands covered by the SAS Conservation Program and stated that designation of critical habitat often provides little additional protection for listed species because section 7 of the Act already requires Federal agencies to ensure their actions do not jeopardize the continued existence of a listed species (70 FR 425; January 4, 2005). They further believe that exclusion of Subunits 1B and 1C will not result in extinction of the species.

Our Response: We understand the commenters' reasoning; however, we carefully and thoroughly analyzed this issue and have not concluded that the benefits of excluding lands in Subunits 1B and 1C within the jurisdiction of the SAS Conservation Program outweigh the benefits of including these lands in the final critical habitat designation. *See* Rationale For Including the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation section above for a detailed discussion of this analysis.

Comments Related to the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

Comment 41: Five commenters believe that lands covered by existing conservation plans should be excluded from the final revised critical habitat designation because of the conservation benefit of the partnerships. They further state that Santa Ana sucker is a covered species under the Western Riverside County MSHCP, and therefore lands within this plan area in Subunits 1B and 1C should be excluded from the final revised critical habitat designation.

Our Response: The Western Riverside County MSHCP has provided an opportunity for valuable partnerships to be established and conservation measures for Santa Ana sucker to be implemented. However, in evaluating the partnership benefits contributed by the Western Riverside County MSHCP in the context of the current status and continued decline of the species and its habitat, we have not concluded that the partnership benefits of excluding lands covered by the Western Riverside County MSHCP outweigh the benefits of including these areas in the final critical habitat designation. Therefore, we are not excluding any lands covered by the Western Riverside County MSHCP in this designation under section 4(b)(2) of the Act in this final critical habitat rule. Please *see* the Rationale For Including the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation section of this rule for a detailed discussion of this decision.

Comments Related to Areas Designated as Critical Habitat

Comment 42: One commenter believes that the portion of the Santa Ana River from Tippecanoe Avenue to the La Cadena drop structure in Subunit 1B does not meet the definition of Santa Ana sucker critical habitat. The commenter reasoned this area does not meet the definition of critical habitat because it: (1) Is not currently occupied, (2) was not considered occupied at the time of listing, (3) is dry and concrete-lined in places, and (4) has areas that block fish passage. The commenter asserted they have been removing sediment from the system to maintain low-flow channels and are not aware this activity is impacting the transport of sediment to occupied locations downstream.

Our Response: We determined the Santa Ana River from Tippecanoe Avenue to the La Cadena drop structure to be essential to the conservation of the species, and consider this area to have been occupied at the time of listing (Service 2000, p. 19686; Service 2009, p. 65071). Currently, upstream movement of Santa Ana suckers is precluded by the drop structure at La Cadena Drive and this area is unoccupied by Santa Ana sucker. However, this reach of the river above La Cadena Drive is a connective corridor for sediment and water transport (PCE 1), even though it may be periodically dry (PCE 7). The best available scientific data indicate that this area contributes coarse sediment required for Santa Ana sucker breeding and feeding to the lower reaches of the river (Humphrey *et al.* 2004, pp. 2–3; USGS gauge data). The definition of critical habitat does not require habitat to be currently occupied or to have been occupied at the time of listing (*see* Critical Habitat section above); therefore, lack of current occupancy by Santa Ana suckers does not preclude critical habitat designation. We are designating critical habitat in City Creek, Mill Creek, and the Santa Ana River above La Cadena Drive and Tippecanoe Avenue because these areas provide a source of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker (PCE 1) to downstream occupied areas, which is an essential physical and biological feature for Santa Ana sucker. These areas are essential for the conservation of the species.

We are also unaware of what impacts sediment removal may have on the functioning of the watershed system as a whole. A study detailing sediment transport within the system is needed to understand how extraction of sediment may be impacting Santa Ana sucker habitat. Answering this question is an important aspect of recovery planning because recent research has shown Santa Ana suckers are limited by the availability of suitable habitat for all life stages (Thompson *et al.* 2010, pp. 321–332). Because hydrologic system connectivity is important for the transport of coarse sediment and water downstream, this area was determined to be essential to the conservation of the species and therefore designated as critical habitat in this final rule.

Comment 43: One commenter believes the critical habitat designation was incomplete because it did not include any of the Santa Clara River Santa Ana sucker population. The commenter believes the discussion of PCEs in the Santa Clara River is lacking and the persistence of the species in this river reinforces the need to include this watershed in the final critical habitat designation.

Our Response: The Santa Clara River population of Santa Ana sucker does not belong to the entity listed under the Act; therefore, we did not designate areas in this river as final revised critical habitat. *See* the Geographic Range and Status sections of the proposed revised critical habitat designation (74 FR 65056; December 9, 2009), this final rule, and our response to Comment 3 above for a more detailed discussion of this issue.

Comment 44: One commenter believes the proposed revised critical habitat designation was incomplete because it did not include additional unoccupied habitat. They asserted that data exist describing Santa Ana River tributaries in San Bernardino County such as Mill, Plunge, City, Strawberry, Twin, Lytle, and Cajon Creeks and the Upper Santa Ana River upstream of Seven Oaks Dam that are good candidate habitats for Santa Ana sucker reintroduction.

Our Response: We understand the commenter's concerns and agree that reintroduction is likely needed for recovery of Santa Ana sucker. However, in this final critical habitat designation, we are not including areas that we proposed solely for reintroduction as critical habitat. We now conclude that these areas are not essential because we lack information indicating that these areas were historically occupied by the species and lack sufficient information to support a determination that these areas are needed for the species' recovery. We require more specific data detailing the need for reintroduction and the suitability of particular locations for reintroduction; therefore, we are not designating areas solely for the purpose of reintroduction. *See* response to Comments 5, 9, 22, 23, 24, 27, 28, 35, and 37 above, and Summary of Changes From 2009 Proposed Critical Habitat to This Final Critical Habitat Designation section. We are however, including in our final critical habitat designation two subunits that are considered unoccupied (*i.e.,* Subunits 1A and 3B) that provide for essential processes that are necessary for the conservation of Santa Ana sucker. Within Subunit 1A, we have determined that City Creek, Mill Creek, and the Santa Ana River above Tippecanoe Avenue provide or contain sources of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker and are therefore essential for the conservation of the species. Strawberry, Twin, Lytle and Cajon Creeks were not designated as critical habitat because, at this time, we do not have data that indicate that they provide for these essential processes necessary for the conservation of the species; however, we may determine in the future that these areas are essential for the conservation of the species. As stated in the Critical Habitat Units—Subunit 1A: Upper Santa Ana River section, we believe in the Santa Ana River the currently occupied areas have been modified and degraded substantially and conservation of areas outside the geographical range occupied at the time of listing is essential. However, in this final critical habitat designation, we are not including areas that we proposed solely for reintroduction as critical habitat but are including unoccupied areas for the essential processes that they provide to occupied areas.

Comment 45: One commenter believes the Service should not eliminate from critical habitat designation any area proposed as critical habitat due to current or historical alterations of hydrology, such as upstream of dams or other impediments. They stated that the Service should work cooperatively with dam managers to mimic natural flows, which would aid in Santa Ana sucker recovery.

Our Response: We agree that natural flow regimes are important to the survival and recovery of Santa Ana sucker. We have designated stream reaches that have been hydrologically altered but still contain one or more of the PCEs, are essential to the conservation of Santa Ana sucker and may require special management consideration or protections. However, areas adjacent to dams, regardless of flow regime, do not provide PCEs and do not meet the definition of critical habitat (*see* Critical Habitat and Criteria Used to Identify Critical Habitat sections above). Therefore, the footprint of areas of dams and other impediments were not proposed nor finalized as critical habitat. A consultation under section 7 of the Act for dam operations would, however, analyze the indirect impacts of operations to upstream and downstream critical habitat that is designated. We will strive to work cooperatively with dam managers as appropriate to mimic natural flows to aid in Santa Ana sucker recovery, regardless of critical habitat designation.

Comment 46: One commenter believes the final revised critical habitat designation should support all existing conservation investments or mitigation efforts. Further, they believe these conservation or mitigation areas should be included in the final critical habitat designation to further support the success of these investments.

Our Response: The commenter did not provide specific examples of additional conservation or mitigation areas that are part of conservation efforts for Santa Ana sucker that were not included in the final critical habitat designation. The final critical habitat designation does include areas within the Western Riverside County MSHCP that are expected to be managed as reserve lands through implementation of the plan and includes the Big Tujunga Wash Mitigation Bank in the Big Tujunga Wash.

Comment 47: Two commenters believe that exclusions of critical habitat on the basis of a management plan is not a substitute for the designation of critical habitat and they asserted that coverage by a habitat management plan is not sufficient justification to exclude it from critical habitat designation. Additionally, the commenter believes that plans or programs in draft form (*i.e.,* the SAS Conservation Program) do not justify exclusion from critical habitat designation.

Our Response: We may exercise our delegated discretion to exclude an area from critical habitat under section 4(b)(2) of the Act if we conclude that the benefits of exclusion of the area outweigh the benefits of its designation. We do not exclude areas based on the mere existence of management plans or other conservation measures. The existence of a plan may reduce the benefits of inclusion of an area in critical habitat to the extent the protections provided under the plan are redundant with conservation benefits of the critical habitat designation. In particular, we believe that the exclusion of lands may be justified when they are managed and conserved in perpetuity. Thus, in some cases the benefits of exclusion in the form of sustaining and encouraging partnerships that result in on the ground conservation of listed species may outweigh the incremental benefits of inclusion. None of the areas under the jurisdiction of the SAS Conservation Program or the Western Riverside County MSHCP are currently conserved for the benefit of Santa Ana sucker, and we have not concluded that the partnership benefits of excluding lands covered by the SAS Conservation Program or the Western Riverside County MSHCP outweigh the benefits of including these areas in the final critical habitat designation. Please *see* the Rationale For Including the Western Riverside County MSHCP and SAS Conservation Program in This Final Critical Habitat Designation section above for a full discussion of our analysis for both the SAS Conservation Program and the Western Riverside County MSHCP.

Comment 48: One commenter believes the Service did not provide documentation that periodically dry areas are occupied by Santa Ana suckers. They stated the area from Mission Boulevard in Riverside County to the City of Colton experienced periods of insufficient flows from 1971 to 1982 (USGS gauge data); therefore, this reach should not be considered occupied by the species.

Our Response: The area the commenter described is known to be currently occupied by Santa Ana suckers (SMEA 2009, pp. 1–5) and was also occupied at the time of listing (Service 2000, pp. 19686–19687). Survey data are not available as far back as 1982, but recent data show the Santa Ana River at Mission Boulevard is routinely occupied by Santa Ana suckers (SMEA 2009, p. 1). Additionally, habitat surveys indicate this area is one of the few remaining

suitable areas for Santa Ana sucker (Thompson *et al.* 2010, pp. 330–331) in the Santa Ana River. There are areas further upstream that may experience periods of dewatering; however, these areas contain the physical and biological features essential to the conservation of the species because they provide sources of water and coarse sediment necessary to maintain all life stages of Santa Ana sucker (PCE 1) and are a connective corridor for transport of water and coarse sediments (PCE 2) to lower portions of the occupied or seasonally occupied range (PCE 7). Moreover, when this periodically dry reach is wetted from late winter rains, Santa Ana sucker has been reported from the La Cadena drop structure (Baskin *et al.* 2005, p. 2), which is currently as far upstream as the fish can travel due to the permanent barrier at La Cadena Drive. Therefore, this area is considered occupied by Santa Ana suckers and is included in this final critical habitat designation.

Comment 49: Four commenters stated that inclusion of areas along the Santa Ana River where compliance with Federal Emergency Management Agency (FEMA) regulation is required for flood control would trigger lengthy section 7 consultations on flood control actions. The commenters believe these lengthy consultations would delay operations because of the time required to conduct section 7 consultations, and may pose a risk to human health and safety.

Our Response: Section 7 of the Act provides for emergency consultations in response to an act of God, disasters, casualties, national defense or security emergencies (such as to expedite measures required to ensure human health and safety) (50 CFR § 402.05). Emergency consultation procedures allow action agencies to incorporate endangered species concerns into their actions during the response to an emergency. If a Federal agency must take emergency action that may affect a listed species or critical habitat, the agency would contact the Service to identify measures to minimize the impacts of the emergency actions that are feasible to implement while responding to the emergency. The Service is very sensitive to the need to allow response efforts necessary to avoid imminent loss of human life or property. The Federal action agency would initiate formal consultation after the fact and provide necessary documentation to the Service for an after the fact biological opinion that documents the effects of the emergency response on listed species or critical habitat. Therefore, we do not believe delays due to section 7 consultation on flood control actions should pose a significant risk to human health and safety, and we did not exclude any areas from this final critical habitat designation on the basis of lengthy section 7 consultation on flood control actions.

Comment 50: One commenter stated the proposed revised critical habitat rule discussion of groundwater rising in Subunit 1B below the Riverside Narrows downstream to Prado Dam was not entirely correct. They stated the Santa Ana River recharges significant quantities of water into the underlying Chino Basin that actually flows away from the river. The commenter concluded there is no cooling of Santa Ana River discharge from rising groundwater in this reach within Subunit 1B. Further, the commenter believes the Service should use updated information from the California Regional Water Quality Control Board (CRWQCB) since the 1995 analysis was completed before making any final critical habitat designation decisions about this reach of the river.

Our Response: The commenter did not provide documentation to support the assertions cited in their comment letter. The best available scientific data we have from the CRWQCB was updated in February 2008, and indicate there is rising groundwater in this reach (CRWQCB 2008, p. 1–13) which provides cool water to the Santa Ana River mainstem. Surveys indicate Santa Ana suckers occupy this reach even though it may experience ebbs and peaks in water volume (PCE 1). Additionally, this area also provides a connective corridor to the lower portion of the occupied range (PCE 7). Therefore, we designated Subunit 1B below the Riverside Narrows downstream to Prado Dam as critical habitat for Santa Ana sucker in this final rule.

Comment 51: One commenter asserted results from a recent study describe areas along the Big Tujunga Wash as unsuitable Santa Ana sucker habitat due to barriers that prevent migration. Therefore, the commenter requested we eliminate areas from the final critical habitat designation that are closest to the dam. Additionally, the commenter believes reaches above the Little Tujunga Wash may not contain perennial stream flow or pools that provide viable Santa Ana sucker habitat and should, therefore, be eliminated from the final critical habitat designation.

Our Response: The commenter submitted habitat suitability survey results for all life stages of Santa Ana suckers. The survey results indicate that the habitat throughout the Wash primarily has a "good" score, while very few locations have a "poor" score. Habitat scores correspond to a quantitative value assigned to each location after evaluating a variety of habitat characters that were measured in the main channel. Ranking was based on "excellent" corresponding to a score of 3–4, "good" corresponding to a score of 2–3, "fair" corresponding to a score of 1–2, and "poor" corresponding to a score of 0–1 (LACDPW 2009, Google Earth kmz file). This habitat suitability report contains the best scientific data available that are known to us at this time. Based on these data, we believe the areas designated as critical habitat in this final rule are consistent with the report conclusions. We agree that portions of the wash may be dewatered during certain periods throughout the year. However, these areas contain PCEs (1–7) and we found them to contain the physical and biological features essential to the conservation of the species. Therefore, we are designating critical habitat in this final rule throughout Big Tujunga Wash (Unit 3), including the area near the confluence with Little Tujunga Wash.

Comment 52: Three commenters stated that the Service should focus on recovery actions and partnership efforts to recover the Santa Ana sucker instead of critical habitat designation.

Our Response: We consider the partnerships and recovery actions that have been and will be achieved through our coordinated efforts with partners in all three watersheds to be of the utmost importance. We believe that coordinated efforts through partnerships are essential for conservation of listed species. We look forward to continuing and creating new partnerships with the many stakeholders and water users in the three watersheds where Santa Ana sucker is listed. Additionally, we plan to initiate development of a draft recovery plan in 2011, and will seek the involvement and participation of our partners and stakeholders.

Comment 53: One commenter stated that we are required to submit an Environmental Impact Statement according to National Environmental Policy Act (NEPA) requirements for "major" Federal actions.

Our Response: 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 (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. Please *see* the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et. seq.*) section below.

Comment 54: Two commenters requested an exclusion of the West Fork of the San Gabriel River from Cogswell Dam to the San Gabriel Reservoir. They stated that this area is covered under the Long-Term Management Plan West Fork San Gabriel River (1989), which is signed by the USFS, CDFG, Los Angeles Department of Public Works, Angeles National Forest, California Trout, Inc., San Gabriel Basin Watermaster, San Gabriel Protective Association, and San Gabriel Water Committee. They state that the plan provides a benefit to Santa Ana sucker and its designated critical habitat through implementation of the plan for wild trout and non-game fishes.

Our Response: The Long-Term Management Plan West Fork San Gabriel River (USFS *et al.* 1989, pp. 1–22) does not contain specific management actions that address Santa Ana sucker. Furthermore, it only provides considerations for flow releases from Cogswell Dam, which address the risk of fishes being flushed downstream during high flow events. The plan offers no other conservation benefits that would ameliorate the threats in the West Fork of the San Gabriel River (*see* Critical Habitat Units—Unit 2: San Gabriel River and Special Managements Considerations or Protections sections). Additionally, Drake (1988, pp. 4–5) states that flows in the summer months may reach less than 1 cfs because all water that flows into the reservoir is stored behind the dam for water uses and the very small amount that may flow out is due to leakage dependent on the pressure of water stored behind the dam. Although the plan contains minimum stream flow recommendations (USFS *et al.* 1989, p. 11), there is no indication that they must be maintained or if they have been evaluated for the benefit of Santa Ana sucker. Therefore, the flow that is most important in the drier, summer months is contributed by tributaries such as Big Mermaids, Canyon Creek, and Bear Creek and not necessarily the flow released from Cogswell Dam. More importantly, recent survey efforts indicate that there has been a sharp decrease in the density of Santa Ana suckers and an increase in nonnative predators in the West Fork of the San Gabriel River (Haglund and Baskin 2002, p. 9–15; Ecorp Inc. 2007, p. 9; Ecorp Inc. 2010b, p. 9). This marked decline may indicate that there has been a change in fish assemblage in the West Fork due to changes in management or environmental parameters. Therefore, we are not excluding the West Fork of the San Gabriel River from the final critical habitat designation. We do encourage partnerships with land managers in an effort to implement management actions that will benefit Santa Ana sucker. In particular, we believe that the exclusion of lands may be warranted when they are managed and conserved in perpetuity for the benefit of listed species. The Long-Term Management Plan for the West Fork San Gabriel River (USFS *et al.* 1989, pp. 1–22) to date has not conserved lands for the benefit of Santa Ana sucker. We appreciate and recognize the management efforts of the participants of the Long-Term Management Plan for the West Fork San Gabriel River (USFS *et al.* 1989, pp. 1–22) and we look forward to working with them on recovery efforts in the future.

Comments Related to the Draft Economic Analysis

Comment 55: Several commenters urge the Service to fully analyze the economic impact of the designation, including all costs associated with the loss of local water supplies, potential flood damage, development, agricultural impacts and transportation infrastructure issues. In particular, these commenters are concerned about potential changes in operation and maintenance of Seven Oaks Dam. Other commenters highlight the potential for water supply losses. Another commenter states that the omission of the major issues affecting the region's economy resulted in a report that is not a fair assessment of the devastating economic impact of including Subunit 1A, particularly since a May 11, 2010 report outlined in detail the economic impact issues that inclusion of Subunit 1A would raise for the affected communities. The commenter states that the economic analysis sidestepped analysis of the major issues raised by the local agencies charged with supplying water, flood control and energy within the critical habitat designation.

Our Response: Following receipt of public comments on the economic analysis, the FEA has been revised to more fully incorporate concerns about potential impacts of critical habitat for Santa Ana sucker. In particular, Chapter 3 now more directly addresses the potential for critical habitat to result in loss of local access to water supplies (IEC 2010, pp. 3–1—3–25). While there is no history of restrictions on water diversion occurring for this species related to critical habitat, uncertainty exists regarding potential future impacts. In response to questions about potential Santa Ana sucker critical habitat impacts on water supply projects, the Service has identified five projects of concern to commenters as having a high probability of Santa Ana sucker critical habitat impacts. These probabilities are not specific to likely project modifications (*i.e.,* a high probability of Santa Ana sucker critical habitat impacts does not necessarily indicate that restrictions on water access are likely). However, to be conservative (*i.e.,* be more likely to overstate than understate costs), this analysis assumes that, under the High End Scenario, loss of access to local water supply will occur at these projects (IEC 2010, p. 3–3). The analysis assumes that replacement water will be available for purchase, and, as such, reductions in water availability for agriculture or development activities are not anticipated. To the extent that local water is not precluded from use for these projects, the analysis is likely to overestimate impacts under this scenario. In fact, we believe that the economic impact or incremental cost attributed to Subunit 1A is likely overstated for two reasons: (1) Projects outside the currently occupied range of Santa Ana sucker that may impact Santa Ana sucker in downstream occupied portions of the Santa Ana River would likely incur costs or modifications to projects for Santa Ana sucker conservation due to its status under the Act and the section 7 process regardless of the critical habitat designation in Subunit 1A and (2) it is highly unlikely that complete access to water rights would be restricted as a result of consultation as a result of the critical habitat designation (*see* Economic Analysis section above).

With regard to flood control, the Endangered Species Act does not compel species conservation to disregard protection of human life or property. This applies in emergency and well as routine maintenance situations. We note that the existing Santa Ana sucker critical habitat designation at Cogswell Dam (Unit 2), has not impeded flood control operations to date. Though sediment removal projects have not been conducted at Cogswell Dam since the species was listed, sediment removal projects at San Gabriel Reservoir in the same unit have been allowed to move forward when seine netting and extensive species monitoring efforts were undertaken, even with critical habitat designated. Importantly, 16 USC 1536(p) allows for emergency actions to be taken without section 7 consultation in the event of an "emergency situation which does not allow the ordinary procedures of this section to be followed." As, such, economic impacts that potentially could

result from a catastrophic flood event, such as loss of life or property value, are not quantified because management actions to prevent catastrophic flooding are not expected to be precluded due to designation of critical habitat for Santa Ana sucker.

Comment 56: One commenter states that several of the public water supply agencies affected by the designation are concerned because they have specific projects already slated for construction within the critical habitat area. Their concern is with the potential inability to build these projects should the Service decide that they are inappropriate due to critical habitat. The commenter states that "local agencies cite numerous instances" in which regulatory delay by the Service has caused elected officials to cancel projects in the belief that they may never be approved, though these projects are not specifically identified. The commenter states that the economic impact of uncertainty thus cannot simply be assumed away. The commenter also assumes that if planned construction projects are not built, the impact would be a loss of construction activity that is equal to the planned construction costs.

Our Response: The Service has conducted over 30 consultations on the sucker in critical habitat areas, most of which addressed transportation, utility, or other instream construction projects. In no instance has the Service concluded that a proposed project was likely to jeopardize the continued existence of Santa Ana sucker or adversely modify the species' designated critical habitat. The commenter does not provide information to support the claim of "numerous instances" of projects being cancelled due to the belief that they would never be approved, and our section 7 consultation record for Santa Ana sucker does not support this assertion. The commenter does not present justification for assuming that funds planned to be spent on construction would be unusable following critical habitat designation. It is unclear why, for example, funds could not be spent elsewhere on other projects in the event that a particular project was not conducted. Hence, total construction costs are not a good representation of the potential impacts of critical habitat designation.

Comment 57: One commenter states that, even if the economy recovers within the timeframe for the analysis, the next few years will have far lower economic activity than expected, particularly in the areas of development. As a result, assumptions about the discount rate for future costs and the time value of money need to be reevaluated.

Our Response: To discount and annualize costs, guidance provided by the OMB specifies the use of a real rate of 7 percent. The 7 percent discount rate is an estimate of the average real pre-tax rate of return generated by private sector investments. Although this rate of return may be lower during current market conditions, it is not clear how long current market conditions will persist. In addition, OMB recommends sensitivity analysis using other discount rates such as 3 percent, which some economists believe better reflects the social rate of time preference. Our analysis adopts OMB's existing guidance, presenting results using both the 7 and 3 percent discount rates (U.S. Office of Management and Budget, Circular A–4, September 17, 2003 and U.S. Office of Management and Budget, "Draft 2003 Report to Congress on the Costs and Benefits of Federal Regulations; Notice," 68 FR 5492, February 3, 2003).

Comment 58: One commenter states that the DEA inappropriately includes costs associated with time delays, regulatory uncertainty, and stigma, but it does not clearly define how it estimates those potential costs. Another commenter states the opposite, that given the potential impact of loss of local water resources due to the inclusion of Subunit 1A in the expanded Santa Ana sucker critical habitat, and the potential inability of development projects to gain water supply certification under California's 20-year law, the economic cost of the stigma of the expanded habitat on land values must be considered and evaluated.

Our Response: As discussed in Chapter 2 of the FEA, the designation of critical habitat may, under certain circumstances, affect actions that do not have a Federal nexus and thus are not subject to the provisions of section 7 under the Act. These indirect impacts are those changes in economic behavior that may occur outside of the Act, through other Federal, State, or local actions, and that result from the designation of critical habitat. These indirect consequences, such as time delays, regulatory uncertainty, and stigma, can constitute real impacts that result from critical habitat designation and are legitimately considered as a category of impacts in the analysis. However, data are not readily available to quantify these impacts in this case; thus they are discussed qualitatively in the FEA. As such, any potential stigma impacts on land values are not quantified.

Comment 59: One commenter states that the DEA only considers the number of section 7 consultations, and does not consider the potential for the designation of critical habitat to result in increased consultation complexity, costs, and time delays.

Our Response: As shown in Exhibit 2–4, the FEA assumes that critical habitat may result in additional administrative effort, *i.e.,* staff time and costs, to address adverse modification in section 7 consultations. Depending on the type of section 7 consultation, the direct cost of this additional administrative effort for each consultation is expected to range from $405 to $9,030. As such, the analysis attempts to capture the increased costs associated with increased complexity associated with consultations following critical habitat designation. As stated in the FEA, both public and private entities may experience incremental time delays for projects and other activities due to requirements associated with the need to initiate the section 7 consultation process and/or compliance with other laws triggered by the designation. While the analysis recognizes the potential for project delays to result from the critical habitat designation, these are not quantified in the FEA.

Comment 60: One commenter states that the economic analysis omits one of the most important impacts that the inclusion of Unit 1 in Santa Ana sucker critical habitat would have on water-short southern California. The incremental opportunity cost of the lost water would represent at least a $2.9 billion cost to the local economy over the 25-year planning horizon used by local agencies in Southern California.

Our Response: The commenter identifies a number of water supply projects in Subunit 1A and 1B as being potentially threatened by this critical habitat designation. These projects and related potential effects were noted in the DEA. The consultant report that accompanies the comment assumes that all water projects in Unit 1 will no longer have access to water sources in critical habitat areas following critical habitat designation for Santa Ana sucker. Some of these projects are existing, ongoing projects, while others are planned future projects. The reports estimate that the total annual volume of water needing replacement, beginning in 2010, then applies the current cost of State Water Project Water, raised at a rate of 2.97 percent over inflation over a 26-year period (2010–2035), to estimate the longer term costs of this loss. The report does not discount, arriving at an estimated total loss of

$2.87 billion over 26 years. These estimates are described in Chapter 3 of the FEA (IEC 2010b, pp. 3–1—3–25).

The Service notes that project modification determinations will be made on a project by project basis, and as such, the potential conservation requirements for future projects are uncertain. However, we note that water diversions have not been restricted as a consequence of past section 7 consultations on this species, including consultations involving designated critical habitat. In response to questions about potential Santa Ana sucker critical habitat impacts on water supply projects, the Service has identified five projects as having a high probability of sucker critical habitat impacts. These probabilities are not specific to likely project modifications (*i.e.,* a high probability of sucker critical habitat impacts does not necessarily indicate that restrictions on water access are likely). However, to be conservative (*i.e.,* be more likely to overstate than understate costs), our FEA assumes that, under a "High End" scenario, loss of access to local water supply will occur at these projects. We believe the likelihood of substantial water supply restrictions, particularly with regard to existing projects, is low however, given our extensive experience in evaluating projects in Santa Ana sucker critical habitat. Thus, based on our past experience, the commenter's estimate of costs, which appear in the FEA as part of the "High End" scenario, is likely to overestimate the economic impacts of designation because (1) projects outside the currently occupied range of Santa Ana sucker that may impact Santa Ana sucker in downstream occupied portions of the Santa Ana River would incur costs or modifications to projects for Santa Ana sucker conservation due to its status under the Act and the section 7 process regardless of the critical habitat designation in Subunit 1A and (2) it is highly unlikely that complete access to water rights would be restricted as a result of consultation as a result of the critical habitat designation (*see* Economic Analysis section above).

Comment 61: The price of water assumed in the calculation of water loss at Big Tujunga Creek appears to be held constant for future years. This methodology does not take into account the 2.97 percent change in prices beyond inflation that recent history has shown have been occurring. It also does not take into account the increases in local water prices that would occur if access to local water is cutoff in the proposed expanded habitat designation for Santa Ana sucker. Allowance for these facts must be taken into account in any and all forecasts of the opportunity cost of lost local water. Given that the entire issue of the proposed habitat designation is essentially about water usage, it is impossible to accept an economic analysis that omits the price implications of such an action.

Our Response: We agree that the real price of water is likely to increase over time, and have revised the cost estimates for replacement water at Big Tujunga Creek according to the commenter's suggested rate increase of 2.97 percent annually. The analysis now also points out that, should a large volume of replacement water be required as a result of critical habitat designation, this could exacerbate the increase in the local cost of water.

Comment 62: One commenter notes that incremental impacts for water management activities are over-estimated. In particular, the commenter states that agencies are already undertaking biological monitoring or paying into a collective fund for purposes of Santa Ana sucker monitoring. These costs would therefore be incurred even absent critical habitat.

Our Response: The FEA acknowledges in Section 3.3.2 that various flood control and water districts already undertake biological monitoring for Santa Ana sucker (IEC 2010b, pp. 3–19–3–20). Costs associated with currently ongoing monitoring activities are attributed to the baseline. However, several stakeholders identified the potential for critical habitat to result in monitoring for work undertaken outside of the wetted channel, where it would not be required absent critical habitat. Only monitoring costs for work outside of the wetted channel are considered incremental.

Comment 63: Several commenters state that the DEA fails to consider operational constraints on flood control operations that may be imposed as a consequence of the designation of critical habitat for Santa Ana sucker, and resulting consequences for flood control. One commenter believes that the designation of critical habitat in Subunit 1A would lead to a modification of the discharge regime for the dam that is contrary to the flood management needs of the river system. The commenter states that major issues include several billions of dollars of impact from potentially barring access to local sources of water and the potential that after Congress authorized investment of over $1 billion in Seven Oaks Dam, the facility potentially will not be able to be used, as designed, for flood control. The commenter states that critical habitat designation would override the will of Congress and leave economic assets like Disneyland and Anaheim Stadium unprotected from potential devastation in a 100 year flood.

Our Response: With regard to flood control, the Endangered Species Act does not compel species conservation to disregard protection of human life or property. This applies in emergency as well as routine maintenance situations. We note that the existing Santa Ana sucker critical habitat designation at Cogswell Dam (Unit 2), has not impeded flood control operations to date. Though sediment removal projects have not been conducted at Cogswell Dam since the species was listed, sediment removal projects at San Gabriel Reservoir in the same unit have been allowed to move forward when seine netting and extensive species monitoring efforts were undertaken, even with critical habitat designated. Importantly, 16 U.S.C. 1536(p) allows for emergency actions to be taken without section 7 consultation in the event of an "emergency situation which does not allow the ordinary procedures of this section to be followed." As such, economic impacts that potentially could result from a catastrophic flood event, such as loss of life or property value, are not quantified because management actions to prevent catastrophic flooding are not expected to be precluded due to designation of critical habitat for Santa Ana sucker.

Comment 64: Two public comments expressed concern that if critical habitat affects managers' ability to clean out sediment from behind Cogswell Dam that (1) the dam could need to be decommissioned, resulting in decommissioning costs of $20 million; (2) the loss of water storage in the basin, which is required to be 50,000 acre-feet in the three reservoirs in the Upper San Gabriel Canyon, would be reduced, increasing the likelihood of catastrophic flood damages of $2.3 billion; and (3) lost storage would lead to reductions in water supply in the region of 11,136 acre-feet per year, with a value of approximately $7.3 million.

Our Response: Our past experience at Cogswell Dam does not support the commenter's claim that water managers will be unable remove sediment at Cogswell Dam following critical habitat designation for Santa Ana sucker. As stated in the comments, the agency "was able to conduct a cleanout project in San Gabriel Reservoir between 2004 through 2006, utilizing areas in the upper reaches of the reservoir where critical habitat for the Santa Ana Sucker had been designated." As such, reservoir

cleanout has occurred in the recent past in Unit 2 while Santa Ana sucker has been present and critical habitat was designated. While conservation efforts were requested and undertaken, cleanout activities at the San Gabriel Reservoir were not precluded, and we have no basis to assume such activities would be precluded in the future. The FEA now includes substantial additional detail on the potential project modification costs at Cogswell Dam that was supplied by public commenters. While it is conceivable that a future consultation on operations at Cogswell Dam could result in recommendations for alternative operations scenarios, the commenter's assumptions about the outcome and economic impacts of such a future consultation are speculative and contrary to our past consultation record.

Comment 65: One commenter states that the effect of critical habitat on Southern California Edison hydropower operations from potential exposure to take, possible curtailment of water supply, water supply operations, and regulatory uncertainty have not been addressed in the economic analysis.

Our Response: As stated in Chapter 3 of the FEA, the Service has stated that potential project modifications resulting from future section 7 consultations involving Santa Ana sucker critical habitat will be made on a project by project basis, and as such, potential conservation requirements for future projects are uncertain. The analysis notes that there is no history of restrictions on water diversion occurring for this species related to critical habitat. In response to questions about potential Santa Ana sucker critical habitat impacts on water supply projects, we identified projects identified by commenters as having a high probability of Santa Ana sucker critical habitat impacts. Southern California Edison (SCE) facilities are not among these projects. As such, it appears that modifications of SCE facility water operations or a curtailment of water supplies available to such facilities related to critical habitat designation are not likely. Recognizing that regulatory uncertainty can affect behavior, the FEA includes the estimated costs provided by the commenter of a potential $6 million fish screen for Santa Ana sucker at these facilities as part of the calculated incremental conservation costs for Santa Ana sucker critical habitat even though the structure is above Seven Oaks Dam and outside the final critical habitat designation. The cost of the fish screen was assumed because of potential reintroduction of Santa Ana sucker near the location of SCE facilities. This area has been removed from the critical habitat designation and we are not currently designating any critical habitat solely for reintroduction purposes. Accordingly, incremental costs to Subunit 1A have been reduced and are reported in the memorandum to the FEA (IEC 2010c, p. 5). We point out, however, that a species may be reintroduced into an area whether or not the area is designated as critical habitat and that measures to reduce the impacts of take of a listed species may occur under section 7 or section 10 of the Act whether or not an area is designated as critical habitat. Thus take minimization costs, such as the costs of a fish screen, are not appropriately attributed to critical habitat designation.

In addition, as discussed in Appendix A of the FEA, the analysis investigates whether impacts to hydropower production facilities, should they occur, would constitute a significant adverse effect under Executive Order No. 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use." The recent average gross generation for potentially affected SCE facilities is approximately 25.6 million kilowatts hours on an annual basis. This level of production represents the total amount of energy production that could be incrementally affected by critical habitat designation, and is well below the 1 billion kilowatts-hours threshold identified in Executive Order No. 13211. As stated above, modifications of SCE facility water operations or a curtailment of water supplies available to such facilities related to critical habitat designation are not likely (*see* response to Comment 26 above). However, we recognize that critical habitat adds an element of regulatory uncertainty to SCE's planning efforts, and does have the potential to affect its behavior. Even so, it appears that the energy industry is unlikely to experience a significant adverse effect as a result of the critical habitat designation for Santa Ana sucker even if these facilities were to undertake conservation efforts for the sucker that affect hydropower production.

Comment 66: One commenter states that the economic analysis does not even mention the cost of lost housing, industrial, office and retail development that would occur due to the interaction between the loss of local water, California's 20-year water for development certification law, and the lack of availability of State Water project water. If local agencies cannot tap their local water supply, and cannot obtain water through the State Water Project, this would mean shutting off population, household and employment growth for the area expected to accommodate most of Southern California's expansion.

Our Response: The FEA acknowledges the commenter's concern that water in southern California is limited. In addition, the existing requirement for new developments to provide certification of 20-year water supply may restrict development in general. It is entirely speculative to conclude that critical habitat will result in a reduced availability of water for development purposes. In quantifying potential impacts, the FEA assumes, as does the commenter's own analysis, that in the case that water access is limited due to critical habitat designation, replacement water will be available for purchase, at an increasing rate over time. As such, development impacts are not expected as a result of the critical habitat designation for Santa Ana sucker related to water access restraints. The FEA acknowledges that if Santa Ana sucker critical habitat restricts water access, the cost of water is likely to increase.

Comment 67: One commenter believes that the DEA overestimated potential impacts to development because it forecasts impacts to construction within the floodplain. Because construction in the floodplain is a safety risk, the commenter argues that these projects would not go forward, and therefore would not incur any associated impacts.

Our Response: Chapter 4 of the FEA presents a range of possible impacts to development (IEC 2010b, pp. 4–1–4–14). The low-end estimate assumes that developable acres that fall within the 100-year floodplain will not be developed in the foreseeable future. Because of development pressures in southern California, the high-end scenario does forecast that some development may occur on acres identified as potentially developable within the 100-year floodplain, but notes that this assumption likely results in an overestimate of costs due to development impacts.

Comment 68: One commenter states that the current economic situation may result in decreased future development. This decreased development may limit the funding available for conservation efforts under the Western Riverside County MSHCP. Therefore, the DEA should reassess the likelihood that these measures will be implemented and whether funds will be available to carry them out.

Our Response: As discussed in Section 4.6, the FEA assumes that development projects undertake

conservation efforts for Santa Ana sucker similar to those outlined under the Western Riverside County MSHCP. It assumes that the costs of these measures are borne by developers or landowners, not paid for out of any established conservation fund (IEC 2010b, pp. 4–9–4–11).

Exhibit 4–3 acknowledges that preliminary socioeconomic forecasts suggest that population growth may be somewhat slower than the forecasts used in the analysis (IEC 2010b, p. 4–4). To the extent that slower population growth results in fewer housing units being constructed, impacts may be overstated. A caveat to this effect has been added to section 4.9 of the FEA.

Comment 69: One commenter notes that two transportation projects do not have a projected construction date within the time frame of the analysis, and should therefore be excluded.

Our Response: As discussed in Section 5.3.1 of the FEA, Caltrans provided GIS data identifying planned transportation projects within the next 15 years, which falls within the analytic time frame for the FEA (IEC 2010b, p. 5–3). While anticipated construction dates were not available for Corridor Mobility Improvement Account projects, the analysis assumes that the projects will go forward within the next 15 years based on the time frame of Caltrans' GIS data. Therefore, it is appropriate to include potential impacts associated with these projects in the economic analysis.

Comment 70: One commenter is concerned that the designation may slow down the approval process for the Upper Santa Ana River Wash Land Management Plan (Plan B). The commenter believes that these delays may impact its business and employment at its quarry.

Our Response: The Service identified Upper Santa Ana River Wash Habitat Conservation Plan as likely to undergo consultation in the near future. Section 7.3.4 of the FEA discusses this plan and forecasts that it will undergo consultation in 2011 (IEC 2010b, pp. 7–9–7–11). As discussed in Section 6.5, the FEA does not quantify any impacts to sand and gravel mining operations. The commenter's sand and gravel operations are located outside of critical habitat areas, and therefore are not anticipated to be affected by the proposed designation.

Comment 71: One commenter notes that the total cost of the upcoming consultation on the Upper Santa Ana River Wash Habitat Conservation Plan is incorrectly attributed solely to the designation of critical habitat.

Our Response: As shown in Exhibit 7–11 of the FEA, administrative costs associated with this consultation are not attributed solely to the designation of critical habitat (IEC 2010b, p. 7–11). Only the portion of administrative effort associated with considering adverse modification for this consultation is considered an incremental impact. The remainder of administrative costs is attributed to the baseline scenario, and would be assumed to occur even absent the designation of critical habitat.

Comment 72: One commenter states that the DEA fails to include consideration of all the benefits resulting from the designation, such as the improvements in water quality and quantity, increases in property value, aesthetic benefits, preservation of native habitat for other species, and maintaining contiguous riparian and adjacent upland habitat for other species. The commenter asserts that these benefits should be assessed and quantified where possible or otherwise included in a detailed qualitative analysis.

Our Response: As described in Chapter 8 of the FEA, the purpose of critical habitat is to support the conservation of Santa Ana sucker. The data required to estimate and value in monetary terms the incremental changes in the probability of conservation resulting from the designation are not available. Depending on the project modifications ultimately implemented as a result of the regulation, other ancillary benefits that are not the stated objective of critical habitat (such as increased property values due to increases in water quality or preserving habitat for other non-listed species) may occur. These benefits are discussed qualitatively in Chapter 8 of the FEA.

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 final 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 Santa Ana sucker 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 Santa Ana sucker 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 Santa Ana sucker 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 above).

In our final economic analysis (FEA) 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 Santa Ana sucker. The analysis is based on the estimated impacts associated with the rulemaking as described in chapters 3 through 7 of the analysis and evaluates the potential for economic impacts related to: Water management, commercial and residential development; and transportation activities (IEC 2010b, p. A–2). The FEA indicates that the incremental impacts for water management activities are to be borne by city and county government jurisdictions. None of the government jurisdictions are considered small entities under the RFA (IEC 2010b, p. A–3). The incremental impacts for transportation projects are to be borne by State and Federal agencies such as the California Department of Transportation and the Federal Highway Administration, which are not considered small entities under the RFA (IEC 2010, p. A–2). The FEA only identifies only those small businesses associated with the development industry as potentially affected by the designation of critical habitat. The potential incremental conservation efforts associated with the development industry range from $96,100 to $306,000 on an annualized basis, with additional administrative costs to third parties associated with consultation under section 7 of the Act of $1,310 to $4,540 on an annualized basis for a total of $97,410 to $310,540 (IEC 2010b, p. A–7). The FEA estimates that 67 small entities, with estimated revenue of $2.8 million per entity, may be affected by the designation. The total estimated High End annualized incremental economic impact to these 67 small entities is approximately $310,000. If all impacts are distributed equally across all entities, this would equate to a 0.16 percent impact to each entity's annual revenues (IEC 2010b, p. A–4). As stated above, the memorandum to the FEA estimated a reduction 3 development projects due to the changes from the proposed to the final revised critical habitat designation, thus reducing the potentially affected small entities to 64. These 64 small entities are anticipated to bear total annualized impacts of $53,500 to $266,000. Assuming annual revenues of $2.8 million per small entity and that impacts are shared equally among entities, we estimate that annualized impacts may represent approximately 0.15 percent of annual revenues for each of these 64 entities. This assumption is likely to overstate the actual impacts to small development firms because it is calculated using the high-end estimates and some or all of the costs of conservation for Santa Ana sucker to development firms may ultimately be borne by current landowners in the form of reduced land values. Many of these landowners may be individuals or families that are not legally considered to be businesses. No NAICS code exists for landowners, and the SBA does not provide a definition of a small landowner (IEC 2010b, p. A–2; IEC 2010c, p. 7). Please refer to our FEA and memorandum to the FEA of critical habitat designation for Santa Ana sucker 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 64, with total anticipated annualized impacts of approximately of $53,500 to $266,000. This impact is approximately 0.15 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. To evaluate whether this final rule will result in a significant effect on a substantial number of small business entities, we first determined whether the regulation will likely affect a substantial number of entities. Guidance from the Small Business Administration (SBA) indicates that if "more than just a few" small business entities in a given sector are affected by a regulation, then a substantial number of entities may be affected. "More than just a few" is not defined, and SBA suggests that a case-by-case evaluation be done. The memorandum to the FEA prepared for the final designation of critical habitat for the Santa Ana sucker predicts that 64 out of 24,800 small business entities in the residential and commercial development sector may be affected by the rule. Adopting a conservative approach in our analysis, we conclude that 64 entities equate to "more than just a few" small entities and, therefore, a substantial number of small business entities may be affected by the rule.

Next, we determined if the final revised designation of critical habitat would result in a significant economic effect on those 64 small business entities. There is no specific guidance under the RFA as to what constitutes a significant effect or at what scale the effect is measured—nationally or regionally. In implementing the RFA, the Service evaluates potential effects on a regional or local scale which, in most instances, results in a more conservative analysis. For the final revised critical habitat rule the Service relied on a threshold of 3 percent of annual revenues to evaluate whether the potential economic impacts of the designation on small business entities in the residential and commercial development sector may be significant. The FEA estimates that the annualized impacts of the final revised rule on the 64 potentially affected entities would be of 0.15 percent of their annual sales

revenue. 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 water management activities, transportation activities, or commercial or residential development as identified in the FEA (IEC 2010b, pp. A–1—A–8). Therefore, we are certifying that the designation of critical habitat for Santa Ana sucker 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 Santa Ana sucker 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 (2 U.S.C. 1501 *et seq.*), we make the following findings:

1. This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [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 [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

2. As discussed in the FEA of the revised designation of critical habitat for Santa Ana sucker, 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 water management and development; however, these are not expected to 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; Cities of Colton, Highland, and Riverside; Counties of Los Angeles, Orange, San Bernardino and Riverside; Riverside County Flood Control and Water Conservation District, San Bernardino Valley Municipal Water District, San Bernardino County Flood Control District, Orange County Flood Control District, and Metropolitan Water District 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 Santa Ana sucker 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 Santa Ana sucker 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), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We received comments from one State agency and have addressed them in the Response to Comments section of the rule. 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 physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist these local governments in long-range planning (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), the regulation 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 species within the designated areas to assist the public in understanding the habitat needs of Santa Ana sucker.

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 (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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 readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no unoccupied Tribal lands that are essential for the conservation of Santa Ana sucker. Therefore, we are not designating critical habitat for Santa Ana sucker on Tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://wwww.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

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 § 17.95(e), revise the entry for "Santa Ana sucker (*Catostomus santaanae*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Santa Ana sucker *(Catostomus santaanae)*

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, and San Bernardino Counties, California, on the maps below.

(2) Within these areas, the physical and biological features for the Santa Ana sucker are as follows:

(i) A functioning hydrological system within the historical geographic range of Santa Ana sucker that experiences peaks and ebbs in the water volume (either naturally or regulated) that encompasses areas that provide or contain sources of water and coarse sediment necessary to maintain all life stages of the species, including adults, juveniles, larva, and eggs, in the riverine environment;

(ii) Stream channel substrate consisting of a mosaic of loose sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools, and shallow sandy stream margins necessary to maintain various life stages of the species, including adults, juveniles, larva, and eggs, in the riverine environment;

(iii) Water depths greater than 1.2 in (3 cm) and bottom water velocities greater than 0.01 ft per second (0.03 m per second);

(iv) Clear or only occasionally turbid water;

(v) Water temperatures less than 86 °F (30 °C);

(vi) In-stream habitat that includes food sources (such as zooplankton, phytoplankton, and aquatic invertebrates), and associated vegetation such as aquatic emergent vegetation and adjacent riparian vegetation to provide: (a) Shading to reduce water temperature when ambient temperatures are high, (b) shelter during periods of high water velocity, and (c) protective cover from predators; and

(vii) Areas within perennial stream courses that may be periodically dewatered, but that serve as connective corridors between occupied or seasonally occupied habitat and through

which the species may move when the habitat is wetted.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one of more of the physical and biological features, 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 Santa Ana sucker (*Catostomus santaanae*) follows:

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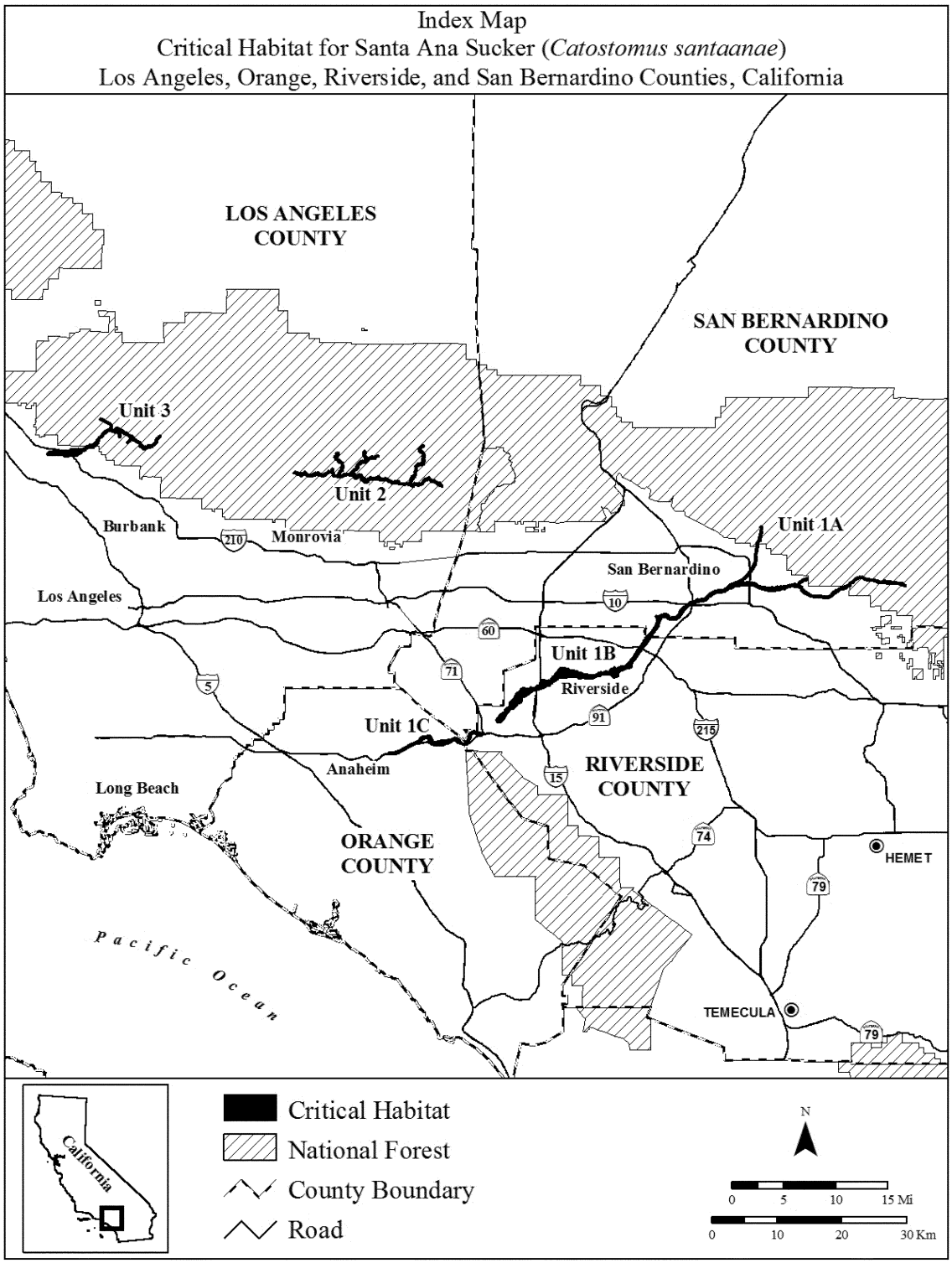

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(6) Unit 1: Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1A: Upper Santa Ana River and Wash, San Bernardino County.

(i) From USGS 1:24,000 quadrangles Forest Falls, Yucaipa, Harrison Mountain, Redlands, and San Bernardino South. Land bounded by the following Universal Transverse Mercator (UTM) Zone 11, North American Datum of 1983 (NAD83) coordinates (E, N): 476057, 3771160; 476057, 3771361; 476067, 3771366; 476363, 3771455; 476483, 3771473; 477305, 3771538; 477407, 3771560; 477571, 3771632; 477860, 3771855; 478333, 3772242; 478402, 3772309; 478500, 3772377; 478520, 3772416; 478590, 3772455; 478940, 3772592; 479868, 3772941; 480001, 3773012; 480336, 3773247; 480371, 3773259; 480393, 3773293; 480485, 3773372; 480526, 3773394; 480690, 3773515; 480864, 3773680; 480972, 3773746; 481132, 3773944; 481165, 3774003; 481261, 3774091; 481297, 3774141; 481350, 3774237; 481644, 3774591; 481673, 3774640; 481719, 3774747; 481827, 3774915; 481925, 3775098; 481967, 3775198; 481974, 3775245; 481997, 3775288; 482030, 3775393; 482069, 3775467; 482110, 3775501; 482122, 3775547; 482158, 3775596; 482181, 3775692; 482245, 3775830; 482286, 3775963; 482425, 3776255; 482435, 3776468; 482450, 3776518; 482433, 3776544; 482427, 3776573; 482424, 3776650; 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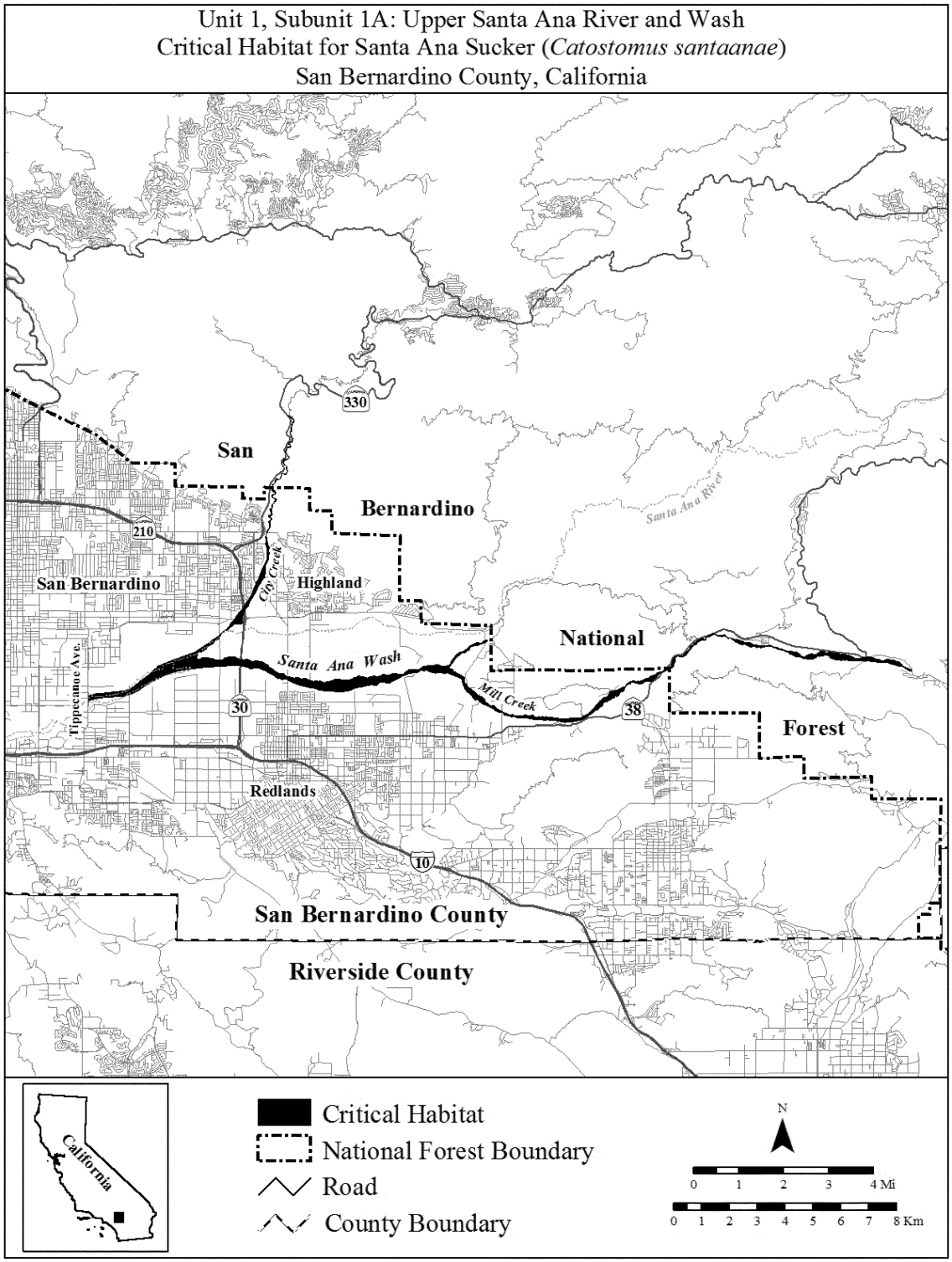
(ii) Map of Subunit 1A (Upper Santa Ana River and Wash) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) *Unit 1:* Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1B: Santa Ana River, Riverside and San Bernardino Counties.

(i) From USGS 1:24,000 quadrangles San Bernardino South, Fontana, Riverside West and Corona North. Land bounded by the following UTM) NAD83 coordinates (E, N): 475287, 3770647; 475229, 3770631; 475159, 3770634; 475029, 3770505; 475080, 3770458; 475001, 3770373; 474886, 3770248; 474792, 3770167; 474561, 3770035; 474404, 3769989; 474266, 3769962; 474155, 3769951; 474074, 3769980; 474045, 3769929; 473999, 3769945; 473688, 3769905; 473458, 3769854; 473253, 3769789; 473090, 3769708; 472936, 3769643; 472759, 3769588; 472637, 3769564; 472418, 3769505; 472326, 3769464; 472166, 3769356; 472083, 3769264; 471951, 3769161; 471855, 3769099; 471802, 3769042; 471434, 3768721; 471194, 3768429; 471073, 3768237; 470973, 3768073; 470781, 3767667; 470656, 3767503; 470554, 3767389; 470432, 3767289; 470296, 3767200; 470161, 3767146; 470029, 3767110; 469902, 3767092;

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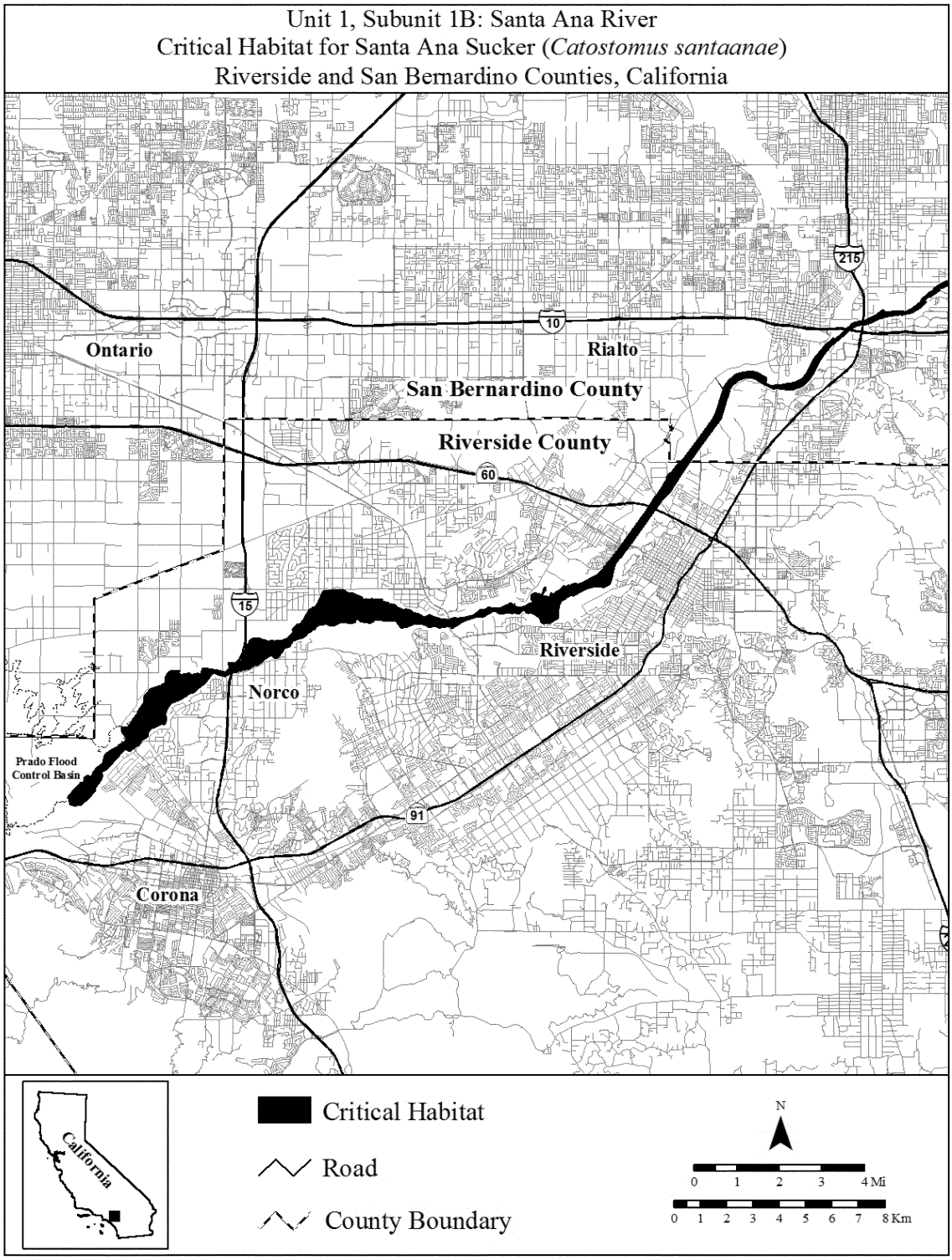
(ii) Map of Subunit 1B: (Santa Ana River) follows:

BILLING CODE 4310–55–P



(8) Unit 1: Santa Ana River, Orange, Riverside, and San Bernardino Counties, California. Subunit 1C: Lower Santa Ana River, Orange and Riverside Counties.

(i) From USGS 1:24,000 quadrangles Prado, Black Star Canyon and Orange. Land bounded by the following UTM) NAD83 coordinates (E, N): 439123, 3749777; 439223, 3749735; 439317, 3749737; 439475, 3749686; 439567, 3749560; 439645, 3749469; 439774, 3749500; 439943, 3749500; 440112, 3749446; 440161, 3749312; 439660, 3749201; 439520, 3749378; 439460, 3749399; 439399, 3749439; 439319, 3749542; 439301, 3749594; 439265, 3749606; 438894, 3749562; 438796, 3749584; 438742, 3749566; 438596, 3749491; 438516, 3749437; 438459, 3749364; 438448, 3749294; 438464, 3749237; 438366, 3748852; 438340, 3748760; 438283, 3748727; 438185, 3748276; 438122, 3748139; 438057, 3748079; 437949, 3748001; 437654, 3747892; 437464, 3747866; 437373, 3747865; 437292, 3747874; 437143, 3747915; 436895, 3748028; 436812, 3748073; 436669, 3748199; 436625, 3748312; 436585, 3748391; 436572,

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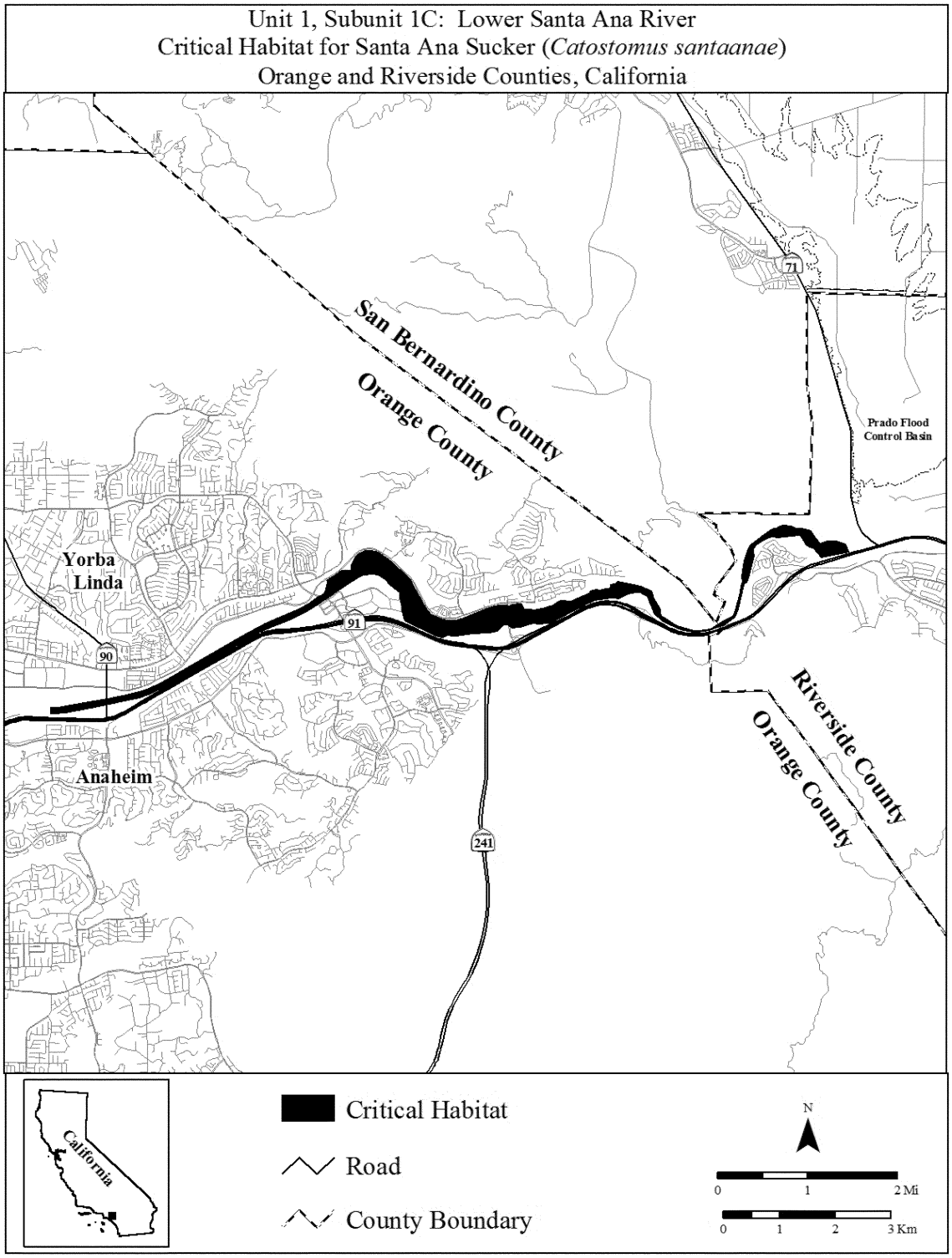
(i) Map of Subunit 1C (Lower Santa Ana River) follows:



BILLING CODE 4310–55–C

(9) Unit 2: San Gabriel River, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangles Mount Baldy, Mount San Antonia, Crystal Lake, Waterman Mountain, Azusa and Glendora. Land bounded by the following UTM NAD83 coordinates (E, N): 412207, 3789649; 412240, 3789651; 412263, 3789642; 412291, 3789622; 412319, 3789588; 412362, 3789390; 412369, 3789285; 412385, 3789277; 412401, 3789280; 412418, 3789291; 412456, 3789343; 412507, 3789432; 412570, 3789514; 412622, 3789548; 412647, 3789547; 412666, 3789539; 412678, 3789496; 412694, 3789488; 412703, 3789493; 412747, 3789568; 412758, 3789617; 412751, 3789642; 412770, 3789656; 412790, 3789696; 412843, 3789762; 412866, 3789779; 412934, 3789799; 412952, 3789788; 412954, 3789775; 412945, 3789723; 412951, 3789658; 413055, 3789562; 413156, 3789439; 413169, 3789408; 413230, 3789343; 413269, 3789328; 413330, 3789348; 413367, 3789370; 413398, 3789365; 413418, 3789326; 413387, 3789291; 413389, 3789230; 413398, 3789203; 413415,

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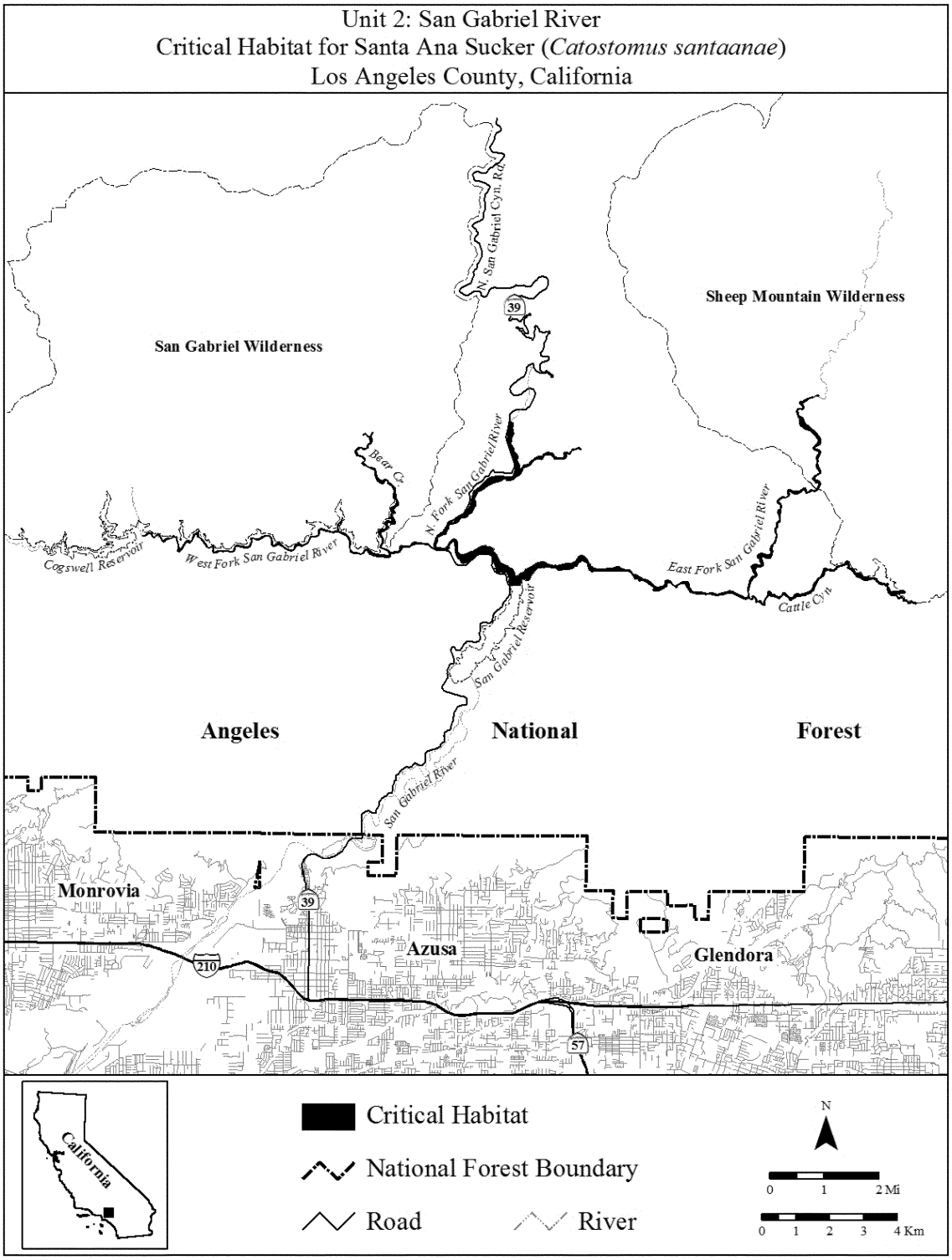
(ii) Map of Unit 2 (San Gabriel River) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(10) Unit 3: Big Tujunga Wash, Los Angeles County, California. Subunit 3A: Big Tujunga Wash.

(i) From USGS 1:24,000 quadrangles Condor Peak and Sunland. Land bounded by the following UTM NAD83 coordinates (E, N): 382996, 3796285; 383017, 3796285; 383034, 3796298; 383087, 3796289; 383191, 3796254; 383559, 3796102; 383600, 3796082; 383635, 3796047; 383703, 3796082; 383734, 3796136; 383755, 3796384; 383781, 3796466; 383777, 3796540; 383809, 3796564; 383903, 3796576; 383967, 3796569; 384008, 3796534; 384109, 3796490; 384156, 3796427; 384231, 3796397; 384262, 3796405; 384403, 3796388; 384489, 3796352; 384606, 3796287; 384699, 3796218; 384868, 3796044; 385054, 3795886; 385104, 3795866; 385315, 3795816; 385436, 3795802; 385491, 3795772; 385531, 3795766; 385564, 3795742; 385609, 3795652; 385779, 3795429; 385841, 3795414; 385904, 3795420; 385979, 3795413; 386111, 3795381; 386172, 3795359; 386263, 3795368; 386319, 3795353; 386360, 3795315; 386382, 3795260; 386389, 3795213;

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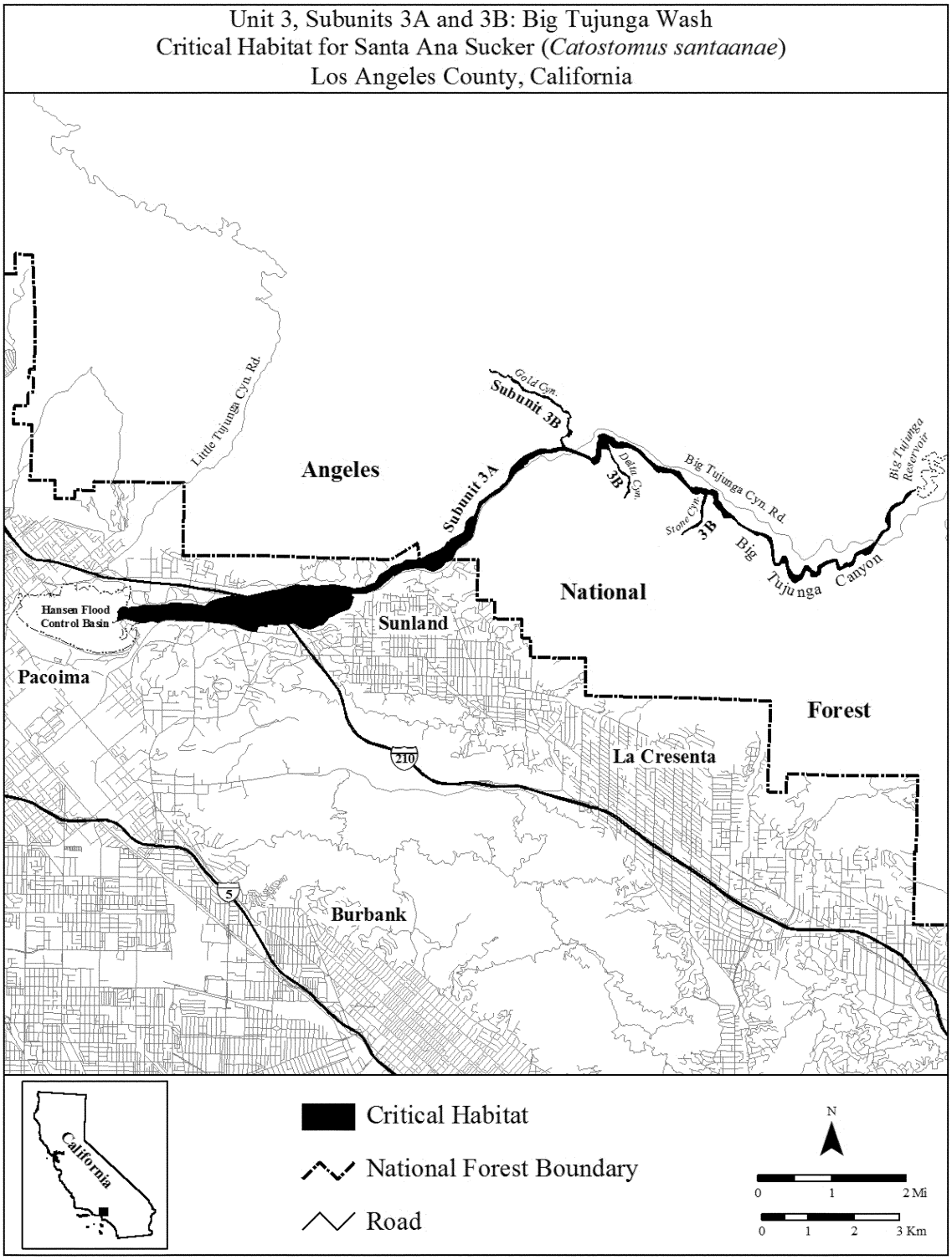
(ii) Map of Subunit 3A (Big Tujunga Wash) appears in paragraph (11)(ii) of this entry.

(11) Subunit 3B: Gold Canyon, Delta Canyon, and Stone Canyon Creeks.

(i) From USGS 1:24,000 quadrangles Condor Peak and Sunland. Land bounded by the following UTM NAD83 coordinates (E, N): 382996, 3796285; 382995, 3796335; 382966, 3796453; 382967, 3796492; 382991, 3796511; 383044, 3796521; 383084, 3796551; 383116, 3796586; 383138, 3796625; 383140, 3796654; 383109, 3796684; 383094, 3796751; 383114, 3796789; 383122, 3796836; 383123, 3796888; 383109, 3796916; 383110, 3796937; 383155, 3796938; 383164, 3796946; 383173, 3796960; 383161, 3796988; 383110, 3797042; 383024, 3797055; 383011, 3797064; 382964, 3797148; 382915, 3797171; 382770, 3797275; 382747, 3797308; 382685, 3797339; 382658, 3797361; 382614, 3797360; 382492, 3797417; 382469, 3797417; 382417, 3797457; 382380, 3797460; 382348, 3797475; 382251, 3797482; 382207, 3797503; 382152, 3797518; 382114, 3797575; 382068, 3797622; 382036, 3797677; 381991, 3797700; 381967, 3797700; 381932, 3797717; 381900, 3797746; 381888, 3797785; 381895, 3797804; 381890, 3797817; 381855, 3797820; 381836, 3797841; 381822, 3797843; 381789, 3797814; 381744, 3797806; 381721, 3797811; 381649, 3797865; 381599, 3797914; 381494, 3797919; 381429, 3797938; 381414, 3797991; 381436, 3797991; 381438, 3797961; 381486, 3797933; 381521, 3797952; 381586, 3797941; 381754, 3797831; 381789, 3797833; 381815, 3797859; 381832, 3797863; 381873, 3797828; 381910, 3797833; 381922, 3797777; 381947, 3797753; 382057, 3797706; 382089, 3797666; 382094, 3797637; 382120, 3797603; 382166, 3797583; 382186, 3797554; 382256, 3797515; 382308, 3797504; 382389, 3797501; 382419, 3797491; 382532, 3797440; 382548, 3797416; 382575, 3797407; 382697, 3797390; 382819, 3797292; 382875, 3797235; 382962, 3797209; 383014, 3797136; 383011, 3797099; 383033, 3797068; 383079, 3797083; 383113, 3797073; 383146, 3797048; 383190, 3796973; 383194, 3796947; 383179, 3796925; 383132, 3796924; 383151, 3796897; 383155, 3796867; 383132, 3796748; 383138, 3796707; 383209, 3796628; 383199, 3796569; 383174, 3796556; 383167, 3796529; 383141, 3796518; 383103, 3796524; 383000, 3796475; 382997, 3796450; 383034, 3796361; 383087, 3796289; 383034, 3796298; 383017, 3796285; thence returning to 382996, 3796285. Continue to 384028, 3796247; 384053, 3796202; 384051, 3796176; 384059, 3796152; 384135, 3796001; 384194, 3795949; 384215, 3795916; 384228, 3795890; 384237, 3795827; 384251, 3795804; 384279, 3795790; 384301, 3795761; 384369, 3795715; 384391, 3795692; 384459, 3795652; 384471, 3795614; 384461, 3795548; 384473, 3795517; 384447, 3795462; 384454, 3795405; 384443, 3795388; 384469, 3795361; 384472, 3795305; 384448, 3795308; 384410, 3795277; 384359, 3795186; 384340, 3795182; 384392, 3795278; 384394, 3795298; 384418, 3795311; 384430, 3795341; 384409, 3795448; 384430, 3795467; 384430, 3795516; 384442, 3795542; 384443, 3795581; 384428, 3795628; 384412, 3795652; 384292, 3795724; 384216, 3795793; 384187, 3795926; 384171, 3795946; 384150, 3795950; 384131, 3795966; 384082, 3796037; 384023, 3796194; 383996, 3796242; thence returning to 384028, 3796247. Continue to 386146, 3795243; 386141, 3795218; 386119, 3795182; 386085, 3795059; 386058, 3795006; 386064, 3794847; 386033, 3794669; 385965, 3794586; 385935, 3794565; 385911, 3794564; 385829, 3794527; 385793, 3794521; 385648, 3794422; 385617, 3794387; 385597, 3794392; 385646, 3794454; 385681, 3794463; 385773, 3794538; 385932, 3794625; 386022, 3794719; 386025, 3794798; 386004, 3794872; 386041, 3795101; 386079, 3795179; 386091, 3795247; thence returning to 386146, 3795243.

(ii) Map of Unit 3 (Big Tujunga Wash) follows:

BILLING CODE 4310–55–P



* * * * *

Dated: November 29, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–30447 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
December 14, 2010

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the North American Wolverine as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2008–0029; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the North American Wolverine as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the North American wolverine (*Gulo gulo luscus*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that the North American wolverine occurring in the contiguous United States is a distinct population segment (DPS) and that addition of this DPS to the Lists of Endangered and Threatened Wildlife and Plants is warranted. Currently, however, listing the contiguous U.S. DPS of the North American wolverine is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the contiguous U.S. DPS of the wolverine to our candidate species list. We consider the current range of the species to include portions of the States of Washington, Idaho, Montana, Wyoming, Colorado, Utah, Oregon, and California. However, due to the dispersal abilities of individual wolverines, we expect that wolverines are likely to travel outside the currently occupied area. We will develop a proposed rule to list this DPS as our priorities allow (see section on Preclusion and Expeditious Progress). We will make any determination on critical habitat during development of the proposed listing rule. In the interim, we will address the status of this DPS through our annual Candidate Notice of Review.

DATES: This finding was made on December 14, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2008–0029. 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, Montana Field Office, U.S. Fish and Wildlife Service, 585 Shepard Way, Helena, MT 59601; telephone (406) 449–5225. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**); by telephone at 406–449–5225; or by facsimile at 406–449–5339. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and whether expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On April 19, 1995, we published a finding (60 FR 19567) that a previous petition, submitted by the Predator Project (now named the Predator Conservation Alliance) and Biodiversity Legal Foundation to list the wolverine in the contiguous United States, did not provide substantial information indicating that listing the wolverine in the contiguous United States may be warranted.

On July 14, 2000, we received a petition dated July 11, 2000, submitted by the Biodiversity Legal Foundation, Predator Conservation Alliance, Defenders of Wildlife, Northwest Ecosystem Alliance, Friends of the Clearwater, and Superior Wilderness Action Network, to list the wolverine within the contiguous United States as a threatened or endangered species and designate critical habitat for the species.

On October 21, 2003, we published a 90-day finding that a petition to list the wolverine in the contiguous United States failed to present substantial scientific and commercial information indicating that listing may be warranted (68 FR 60112).

On September 29, 2006, as a result of a complaint filed by Defenders of Wildlife and others alleging we used the wrong standards to assess the wolverine petition, the U.S. District Court, Montana District, ruled that our 90-day petition finding was in error and ordered us to make a 12-month finding for the wolverine. On April 6, 2007, a deadline for this 12-month finding was extended to February 28, 2008.

On March 11, 2008, we published a 12-month finding of "not warranted" for the wolverine in the contiguous United States (73 FR 12929). In that finding we determined that the wolverine in the contiguous United States did not constitute a distinct population segment or a significant portion of the range of wolverines in North America and so was not eligible for listing under the Act.

On July 8, 2008 we received a Notice of Intent to Sue from Earthjustice alleging violations of the Act in our March 11, 2008, 12-month finding. On September 30, 2008, Earthjustice filed a complaint in the U.S. District Court, District of Montana, seeking to set aside and remand the 12-month finding back to the Service for reconsideration.

On March 6, 2009, the Service agreed to settle the case with Earthjustice by voluntarily remanding the 12-month finding and issuing a new 12-month finding by December 1, 2010. Following the settlement agreement, the court dismissed the case on June 15, 2009, and ordered the Service to comply with the settlement agreement.

On April 15, 2010, the Service published a Notice of Initiation of a 12-month finding for wolverines in the contiguous United States (75 FR 19591).

Species Information

Taxonomy and Life History

The wolverine has a holarctic distribution including northern portions of Europe, Asia, and North America. The currently accepted taxonomy classifies wolverines worldwide as a single species, *Gulo gulo*. Old and New World wolverines are divided into separate subspecies. Wolverines in the

contiguous United States are a part of the New World subspecies, *G. g. luscus:* the North American wolverine (Kurten and Rausch 1959 p. 19; Pasitschniak-Arts and Lariviere 1995, p. 1). The species is known by several common names including mountain devil, glutton, caracajou, quickhatch, gulon, skunk bear, as well as wolverine.

The wolverine is the largest terrestrial member of the family Mustelidae. Adult males weigh 12 to 18 kilograms (kg) (26 to 40 pounds (lb), and adult females weigh 8 to 12 kg (17 to 26 lb) (Banci 1994, p. 99). The wolverine resembles a small bear with a bushy tail. It has a broad, rounded head; short, rounded ears, and small eyes. Each foot has five toes with curved, semi-retractile claws used for digging and climbing (Banci 1994, p. 99).

A large number of female wolverines (40 percent) are capable of giving birth at 2 years old, become pregnant most years, and produce litter sizes of approximately 3.4 kits on average. Pregnant females commonly resorb or spontaneously abort litters prior to giving birth (Magoun 1985, pp. 30–31; Copeland 1996, p. 43; Persson *et al.* 2006, p. 77; Inman *et al.* 2007c, p. 70). It is likely that, despite the high rate of initiation of pregnancy, due to the spontaneous abortion of litters resulting from resource limitation, actual rates of successful reproduction in wolverines are among the lowest known for mammals (Persson 2005, p. 1456). In one study of known-aged females, none reproduced at age 2, 3 of 10 first reproduced at age 3, and 2 did not reproduce until age 4; the average age at first reproduction was 3.4 years (Persson *et al.* 2006, pp. 76–77). The average age at first reproduction is likely more than 3 years (Inman *et al.* 2007c, p. 70).

It is common for females to forgo reproducing every year, possibly saving resources to increase reproductive success in subsequent years (Persson 2005, p. 1456). Supplemental feeding of females increases reproductive potential (Persson 2005, p. 1456). Food-supplemented females were also more successful at raising kits to the time of weaning, suggesting that wolverine reproduction and ultimately population growth rates and viability are food-limited. By age 3, nearly all female wolverines become pregnant every year, but energetic constraints due to low food availability result in loss of pregnancy in about half of them each year. It is likely that, in many places in the range of wolverines, it takes 2 years of foraging for a female to store enough energy to successfully reproduce (Persson 2005, p. 1456).

Breeding generally occurs from late spring to early fall (Magoun and Valkenburg 1983, p. 175; Mead *et al.* 1991, pp. 808–811). Females undergo delayed implantation until the following winter to spring, when active gestation lasts from 30 to 40 days (Rausch and Pearson 1972, pp. 254–257). Litters are born from mid-February through March, containing one to five kits, with an average in North America of between 1 and 2 kits (Magoun 1985, pp. 28–31; Copeland 1996, p. 36; Krebs and Lewis 1999, p. 698; Copeland and Yates 2006, pp. 32–36; Inman *et al.* 2007c, p. 68).

Female wolverines use natal (birthing) dens that are excavated in snow. Persistent, stable snow greater than 1.5 meters (m) (5 feet (ft)) deep appears to be a requirement for natal denning, because it provides security for offspring and buffers cold winter temperatures (Pulliainen 1968, p. 342; Copeland 1996, pp. 92–97; Magoun and Copeland 1998, pp. 1317–1318; Banci 1994, pp. 109–110; Inman *et al.* 2007c, pp. 71–72; Copeland *et al.* 2010, pp. 240–242). Female wolverines go to great lengths to find secure den sites, suggesting that predation is a concern (Banci 1994, p. 107). Natal dens consist of tunnels that contain well-used runways and bed sites and may naturally incorporate shrubs, rocks, and downed logs as part of their structure (Magoun and Copeland 1998, pp. 1315–1316; Inman *et al.* 2007c, pp. 71–72). In Idaho, natal den sites occur above 2,500 m (8,200 ft) on rocky sites, such as north-facing boulder talus or subalpine cirques in forest openings (Magoun and Copeland 1994, pp. 1315–1316). In Montana, natal dens occur above 2,400 m (7,874 ft) and are located on north aspects in avalanche debris, typically in alpine habitats near timberline (Inman *et al.* 2007c, pp. 71–72). Offspring are born from mid-February through March, and the dens are typically used through late April or early May (Myrberget 1968, p. 115; Magoun and Copeland 1998, pp. 1314–1317; Inman *et al.* 2007b, pp. 55–59). Occupation of natal dens is variable, ranging from approximately 9 to 65 days (Magoun and Copeland 1998, pp. 1316–1317).

Females may move kits to multiple secondary (maternal) dens as they grow during the month of May (Pulliainen 1968, p. 343; Myrberget 1968, p. 115), although use of maternal dens may be minimal (Inman *et al.* 2007c, p. 69). Timing of den abandonment is related to accumulation of water in dens (due to snow melt), the maturation of offspring, disturbance, and geographic location (Myrberget 1968, p. 115; Magoun 1985, p. 73). After using natal and maternal dens, wolverines may also use rendezvous sites through early July. These sites are characterized by natural (unexcavated) cavities formed by large boulders, downed logs (avalanche debris), and snow (Inman *et al.* 2007c, p. 55–56).

Habitat, Space, and Food

In North America, wolverines occur within a wide variety of alpine, boreal, and arctic habitats, including boreal forests, tundra, and western mountains throughout Alaska and Canada. The southern portion of the species' range extends into the contiguous United States, including high-elevation alpine portions of Washington, Idaho, Montana, Wyoming, California, and Colorado (Wilson 1982, p. 644; Hash 1987, p. 576; Banci 1994, p. 102, Pasitschniak-Arts and Lariviere 1995, p. 499; Aubry *et al.* 2007, p. 2152; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–25). Wolverines do not appear to specialize on specific vegetation or geological habitat aspects, but instead select areas that are cold and receive enough winter precipitation to reliably maintain deep persistent snow late into the warm season (Copeland *et al.* 2010, entire). The requirement of cold, snowy conditions means that, in the southern portion of the species' range where ambient temperatures are warmest, wolverine distribution is restricted to high elevations, while at more northerly latitudes, wolverines are present at lower elevations and even at sea level in the far north (Copeland *et al.* 2010, Figure 1).

In the contiguous United States, wolverines likely exist as a metapopulation (Aubry *et al.* 2007, p. 2147, Figures 1, 3). A metapopulation is a network of semi-isolated populations, each occupying a suitable patch of habitat in a landscape of otherwise unsuitable habitat (Pulliam and Dunning 1997, pp. 212–214). Metapopulations require some level of regular or intermittent migration and gene flow among subpopulations, in which individual populations support one-another by providing genetic and demographic enrichment through mutual exchange of individuals (Meffe and Carroll 1997, p. 678). Individual subpopulations may go extinct or lose genetic viability, but are then "rescued" by immigration from other subpopulations, thus ensuring the persistence of the metapopulation as a whole. Metapopulation dynamics (the process of extinction and recolonization by subpopulations) rely on the ability of subpopulations to support one another through exchange of individuals for genetic and demographic enrichment. If

metapopulation dynamics break down, either due to changes within subpopulations or loss of connectivity, then the entire metapopulation may be jeopardized due to subpopulations becoming unable to persist in the face of inbreeding or demographic and environmental stochasticity (Pulliam and Dunning 1997b, pp. 221–222). We believe this outcome is likely for wolverine, due to their naturally low reproductive rates and low densities.

Wolverines are opportunistic feeders and consume a variety of foods depending on availability. They primarily scavenge carrion, but also prey on small animals and birds, and eat fruits, berries, and insects (Hornocker and Hash 1981, p. 1290; Hash 1987, p. 579; Banci 1994, pp. 111–113). Wolverines have an excellent sense of smell that enables them to find food beneath deep snow (Hornocker and Hash 1981, p. 1297).

Wolverines require a lot of space; the availability and distribution of food is likely the primary factor in determining wolverine movements and home range size (Hornocker and Hash 1981, p. 1298; Banci 1994, pp. 117–118). Female wolverines forage close to den sites in early summer, progressively ranging further from dens as kits become more independent (May *et al.* 2010, p. 941). Wolverines travel long distances over rough terrain and deep snow, and adult males generally cover greater distances than females (Hornocker and Hash 1981, p. 1298; Banci 1994, pp. 117–118; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28; Brian 2010, p. 3; Copeland and Yates 2006, Figure 9). Home ranges of wolverines are large, and vary greatly in size depending on availability of food, gender and age of the animal, and differences in habitat quality. Home ranges of adult wolverines also vary in size depending on geographic location. Home ranges in Alaska were approximately 100 square kilometers (km^2) to over 900 km^2 (38.5 square miles (mi^2) to 348 mi^2) (Banci 1994, p. 117). Average home ranges of resident adult females in central Idaho were 384 km^2 (148 mi^2), and average home ranges of resident adult males were 1,522 km^2 (588 mi^2) (Copeland 1996, p. 50). Wolverines in Glacier National Park had average adult male home ranges of 496 km^2 (193 mi^2) and adult female home ranges of 141 km^2 (55 mi^2) (Copeland and Yates 2006, p. 25). Wolverines in the Greater Yellowstone Ecosystem had average adult male home ranges of 797 km^2 (311 mi^2), and average adult female home ranges of 329 km^2 (128 mi^2) (Inman *et al.* 2007a, p. 4). These home range sizes are large relative to the body size of wolverines, and may indicate that wolverines occupy a relatively unproductive niche in which they must forage over large areas to consume the amount of calories needed to meet their life-history requirements (Inman *et al.* 2007a, p. 11).

Wolverine Densities

Wolverines naturally occur in low densities of about 1 wolverine per 150 km^2 (58 mi^2) with a reported range from 1 per 65 to 337 km^2 (25 to 130 mi^2) (Hornocker and Hash 1981, pp. 1292–1295; Hash 1987, p. 578; Copeland 1996, pp. 31–32; Copeland and Yates 2006, p. 27; Inman *et al.* 2007a, p. 10; Squires *et al.* 2007, p. 2218). No systematic population census exists over the entire current range of wolverines in the contiguous United States, so the current population level and trends remain unknown. However, based on our current knowledge of occupied wolverine habitat and wolverine densities in this habitat, it is reasonable to estimate that the wolverine population in the contiguous United States numbers approximately 250 to 300 individuals (Inman 2010b, pers. comm.). The bulk of the current population occurs in the northern Rocky Mountains with a few individuals in the North Cascades and one known individual each in the Sierra Nevada and southern Rocky Mountains. Within the area known to currently have wolverine populations relatively few wolverines can coexist due to their naturally low population densities, even if all areas were occupied at or near carrying capacity. Given the natural limitations on wolverine population density, it is likely that historic wolverine population numbers were also low (Inman *et al.* 2007a, Table 6). Because of these natural limitations, we believe that densities and population levels in the northern Rocky Mountains and North Cascades where populations currently exist are likely not substantially lower than population densities were in these areas prior to European settlement. However, historically, the contiguous U.S. population would have been larger than it is today due to the larger area occupied by populations when the southern Rocky Mountains and Sierra Nevada were occupied at full capacity.

Wolverine Status in Canada and Alaska

The bulk of the range of North American wolverines is found in Canada and Alaska. Wolverines inhabit alpine tundra, boreal forest, and arctic habitats in Canada and Alaska (Slough 2007, p. 78). Wolverines in Canada have been divided into two populations for management by the Canadian Government: An eastern population in Labrador and Quebec, and a western population that extends from Ontario to the Pacific coast, and north to the Arctic Ocean. The eastern population is currently listed as endangered under the Species At Risk Act in Canada, and the western population is designated as a species of special concern (COSEWIC 2003, p. 8).

The current status of wolverines in eastern Canada is uncertain. Wolverines have not been confirmed to occur in Quebec since 1978 (Fortin *et al.* 2005, p. 4). Historical evidence of wolverine presence in eastern Canada is also suspect because no proof exists to show that wolverine pelts attributed to Quebec or Labrador actually came from that region; animals were possibly trapped elsewhere and the pelts shipped through the eastern provinces (COSEWIC 2003, p. 20). Wolverines in eastern Canada may currently exist in an extremely low-density population, or may be extirpated. Wolverines in eastern Canada, both historically and currently, could represent migrants from western populations that never became resident animals (COSEWIC 2003, pp. 20–21). The Federal Government of Canada has completed a recovery plan for the eastern population with the goal of establishing a self-sustaining population through reintroduction and protection (Fortin *et al.* 2005, p. 16).

Wolverines in western Canada and Alaska inhabit a variety of habitats from sea level to high in mountains (Slough 2007, pp. 77–78). They occur in Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut (Slough 2007, pp. 77–78). Since European colonization, a generally recognized range contraction has taken place in boreal Ontario and the aspen parklands of Manitoba, Saskatchewan, and Alberta (COSEWIC 2003, pp. 20–21; Slough 2007, p. 77). This range contraction occurred concurrently with a reduction in wolverine records for the Great Lakes region in the contiguous United States (Aubry *et al.* 2007, pp. 2155–2156). Causes of these changes are uncertain, but may be related to increased harvest, habitat modification, or climate change (COSEWIC 2003, pp. 20–21; Aubry *et al.* 2007, pp. 2155–2156; Slough 2007, pp. 77–78). Analysis supports climate change as a contributing factor to declines in southern Ontario, because snow conditions necessary to support wolverines do not currently exist in the Great Lakes region of the contiguous United States, and are marginal in southern Ontario (Aubry *et al.* 2007, p. 2154). It is not known if these snow

conditions existed historically in the Great Lakes of the contiguous United States, however, the small number of wolverine records from this area suggests that they did not. It is possible that suitable snow conditions did reach further south in eastern Canada in 1850 than they do today, making wolverine dispersal attempts from Canada to the Great Lakes region of the contiguous United States more likely than they are now. Wolverines occurred historically on Vancouver Island and have been given status as a separate subspecies by some (Hall 1981, p. 109). The Vancouver Island population is now regarded as possibly extirpated; no sightings have occurred since 1992 (COSEWIC 2003, p. 18).

Wolverines in western Canada and Alaska appear to persist everywhere that habitat and climate conditions are suitable (COSEWIC 2003, pp. 13–21; Aubry *et al.* 2007, pp. 2152–2155; Slough 2007, p. 79; Copeland *et al.* 2010, Figure 2). Throughout this area, wolverines are managed by regulated harvest at the Provincial and State level. Population estimates for Canada and Alaska are rough because no wolverine surveys have taken place at the State or Provincial scale. However, the population in western Canada is estimated to include approximately 15,089 to 18,967 individuals (COSEWIC 2003, p. 22). The number of wolverines in Alaska is unknown, but they appear to exist at naturally low densities in suitable habitats throughout Alaska (Alaska Department of Fish and Game 2004, pp. 1–359). We have no information to indicate that wolverine populations have been reduced in numbers or geographic range in Alaska.

The Complexity of Geographic Range Delineation

Delineating wolverine historical and present range is inherently difficult for several reasons. Wolverines tend to live in remote and inhospitable places away from human populations where they are seldom encountered, documented, or studied. Wolverines naturally occur at low population densities and are rarely and unpredictably encountered where they do occur. Wolverines often move long distances in short periods of time, when dispersing from natal ranges, into habitats that are unsuitable for long-term survival (Aubry *et al.* 2007, p. 2147; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28; Brian 2010, p. 3). Such movements make it difficult to distinguish with certainty between occurrence records that represent established populations and those that represent short-term occupancy or exploratory movements without the potential for establishment of home ranges, reproduction, and eventually populations. These natural attributes of wolverines make it difficult to precisely determine their present range, or trends in range expansion or contraction that may have occurred in the past. Therefore, we must be cautious and use multiple lines of evidence when trying to determine where past wolverine populations occurred.

Throughout the remainder of this finding, we focus on the use of verifiable and documented wolverine occurrence records to define historic and present range because we have determined that these records constitute the best scientific information available on the past and present distribution of wolverines (See Aubry *et al.* 2007, p. 2148). Verifiable records are records supported by physical evidence such as museum specimens, harvested pelts, DNA samples, and diagnostic photographs. Documented records are those based on accounts of wolverines being killed or captured. Use of only verifiable and documented records avoids mistakes of misidentification often made in eyewitness accounts of visual encounters. Visual-encounter records often represent the majority of occurrence records for elusive forest carnivores, and their inherently high rate of misidentification of the species involved can result in wildly inaccurate conclusions about species occurrence (McKelvey *et al.* 2008, entire). The paper by Aubry *et al.* (2007, entire) utilized only verifiable and documented records to investigate wolverine distribution through time. This paper is the only available comprehensive treatment of these distribution patterns that attempts to distinguish between records that represent resident animals versus animals that have dispersed outside of suitable habitat. For these reasons we believe that Aubry *et al.* (2007, entire) represents the best available summary of wolverine occurrence records in the contiguous United States at this time. Since the publication of Aubry *et al.* (2007, entire), verified records of wolverine have also been documented in Colorado and California, which we will describe in greater detail below.

Aubry *et al.* (2007, entire) used verifiable and documented records from museum collections, literature sources, and State and Federal institutions to trace changes in geographic distribution of wolverines in the historic record. They then used an overlay of suitable wolverine habitats to further refine which records represent wolverines in habitats that may support residency, and by extension, populations, and which records likely represent wolverines outside the range of suitable habitats, so called "extralimital" records. Aubry *et al.'s* (2007, entire) focus on verifiable and documented records corrected past overly broad approaches to wolverine range mapping (Nowak 1973, p. 22; Hall 1981, p. 1009; Wilson 1982, p. 644; Hash 1987, p. 576) that used a more inclusive but potentially misleading approach when dealing with occurrence records. Many of the extralimital records used in these publications represent individuals dispersing from natal ranges that ended up in habitats that cannot support wolverines, and the use of this data to determine the historic geographic range of wolverines results in gross overestimation of the area that can actually be used successfully by wolverines for the establishment of populations. Subsequent to publication of Aubry *et al.* (2007, entire), Copeland *et al.* (2010, entire) further refined our understanding of wolverine habitat needs and corroborated the approach of Aubry *et al.* (2007, entire).

We agree with Aubry *et al.* (2007, p. 2149) that the most appropriate method to determine the current and historic range of wolverines is to use a combination of occurrence records and habitat suitability, along with other information, such as documented successful reproduction events, that indicate where reproductive and potentially self-sustaining populations may occur. We also generally agree with their conclusions about the historic and current range of the species. We believe that the species' range is the area that may support viable populations, and does not include extralimital occurrences outside of habitat that is likely to support wolverine life-history needs. Areas that can support wolverine populations may be referred to as potential "source" populations because they provide surplus individuals through reproduction beyond what is needed for replacement. Areas that do not have the habitat to support viable populations may be referred to as population "sinks" because wolverines may disperse to these areas and remain for some time, but will either die there without reproducing, leave the area in search of better habitat conditions, or may actually reproduce, but at a rate lower than that needed for replacement of individuals lost to mortality or emigration, leading to eventual population extinction. For a widely dispersing species like wolverines, we expect many locality records to represent dispersers into sink habitats. The value to the population (and thus

the DPS) of these dispersers in sink habitat is unclear; however, it is likely that most dispersers into sink habitats will be lost to the population unless they are able to move back into source habitats. Therefore, it is our belief that population sink areas, here defined as places where wolverines may be found but where habitat is not suitable for long-term occupancy and reproduction, do not represent part of the species historic range and have little conservation value for the DPS, other than possibly serving as way-stations for attempted dispersers as they search for suitable habitats. This approach to defining historic range results in reducing the bias of extralimital dispersers and concentrates conservation attention on areas capable of maintaining populations, and is more in keeping with the intentions of the Act, than broader depictions of geographic range.

Aubry *et al.* (2007, pp. 2147–2148) divided records into "historical" (recorded prior to 1961), "recent" (recorded between 1961 and 1994), and "current" (recorded after 1994). Historical records occurred before systematic surveys. Historical records encompass the time during which wolverine numbers and distribution were hypothesized to be at their highest (prior to European settlement) and also at their lowest (early 20th Century) (Wright and Thompson 1935; Grinnell *et al.* 1937; Allen 1942; Newby and Wright 1955, all as cited in Aubry *et al.* 2007, p. 2148). The recent time interval covers a hypothesized population expansion and rebound from the early 20th Century low. Current records offer the most recent evidence available for wolverine occurrences and potential populations. We believe all occurrence records must be individually analyzed in light of their context in terms of habitat conditions conducive to wolverine population establishment and whether or not they occur clustered with other records, which might indicate that populations have historically occurred in the area. The authors of Aubry *et al.* (2007) did such an analysis as they compiled their records.

Wolverine Distribution

Of 729 mappable records (those records with precise location information) compiled by Aubry *et al.* (2007, p. 2150), 188 were from the historical time interval (see Figure 1). We assessed the historical, recent, and current distribution data for each of the regions below to determine the likelihood of the presence of historical populations (rather than extralimital dispersers). The discussion below draws heavily from both Aubry et al. (2007, entire) and Copeland et al. (2010, entire).

TABLE 1—WOLVERINE RECORDS FROM THREE TIME PERIODS FROM AUBRY ET AL. 2007.

[Numbers Represent Total Documented and Verifiable Records With the Subset of Those Records That Were Verifiable in Parentheses]

	Historical (< 1964)	Recent (1961–1994)	Current (> 1994)
Northeast	13 (1)	0	0
Upper Midwest	4 (2)	0	0
Great Lakes	36 (4)	1	0
Central Great Plains	71 * (2)	1	0
Rocky Mountains	147 (45)	332 (283)	215 (210)
Pacific Coast	89 (14)	23 (15)	7
Totals	362 (68)	357 (298)	222 (210)

* 35 records from a single source (the journals of Alexander Henry).

Northeast and Upper Midwest—The low number of records and scattered nature of their distribution combined with a lack of suitable habitat indicate that wolverines were likely only occasional transients to the area and not present as a reproducing population after 1800.

Great Lakes—The lack of large numbers of verifiable records in this area of relatively high human population density and the lack of suitable habitat suggests that wolverines did not exist in this area as a viable population after 1900. Widely scattered records generally before 1900, with an occasional record after that year, suggest that if a reproducing population existed in the Great Lakes, it predated 1900, and that post-1900 records represent dispersal from a receding Canadian population. Wolverine distribution in Ontario, Canada, appears to have receded north from the Great Lakes region since the 1800s, and currently wolverines occupy only the northern portion of the province, a distance of over 400 miles from the U.S. border (COSEWIC 2003, p. 9). The pattern of record distribution illustrated in Aubry *et al.* (2007, p. 2152) is consistent with what would be expected if those records were of dispersing individuals from a Canadian population that receded progressively further north into Canada after 1900, possibly due to natural climate changes.

Central Great Plains—The lack of precise locality records and suitable habitat from the Great Plains States leads us to conclude that reproducing populations of wolverines did not historically inhabit this area. Thirty-five of thirty-six records from North Dakota are from the journals of a single fur trader (see Table 1), and it is not clear that the records represent actual collection localities or are localities where trades or shipments occurred (Aubry 2007, pers. comm.). Given the habitat relationships of wolverines (e.g., Copeland *et al.* 2010, Figure 1), it is unlikely that these records represent established wolverines or that this area was in any way wolverine habitat.

Rocky Mountains—Five Rocky Mountains States (Idaho, Montana, Wyoming, Colorado, and Utah) contained numerous wolverine records. Records with precise locality information appear to coalesce around several areas that may have been population centers, such as central Colorado, the greater Yellowstone region, and northern Idaho-northwestern Montana. The large number of verifiable and documented records for this region, along with the suggestion of population centers or strongholds, suggests that wolverines existed in reproducing populations throughout much of the Rocky Mountains during the historical time interval. The lack of records for Colorado and Utah after 1921 suggests that the southern Rocky Mountain population of wolverines was extirpated in the early 1900s, concurrent with

widespread systematic predator control by government agencies and livestock interests. The northern Rocky Mountain population (north of Wyoming) was reduced to historic lows or possibly even extirpated during the early 1900s, and then increased dramatically in the second half of the 1900s (see Table 1) as predator control efforts subsided and trapping regulations became more restrictive (Aubry *et al.* 2007, p. 2151). This increase likely indicates a population rebound from historic lows in this period.

Wolverine records from 1995 to 2005 indicate that wolverine populations currently exist in the northern Rocky Mountains (see Table 1). Legal trapping in Montana in the recent past removed an average of 10.5 individuals from this population each year (Montana Department of Fish, Wildlife, and Parks 2007, p. 2), and harvest mortality has been reduced due to regulatory changes in 2008 (Montana Department of Fish, Wildlife and Parks 2008, p. 8). Populations in British Columbia and Alberta, Canada, are extant (COSEWIC 2003, pp. 18–19), and may have been a source of surplus wolverines to the contiguous U.S. population during population lows. Recently, a male wolverine moved on its own from the southern Greater Yellowstone Area of Wyoming into the southern Rocky Mountains of Colorado where it still persisted as of August 2010 (Inman *et al.* 2009, pp. 22–26; Inman 2010, pers. comm.). This attempted dispersal event is the first verified wolverine occurrence in Colorado since 1919 and may represent a continuation of the wolverine expansion in the Rocky Mountains detailed above. It is possible that other wolverines have travelled to the southern Rocky Mountains and have remained undetected. There is no evidence that Colorado currently hosts a wolverine population or that female wolverines have made, or are likely to make, similar movements.

Pacific Coast—Historically, wolverines occurred in two population centers in the North Cascades Range and the Sierra Nevada. These areas are separated by an area with no historic records (southern Oregon and northern California), indicating that the historical distribution of wolverines in this area is best represented by two disjunct populations rather than a continuous peninsular extension from Canada. This conclusion is supported by genetic data indicating that the Sierra Nevada and Cascades wolverines were separated for at least 2,000 years prior to extirpation of the Sierra Nevada population (Schwartz *et al.* 2007, p. 2174).

Only one Sierra Nevada record exists after 1930, indicating that this population was likely extirpated in the first half of the 1900s concurrent with widespread systematic predator control programs. In 2008, a male wolverine was discovered in the Sierra Nevada Range of California, the first verified record from California since 1922 (Moriarty *et al.* 2009, entire). Genetic testing revealed that this wolverine was not a descendant of the endemic Sierra Nevada wolverine population, but was likely derived from wolverines in the Rocky Mountains (Moriarty *et al.* 2009, p. 159). This attempted dispersal event may represent a continuation of the wolverine expansion in the contiguous United States as detailed above. Other wolverines may have traveled to the Sierra Nevada and remain undetected. There is no evidence that California currently hosts a wolverine population or that female wolverines have made or are likely to make similar dispersal movements.

Wolverines were likely extirpated from the North Cascades in the early 20th century and then recently recolonized from Canada. Currently, a small population persists in this area (Aubrey *et al.* 2009, entire). The Northern Cascades population may be connected with, and is possibly dependent on, the larger Canadian population for future expansion and long-term persistence.

Summary of Wolverine Distribution

Historical wolverine records were found across the northern tier of the contiguous United States with convincing evidence of wolverine populations in the northern and southern Rocky Mountains, Sierra Nevada Mountains, and North Cascades Mountains (Aubry *et al.* 2007, p. 2152).

Currently, wolverines appear to be distributed as functioning populations in two regions in the contiguous United States: The North Cascades in Washington, and the northern Rocky Mountains in Idaho, Montana, and Wyoming. Wolverines were likely extirpated, or nearly so, from the entire contiguous United States in the first half of the 20th Century (Aubry *et al.* 2007, Table 1). The available evidence suggests that, in the second half of the 20th Century and continuing into the present time, wolverine populations have expanded in the North Cascades and the northern Rocky Mountains, but that populations have not been reestablished in the Sierra Nevada Range or the southern Rocky Mountains. We conclude that the current range of the species in the contiguous United States includes the North Cascades Mountains, the northern Rocky Mountains, the southern Rocky Mountains, and the Sierra Nevada Mountains, but that reestablishment of populations in the southern Rocky Mountains and Sierra Nevada has not yet occurred.

We also conclude that wolverines either did not exist as established populations, or were extirpated prior to settlement and the compilation of historical records, in the Great Lakes region, possibly due to climate changes that occurred through the 1800s and 1900s. The Great Lakes region lacks suitable wolverine habitat, and suitable habitat does not appear to exist in adjacent Canada (Copeland *et al.* 2010, Figure 1). The widely scattered records from this region are consistent with dispersing individuals from a Canadian population that receded north early in the 1800s. We cannot rule out the possibility that wolverines existed as established populations prior to the onset of trapping in this area, but we have no reliable evidence that they did.

No reliable evidence in the historical records indicates that wolverines were ever present as established populations in the Great Plains, Midwest, or Northeast.

Habitat Relationships and Wolverine Distribution

Deep, persistent, and reliable spring snow cover (April 15 to May 14) is the best overall predictor of wolverine occurrence in the contiguous United States (Aubry *et al.* 2007, pp. 2152–2156; Copeland *et al.* 2010, entire). Deep persistent snow correlates well with wolverine year-round habitat use across wolverine distribution in North America and Eurasia at both regional and local scales (Copeland *et al.* 2010, entire). It is uncertain why spring snow cover so accurately predicts wolverine habitat use; however, it is likely related to wolverines' need for deep snow during the denning period, and also wolverines' physiological requirement for year-round cold temperatures (Copeland *et al.* 2010, pp. 242–243). Snow cover during the denning period is essential for successful wolverine reproduction range-wide (Hatler 1989, p. iv; Magoun and Copeland 1998, p. 1317; Inman *et al.* 2007c, pp. 71–72; Persson 2007; Copeland *et al.* 2010, p. 244). Wolverine dens tend to be in areas of high structural diversity such as logs and boulders with deep snow (Magoun and Copeland 1998, p. 1317; Inman *et al.* 2007c, pp. 71–72; Persson 2007, entire). Reproductive females dig deep snow tunnels to reach the protective structure provided by logs and boulders. This behavior presumably protects the

vulnerable kits from predation by large carnivores, including other wolverines (Pulliainen 1968, p. 342; Zyryanov 1989, pp. 3–12), but may also have physiological benefits for kits by buffering them from extreme cold, wind, and desiccation (Pullianen 1968, p. 342, Bjärvall *et al.* 1978, p. 23). Wolverines live in low-temperature conditions and appear to select habitats in part to avoid high summer temperatures (Copeland *et al.* 2010, p. 242). Wolverine distribution is likely affected by climatic conditions at two different scales. Wolverines require deep persistent snow for denning, and this likely determines where wolverine populations can be found at the grossest range-wide scale (Copeland *et al.* 2010, p. 244). At smaller scales, wolverines likely select habitats to avoid high summer temperatures. These cool habitats also tend to retain snow late into spring, leading to wolverines' year-round association with areas of persistent spring snow (Copeland *et al.* 2010, p. 244).

All of the areas in the contiguous United States for which good evidence of persistent wolverine populations (either present or historic) exists (i.e., North Cascades, Sierra Nevada, northern and southern Rocky Mountains) contain large and well-distributed areas of deep snow cover that persists through the wolverine denning period (Brock *et al.* 2007, pp. 36–53; Aubry *et al.* 2007, p. 2154; Copeland *et al.* 2010, Figure 1). The Great Plains, Great Lakes, Midwest, and Northeast lack the spring snow conditions and low summer temperatures thought to be required by wolverines for successful reproduction and year-round occupancy (Aubry *et al.* 2007, p. 2154; Copeland *et al.* 2010, Figure 1). The lack of persistent spring snow conditions in the Great Plains, Great Lakes, Midwest, and Northeast supports the exclusion of these areas from the current range of wolverines. Whether wolverines once existed as established populations in any of these regions is uncertain, but the current climate appears to preclude their presence as reproducing populations now, and the sparse historical record of wolverine presence in this area makes historic occupation of these areas by wolverine populations doubtful. It is our conclusion that the ecosystem that supports wolverines does not exist in these areas currently, and may never have existed in the past.

Large areas of habitat with characteristics suitable for wolverines still occur in the southern Rocky Mountains and Sierra Nevada, despite the extirpation of wolverines from those areas (Aubry *et al.* 2007, p. 2154, Brock *et al.* 2007, p. 26; Copeland *et al.* 2010, Figure 1). Wolverine extirpations in these areas were coincident with systematic predator eradication efforts in the early 1900s, which have been discontinued for many years. Each of these areas has received at least one and possibly more migrants from adjacent populations in the northern Rocky Mountains; however, there is no evidence that females have migrated to these areas or that populations of wolverines exist in them (Aubry *et al.* 2007, Table 1; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, entire).

We conclude that areas of wolverine historical occurrence can be placed in one of three categories: (1) Areas where wolverines are extant as reproducing and potentially self-sustaining populations (North Cascades, northern Rocky Mountains); (2) areas where wolverines historically existed as reproducing and potentially self-sustaining populations prior to human-induced extirpation, and where reestablishment of those populations is possible given current habitat condition and management (the Sierra Nevada Mountains in California and southern Rocky Mountains in Colorado, New Mexico, Wyoming, and Utah); and (3) areas where historical presence of wolverines in reproducing and potentially self-sustaining populations is doubtful, and where the current habitat conditions preclude the establishment of populations (Great Plains, Midwest, Great Lakes, and Northeast). We, therefore, consider the current range of wolverines to include suitable habitat in the North Cascades of Washington and possibly Oregon, the northern Rocky Mountains of Idaho, Wyoming, and Montana, the southern Rocky Mountains of Colorado, Utah, and Wyoming, and the Sierra Nevada of California. We here include the Sierra Nevada and southern Rocky Mountains in the current range of wolverines despite the probability that functional populations do not exist in these areas. They are included due to the known existence of one individual in each area and the possibility that more, as yet undetected, individuals inhabit these areas.

Distinct Population Segment

Pursuant to the Act, we must consider for listing any species, subspecies, or, for vertebrates, any Distinct Population Segment (DPS) of these taxa, if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published, on February 7, 1996, an interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (61 FR 4722). This policy addresses the recognition of DPSs for potential listing actions. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the biological or ecological 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 (*i.e.,* whether the population segment is, when treated as if it were a species or subspecies, endangered or threatened). Discreteness refers to the degree of isolation of a population from other members of the species, and we evaluate this based on specific criteria. If a population segment is considered discrete, we must consider whether the discrete segment is "significant" to the taxon to which it belongs by using the best available scientific and commercial information. If we determine that a population segment is both discrete and significant, we then evaluate it for endangered or threatened status based on the Act's standards. The DPS evaluation in this finding concerns the segment of the wolverine species occurring within the 48 States, including the northern and southern Rocky Mountain physiographic provinces, Sierra Nevada Range, and North Cascades Range.

Distinct Population Segment Analysis for Wolverine in the Contiguous United States

Analysis of Discreteness

Under our DPS Policy, a population segment of a vertebrate species 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); or (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 (inadequacy of existing regulatory mechanisms). The wolverine within the contiguous United States meets the second DPS discreteness condition because of differences in conservation status as delimited by the Canadian-U.S. international governmental boundary.

Discreteness Based on the International Border—Differences in Conservation Status

We find that differences in conservation status of the wolverine between the United States and Canada are substantial and significant in light of section 4(a)(1)(D) of the Act. In the remaining current range in Canada-Alaska, wolverines exist in well-distributed, interconnected, large populations. Conversely, wolverine populations in the remaining U.S. range appear to be at numbers so low that their continued existence could be at risk, especially as considered in light of the five threat factors discussed below. These risks come from three main factors: (1) Small total population size; (2) effective population size below that needed to maintain genetic diversity and demographic stability; and (3) the fragmented nature of wolverine habitat in the contiguous United States that results in smaller, isolated "sky island" patches separated by unsuitable habitats. It is apparent that maintaining wolverines within their native range in the contiguous United States into the future is likely to require regulatory mechanisms that are not currently in place. These three factors are explained in more detail below.

The total population sizes for Canada-Alaska and the contiguous United States differ by more than an order of magnitude. The contiguous U.S. population likely numbers approximately 250 to 300 individuals (Inman 2010b, pers. comm.). This contrasts with western Canada, where wolverine populations are estimated at 15,089 to 18,967 individuals (COSEWIC 2003, p. 22). Wolverine population size in Alaska is unknown; however, the average annual harvest exceeds 500 individuals and the population does not appear to be in decline (Alaska Department of Fish and Game 2004, entire), indicating that the population is likely to number over ten thousand individuals (calculated using demographic data in Lofroth and Ott 2007, pp. 2196–2198; assumes sustainable harvest). The difference in total population size coincides with the international boundary between the contiguous United States and Canada. Wolverine populations number 2,089–3,567 in British Columbia and 1,500–2,000 in Alberta (COSEWIC 2003, p. 22), the two provinces immediately adjacent to the contiguous U.S. wolverine population. The difference in total population sizes is significant because critically small populations such as those in the contiguous United States face higher extinction risk than large ones such as the Canada-Alaska population. Therefore, the contiguous U.S. population is more vulnerable to extinction, and thus of poor conservation status, relative to the more secure Canada-Alaska population.

Wolverines in Canada's eastern provinces are listed under the Species at Risk Act of Canada. Wolverines in the eastern provinces appear to have been extirpated by the early 20th century (COSEWIC 2003, p. 20). There is a general lack of reliable historic information on wolverines in this area, and significant doubt exists about whether a population ever occurred there historically (COSEWIC 2003, p. 20). For the purposes of this finding, we considered the Canadian wolverine population to include only wolverines from Ontario west to the Pacific coast and Alaska, and assumed that wolverines in eastern Canada were either extirpated or are at such low numbers as not to be part of a functioning population. It is our determination that the conservation status of the eastern population, if it does indeed exist, is not relevant to the discreteness analysis for this DPS for the following reasons: (1) If wolverines currently reside in the eastern Canadian Provinces, they are likely disjunct from wolverines in western Canada (COSEWIC 2003, Figure 3); and (2) there is significant doubt that wolverine populations existed in this part of Canada historically, so the current lack of evidence of a population may not represent a degradation of species status in this area (COSEWIC 2003, pp. 20–21).

The second substantial difference in wolverine status between the contiguous United States and Canada is reflected in the size of the effective populations. Population ecologists use the concept of a population's "effective" size as a measure of the proportion of the actual population that contributes to future generations (for a review of effective population size, see Schwartz *et al.* 1998, entire). In a population where all of the individuals contribute offspring equally, effective population size would equal true population size. For populations where contribution to the next generations is often unequal, effective population size will be smaller than the true or "census" population size. The smaller the effective population size, the more reproduction is dominated by a few individuals. Effective population size is important because it determines rates of loss of genetic variation, fixation of deleterious alleles and the rate of inbreeding. Populations with small effective population sizes show reductions in population growth rates and increases in extinction probabilities (Leberg 1990, p. 194; Jimenez *et al.* 1994, pp. 272–273; Newman and Pilson 1997, p. 360; Saccheri *et al.* 1998, p. 492; Reed and Bryant 2000, p. 11; Schwartz and Mills 2005, p. 419; Hogg *et al.* 2006, p. 1495, 1498; Allendorf and Luikart 2007, pp. 338–342). Franklin (1980, as cited in Allendorf and Luikart 2007, p. 359) proposed an empirically based rule suggesting that for short-term (a few generations) maintenance of genetic diversity, effective population size should not be less than 50. For long-term (hundreds of generations) maintenance of genetic diversity, effective population size should not be less than 500 (for appropriate use of this rule and its limitations see Allendorf and Luikart 2007, pp. 359–360). Others suggest that even higher numbers are required to ensure that populations remain viable, suggesting that long-term connectivity to the reservoir of genetic resources in the Canadian population of wolverines will be required (Traill *et al.* 2010, p. 32).

Wolverine effective population size in the largest extant population in the contiguous United States is exceptionally low (Schwartz personal communication 2007, entire) and is below what is thought necessary for short-term maintenance of genetic diversity. Effective population size for wolverines in the Rocky Mountains averaged 39 (Schwartz personal communication 2007, entire) (this study excluded the small population from the Crazy and Belt Mountains (hereafter "CrazyBelts") as they may be an isolated population, which could bias the estimate using the methods of Tallmon *et al.* (2007, entire)). Measures of the effective population sizes of the other populations in the contiguous United States have not been completed, but given their small census sizes, their effective sizes are expected to be smaller than for the northern Rocky Mountain population. Thus, wolverine effective population sizes are very low. For comparison, estimates of wolverine effective population size are bracketed by critically endangered species like the black-footed ferret (4.10) (Wisely *et al.*

2007, p. 3) and ocelots (2.9 to 13.9) (Janecka *et al.* 2007, p. 1), but substantially smaller than estimates for the Yellowstone Grizzly bear (greater than 100), which has reached the level of recovery under the Act (Miller and Waits 2003, p. 4338). Therefore, we conclude that effective population size estimates for wolverines do not suggest that populations are currently critically endangered, but they do suggest that populations are low enough that they could be vulnerable to loss of genetic diversity, and may require intervention in the future to remain viable.

The concern with the low effective population size is highlighted in recent research that determined that, absent immigration, at least 400 breeding pairs would be necessary to sustain long-term genetic viability of the contiguous U.S. wolverine population (Cegelski *et al.* 2006, p. 197). However, the entire population is likely 250–300 (Inman 2010b, pers. comm.), with a substantial number of these being nonbreeding subadults. Furthermore, the U.S. population appears to be split into at least five smaller subpopulations (Northern Cascades, CrazyBelts, Idaho, Greater Yellowstone Ecosystem, and Northern Montana) that are semi-isolated from each other, meaning that genetic exchange does not occur frequently enough to prevent genetic drift (changes in genetic composition due to random sampling in small populations) and loss of genetic diversity (Cegelski *et al.* 2006, p. 206) further reducing the effective population size. Based on available scientific and commercial information, it does not appear that any of the wolverine populations that historically existed in the contiguous United States would have had effective population sizes approaching 400 animals. Therefore, it is likely that connectivity to Canadian populations to the north would have been necessary to maintain genetic diversity in these populations prior to European settlement.

The concern that low effective population size may result in negative effects is already being realized for the contiguous U.S. population of wolverine. Genetic drift has occurred in the remaining populations in the contiguous United States: wolverines here contain 3 of 13 haplotypes (sets of closely linked genetic markers that are inherited together) found in Canadian populations (Kyle and Strobeck 2001, p. 343; Cegelski *et al.* 2003, pp. 2914–2915; Cegelski *et al.* 2006, p. 208; Schwartz *et al.* 2007, p. 2176; Schwartz *et al.* 2009, p. 3229). The haplotypes found in these populations are a subset of those in the larger Canadian population, indicating that genetic drift had caused a loss of genetic diversity. A single haplotype dominates the northern Rocky Mountain wolverine population, with 71 of 73 wolverine sampled expressing that haplotype (Schwartz *et al.* 2007, p. 2176). The reduced number of haplotypes indicates not only that genetic drift is occurring, but also that there is some level of genetic separation; if these populations were freely interbreeding, they would share more haplotypes. The reduction of haplotypes is likely a result of small population size and the fragmented nature of wolverine habitat in the United States and is consistent with an emerging pattern of reduced genetic variation at the southern edge of the range documented in a suite of boreal forest carnivores (Schwartz *et al.* 2007, p. 2177). Whether or not the wolverine population in the contiguous United States has suffered any deleterious effects due to this reduction in genetic diversity is unknown. However, based on principles of conservation genetics, we do expect that reduced genetic diversity would make this population more vulnerable to other threats due to reduced genetic resiliency and reduced ability to adapt to change (Allendorf and Luikart 2007, pp. 338–342).

No effective population size estimate exists for populations in Canada or Alaska; however, because of the large and contiguous nature of the population and the relatively high genetic diversity in Canada and Alaska, there is a reasonable scientific basis to conclude that the effective population size is large enough that it is not a cause for conservation concern. None of the Canadian or Alaskan populations tested show signs of genetic drift or inbreeding. This information indicates that the population does not have a low effective population size.

Reduced genetic diversity and low effective population sizes result in high extinction risk in animal populations (Frankham 1995, p. 795). The fragile nature of wolverine populations in the contiguous United States contrasts with Canada and Alaska where wolverines are relatively abundant and exist in habitats with a high level of connectivity (COSEWIC 2003, p.8; Slough 2007, p. 78).

The third substantial difference in wolverine status between the contiguous United States and Canada is reflected by the amount and distribution of available habitat for the species. Habitat in the contiguous United States consists of small isolated "islands" of high-elevation alpine habitats separated from each other by low valleys of unsuitable habitats. Habitat islands are represented by areas containing spring snow (Copeland *et al.* 2010, Figure 2). Wolverine range in the contiguous United States is characterized by isolated mountain habitats dissected by lower-elevation valleys, while habitat in adjoining Canada comprises mostly large blocks of contiguous habitat (Copeland *et al.* 2010, Figure 2; Copeland 2010, pers. comm.). Wolverines occupy habitat at high elevations, generally above 2,100 m (6,888 ft), in the mountains of the contiguous United States. The intervening valleys in this area range from 975 m to 1,500 m (3,198 ft to 4,920 ft), and are dominated by ecosystems that are unsuitable for long-term wolverine presence, but do serve as routes for wolverine movement between suitable habitat patches. Intermountain valleys are increasingly becoming the sites of human residential and commercial developments and transportation corridors. The large distances between suitable wolverine habitats results in wolverines existing on an archipelago of suitable habitats in a sea of unsuitable habitat. The low population density and genetic diversity of wolverines in this area requires that exchange of individual wolverines between islands of habitat occurs to avoid inbreeding or local extinction due to demographic stochasticity.

Wolverine populations in the Canadian Rocky Mountains also exist on habitat islands, but the islands are much larger, so that exchange of individuals is less critical for demographic and genetic stability. Further north in Canada, where cold snowy conditions occur at lower elevations, wolverines inhabit lower elevations and valley bottom habitats (COSEWIC 2003, pp. 7–8). In the far north of Canada, wolverine habitat extends into low-elevation valleys and the vast expanses of low-elevation boreal forest and tundra. For these reasons, exchange of wolverines between habitat islands in the Canadian Rocky Mountains is both more likely to occur and less critical for the long-term maintenance of those populations.

In the contiguous United States, wolverines must cross unsuitable habitats to achieve connectivity among subpopulations, which is required to avert further genetic drift and loss of genetic diversity (Kyle and Strobeck 2002, p. 1148; Cegelski *et al.* 2006, pp. 208–209; Schwartz *et al.* 2009, p. 3230). The highly fragmented nature of the habitat in the contiguous United States contributes to the low effective population size for wolverines in this area, making the continued persistence of the population precarious relative to the Canadian-Alaskan population.

Habitats in Canada and Alaska exist in larger contiguous blocks that have few or no impediments to demographic or genetic connectivity with peripheral smaller blocks (Copeland *et al.* 2010, Figure 2). The fragmented nature and distribution of wolverine habitat in the contiguous United States results in a population that is highly vulnerable to extirpation because of lack of connectivity between subpopulations, it also makes them more vulnerable to external threats such as those analyzed under the five threat factors below.

Conservation status of wolverines in the contiguous United States differs significantly with that of the Canada-Alaska population. The Canada-Alaska population is large, well-connected, and exists in large blocks of contiguous habitat. In contrast, the population in the contiguous United States is small in total size and is fragmented on small patches of suitable habitat that are separated by large areas of unsuitable habitat. These differences result in a Canada-Alaska population that is robust and better able to respond to habitat changes, while the contiguous United States population is vulnerable to changes in habitat or management. We believe that the differences in conservation status between the contiguous United States and Canada are significant in light of section 4(a)(1)(D) of the Act (inadequacy of existing regulatory mechanisms) because they reveal that the existing mechanisms in Canada are sufficient to maintain wolverine, while in the United States, the existing regulatory mechanisms are not sufficient to address the biological conservation concerns.

Legal Status Conveyed by National, State, and Provincial Governments

The United States currently confers no Federal status on the wolverine. Each State regulates the species relative to its existing populations. In Washington, the wolverine is listed as State Endangered (Washington Department of Fish and Wildlife 2010, entire). Idaho and Wyoming designate it as a protected nongame species (Idaho Fish and Game 2010, p. 4; Wyoming Game and Fish 2005, p. 4), and Montana regulates it as a furbearer (Montana Department of Fish, Wildlife, and Parks 2010, entire). Oregon, while currently not considered to have any individuals other than possible unsuccessful dispersers, has a closed season on trapping of wolverines. California and Colorado currently each have only one confirmed wolverine, and the States do not allow harvest.

The Canadian Government has listed its Eastern population of wolverine as Endangered under the Species at Risk Act (SARA) in Quebec and Labrador, where it may be extirpated due to trapping and hunting and declining caribou herds (Government of Canada 2010, entire). Because wolverines appear to have been extirpated from this area since the early part of the century and their historical status as a viable population is uncertain, we do not consider it to be in the current range, and thus consider the species' status there not relevant to the question of whether significant differences in status exist between the two countries. The Western population of wolverines occurs in eight Provinces, two of which (British Columbia and Alberta) are contiguous to the wolverine range in the United States. This population in Canada has no status under SARA, but has a designation of Special Concern (Vulnerable) under the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (Government of Canada 2010, entire), a status that does not provide legal protections. British Columbia and Alberta have Provincial species conservation lists, which are priority-setting tools for establishing baseline ranks and conservation activities (Province of British Columbia 2002, p. 1). Both Provinces include the wolverine on their provincial "blue list," indicating that it may be at risk (Peterson 1997, p. 1), except on Vancouver Island where the wolverine is possibly extirpated and is "red listed" (threatened, endangered, or candidate; not harvested) (Lofroth and Ott 2007, p. 2193; Province of British Columbia 2002, p. 2).

In our 2008 12-month finding, we determined that differences in management status conveyed by the States and Provinces that regulate wolverine management were not significantly different from each other, as States and Provinces both allowed regulated harvest and there were a variety of regulatory mechanisms in each. Regulatory status in the Canadian Provinces and U.S. States regulatory status remains unchanged, and we continue to find no significant difference between the legal status of wolverines between Canada and the United States.

While similarities exist in the legal conservation statuses bestowed on the wolverine in the four U.S. States where it currently persists, and the two adjacent Canadian Provinces, the differences in biological conservation status are significant and affect the future of the species. In western Canada, the wolverine has no protection under SARA; in the United States the wolverine currently has no status under the Act. This allows piecemeal management by States and Provinces with little regard for regional management directed at the continued existence of the species in the contiguous United States.

Because British Columbia and Alberta are contiguous to a larger, and more robust, portion of the wolverine's range in northwestern Canada, documented declines in wolverine populations (likely due to harvest levels) in the southern portions of both Provinces have not raised the status of the species to a level of concern that would result in its consideration for status under SARA (Lofroth and Krebs 2007, pp. 2164–2165; Lofroth and Ott 2007, p. 2193; Peterson 1997, pp. 4–5).

Differences in Control of Exploitation

Significant differences exist in control of exploitation between the United States and Canadian wolverine populations. U.S. populations are largely not harvested, with the exception of a carefully controlled and very limited harvest in Montana; while in Canada, harvest is widespread throughout the provinces within the current range. British Columbia has a 3- to 4-month trapping season with no provincial quota, while adjacent Washington considers the species State Endangered and allows no trapping. Alberta allows a 3-month trapping season with quotas in 6 of its 8 fur management zones for an annual average harvest of 37 (zones 7 and 8 in Alberta are closed to trapping but are outside the species' normal range and so the closure is of little conservation consequence (Province of Alberta 2007, entire)), while adjacent Montana allows up to a 2.5-month hunting and trapping season with a total quota of 5 wolverines (maximum of 3 females).

Although we do not have comprehensive numbers of the annual wolverine harvest in Canada, we have estimated a total annual harvest of 719 animals (see Table 2) based upon the best information available to us. Based on available information, we presume this to be an underestimate, because it is based upon reported harvests, which, for Canadian territories, likely accounts for only one-fifth to one-third of the total harvest because of heavy unreported harvest and use by local communities (Melchoir *et al.* 1987 as cited in Banci 1994, p. 101).

TABLE 2—ESTIMATED ANNUAL WOLVERINE HARVEST IN CANADA

Province or territory	Estimated annual harvest	Source
British Columbia	175	Lofroth and Ott, 2007, pp. 2196–2197.
Alberta	37	Province of Alberta 2006, p. 14.
Saskatchewan	10	COSEWIC 2007, Table 1
Manitoba	48	COSEWIC 2007, Table 1
Ontario	8	COSEWIC 2007, Table 1
Yukon	150	COSEWIC 2007, Table 1
Northwest Territories	209	COSEWIC 2007, Table 1 *
Nunavut	82	COSEWIC 2007, Table 1 ∧
Total	719	

* Corrected to adjust for majority being unreported in pelt production statistics.
∧ Corrected using Dumond and Krizan 2002 as cited in COSEWIC 2007 p. 17.

Based upon these numbers, we conservatively estimate that harvest in Canada is a minimum of 4.7 percent of the population annually. This estimate is nearly three times the amount of harvest in the United States, which is approximately 5 animals of 300, or 1.6 percent. We find that this nearly 300 percent difference is significant, because the wolverine is sensitive to even small increases in mortality rates (Squires *et al.* 2007, p. 2218). Human-caused mortality of wolverines is likely additive to natural mortality due to the low reproductive rate and relatively long life expectancy of wolverines (Krebs *et al.* 2004, p. 499; Lofroth and Ott 2007, pp. 2197–2198; Squires *et al.* 2007, pp. 2218–2219).

These differences may be significant in light of section 4(a)(1)(D) of the Act, because they show that regulatory mechanisms are necessary in the United States and Canada to ensure that the contiguous U.S. population continues to receive migrants from the genetically richer Canadian population. However, the differences in control of exploitation favor the U.S. population, which is the population that is potentially at risk. In Canada, no such mechanisms are currently needed to protect the species. About 15,000 to 19,000 wolverines occur in western Canada where suitable habitat is plentiful (COSEWIC 2003, pp. 14–21). Because of this abundance of habitat, conservative management and careful geographic control of harvest are not necessary to conserve wolverines in western Canada. This situation contrasts with the situation in the United States, where habitat is fragmented and wolverine populations are limited to high elevations over portions of four States (Washington, Idaho, Montana, and Wyoming). Because differences in control of exploitation exist, but control favors the at-risk population, we do not rely on control of exploitation to establish discreteness.

Summary for Discreteness

The international boundary between Canada and the United States currently leads to division of the control of exploitation and conservation status of the wolverine. This division is significant because it allows for potential extirpation of the species within the contiguous United States through loss of small populations and lack of demographic and genetic connectivity of the two populations. This difference in conservation status is likely to become more significant in light of threats discussed in the five factors analyzed below. Therefore, we find that the difference in the conservation statuses in Canada and the United States result in vulnerability to the significant threats (discussed below) in the U.S. wolverine population but not for the Canadian population. Existing regulatory mechanisms are inadequate to ensure the continued existence of wolverines in the contiguous United States in the face of these threats. Therefore, it is our determination that the difference in conservation status between the two populations is significant in light of section 4(a)(1)(D) of the Act, because existing regulatory mechanisms appear sufficient to maintain the robust conservation status of the Canada-Alaska population, while existing regulatory mechanisms in the contiguous United States are insufficient to protect the wolverine from threats due to its depleted conservation status. As a result, the contiguous United States population of the wolverine meets the discreteness criterion in our DPS Policy (61 FR 4725). Consequently, we use the international border between the United States and Canada to define the northern boundary of the North American wolverine DPS.

Analysis for Significance

If we determine a population segment is discrete, its biological and ecological significance will then be considered in light of Congressional guidance that the authority to list DPS's be used sparingly while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon to which it belongs (*i.e.,* the North American wolverine (*Gulo gulo luscus*). Our DPS policy states that this consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the 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. Below we address Factors 1, 2, and 4. Factor 3 does not apply to the continental U.S. wolverine population because North American wolverines are distributed widely across Alaska and Canada.

Significant Gap in the Range of the Taxon

Loss of wolverines in the contiguous United States would represent a significant gap in the range of the taxon. Wolverines once lived throughout the North American Rocky Mountains from Alaska and Canada, south through Colorado and into New Mexico, and in the North Cascades of Washington and the Sierra Nevada Range of California—an extent covering approximately 38° of latitude. Wolverines were extirpated

from most of the southern portions of their historic range, including all of the Sierra Nevada in California and all of Colorado, and possibly even the North Cascades and northern Rocky Mountains in the early 20th century (Aubry *et al.* 2007, Table 1), a loss of approximately 15° of latitude. The wolverines that have moved to California and Colorado in the past 2 years (Moriarty *et al.* 2009, Figure 1; Inman *et al* 2009, pp. 22–25) may represent the initial attempts to recolonize the southernmost extent of the species' historic range and a continuation of a recolonization of the contiguous United States that began in the 1930s (Aubry *et al.* 2007, Table 1). Based on the current scientific information, we conclude that there is at least one wolverine each in the Sierra Nevada and southern Rocky Mountains. Both of these animals are males that dispersed from known populations rather than being from undiscovered remnant populations native to the regions in question, and there is no reason to believe that functional populations exist in these areas. Today, the contiguous United States represents the southernmost reach of the wolverine's range. The loss of this population would be significant because it would substantially curtail the range of the wolverine by moving the southern range terminus approximately 15° of latitude to the north (or approximately 40 percent of the latitudinal extent of wolverine range) and eliminate wolverines from the fauna of the contiguous United States. Therefore, the loss of this population would result in a significant gap in the range of the taxon. The estimated area that would be lost from wolverine range in North America if the contiguous U.S. population was extirpated is 205,942 km^2 (79,515 mi^2) based on the habitat model developed by Copeland *et al.* (2010, entire; Copeland 2010, pers. comm.).

Given the wolverine's historic occupancy of the contiguous United States and the portion of the historic range they represent, maintenance and recovery of wolverines in their current range would provide some security for the rest of the taxon if conditions in Canada and Alaska deteriorated to the point that wolverines become endangered there. Populations on the periphery of species' ranges tend to be given lower conservation priority because they are thought to exist in low-quality habitats, and are also thought to be the populations that are least likely to survive a reduction in range (Wolf *et al.* 1996, p. 1147). However, this tendency presumes that the ultimate cause of the species' extinction will be one that operates by eroding away the species' range beginning at the periphery and progressing to the center. This presumption is based on biogeographical information that habitat and population densities of species are highest near the center of the species' range, and decline near the edge (Brown and Lomolino 1998, Figure 4.16). Data from real range collapses of species from around the world illustrate that species' ranges tend to collapse to peripheral areas rather than to the center of their historic ranges (Lomolino and Channell 1995, p. 342; Channell and Lomomolino 2000, pp. 84–86). Of 96 species whose last remnant populations were found either in the core or periphery of their historic range (rather than some in both core and periphery), 91 (95 percent) of the species were found to exist only in the periphery, and 5 (5 percent) existed solely in the center (Channell and Lomolino 2000, p. 85). Available scientific data support the importance of peripheral populations for conservation (Fraser 1999, entire; Lesica and Allendorf 1995, entire).

Based upon the 15 degree latitude gap that would result in the range of the wolverine if the U.S. population was lost, we determine that the loss of the contiguous U.S. wolverine population would result in a significant gap in the range of the taxon. Thus, the DPS meets the definition of significant in our DPS policy.

Unusual or Unique Ecological Setting

Wolverines in the contiguous United States exist in an ecosystem that requires extensive movements between habitats to maintain demographic viability and genetic diversity. Within the range of North American wolverines, the northern Rocky Mountains and North Cascades have the highest diversity of large predators and native ungulate prey species, which results in complex ecological interaction among ungulate prey, predators, scavenger groups, and vegetation (Smith *et al.* 2003, pp. 330–339). In the proposed DPS area, wolverines share habitats with gray wolves (*Canis lupus*), black bears (*Ursus americanus*), grizzly bears (*Ursus arctos horribilis*), puma (*Felis concolor*), lynx (*Lynx canadensis),* coyotes (*Canis latrans*), badgers (*Taxidea taxus*), bobcats (*Felis rufus*), fishers (*Martes pennanti*), and martens (*Martes americana*). The unique and diverse assemblage of native prey, and sources of carrion, for these carnivores include elk (*Cervus elaphus*), mule deer *(Odocoileus hemionus),* white-tailed deer (*Odocoileus virginianus*), moose (*Alces alces*), woodland caribou (*Rangifer caribou),* bighorn sheep (*Ovis canadensis*), mountain goats (*Oreamnos americanus*), pronghorn (*Antilocapra americana*), bison (*Bison bison*) (only in the Greater Yellowstone Area), and beaver (*Castor canadensis*).

Despite the fragmented nature of the habitat and the high diversity of prey, wolverines in the contiguous United States appear to use habitat attributes that are similar to wolverine populations range-wide (Copeland *et al.* 2010, entire), and do not appear to exist in an unusual or unique ecological setting. Thus, we did not rely on this factor when determining that the wolverine in the United States is significant to the taxon as a whole.

Marked Genetic Differences

Several genetics studies have confirmed genetic differentiation between wolverines in the contiguous United States and those in Canada and Alaska (Cegelski *et al.* 2006, pp. 203–205; Kyle and Strobeck 2002, p. 342; Schwartz *et al.* 2007, p. 2175). The U.S. Rocky Mountain populations group together in mitochondrial DNA (mtDNA) analyses (Schwartz *et al.* 2007, p. 2176). The primary genetic difference is a reduction of diversity in the United States as compared with Canada so that the contiguous U.S. populations contain a subset of the genetics of the Canada-Alaska population (Cegelski *et al.* 2006, p. 200; Schwartz *et al.* 2007, p. 2172). The contiguous U.S. populations contain 3 mtDNA haplotypes and Canada-Alaska samples also contain those three haplotypes plus ten more. Idaho has substantially lower heterozygosity (a measure of the genetic variation in a population) (42 percent) than the nearest Canadian population (61 percent) sampled only 700 km (435 mi) away (Kyle and Strobeck, 2001, p. 341, 345). Genetic structure in the contiguous United States indicates that population fragmentation caused by either natural or anthropogenic factors, has reduced gene flow between populations, and that genetic drift has occurred and may still be occurring (Kyle and Strobeck 2001, p. 343; Cegelski *et al.* 2003, pp. 2914–2915; Cegelski *et al.* 2006, p. 208). This reduced genetic diversity and gene flow coincides with the international border and indicates that individuals are not passing freely between Canadian and U.S. populations (Schwartz *et al.* 2009, pp. 3229–3230). Four wolverine subpopulations have been identified within Montana based on genetic data (Cegelski *et al.* 2003, p. 2913; Guillot *et al.* 2005, p. 1274). Subsequent work suggests that Montana may contain a

single population that is genetically structured by both distance and ecological factors meaning that wolverines across their range in Montana occasionally exchange individuals but do not freely interbreed because of the great distances and frequent unsuitable habitat that separates populations (Schwartz *et al.* 2009, p. 3227).

The levels of gene flow in the contiguous United States are low compared to wolverines in Alaska and Northern Canada (Kyle and Strobeck 2001; 2002, pp. 343–345), indicating that habitat in the contiguous United States is much more fragmented than habitats further north in Canada and Alaska (Schwartz *et al.* 2009, p. 3227). A distinct break was identified between the U.S. population and the Canadian populations (Cegelski *et al.* 2006, p. 203; Schwartz *et al.* 2009, pp. 3229–3230). Similarly, Schwartz *et al.* (2007, p. 2176) found that wolverines in Idaho, Montana, and Wyoming have few haplotypes (2 in the main Rocky Mountain group, plus 1 identified by Cegelski *et al.* 2006 in north-central Montana) compared to 13 distinct haplotypes in Canada, despite greater numbers of samples collected in the contiguous United States. Of these two haplotypes found by Schwartz, one is predominant, with 71 of 73 samples containing this haplotype (Schwartz *et al.* 2007, p. 2176).

The genetic differences between the U.S. and Canadian wolverine populations identified above are the result of loss of genetic diversity, either through genetic drift or founder effects. The differences consist of lower genetic diversity in the United States, a difference that is of conservation concern because it reflects loss of genetic diversity through inbreeding. This is not the kind of genetic difference that would lead us to conclude that a population is significant under our DPS policy. That policy is designed to ensure the protection of rare or unique biological diversity rather than mere differences in gene frequencies. Therefore, we do not rely on marked genetic differences in our determination of significance for this DPS.

Summary for Significance

We conclude that the wolverine population in the contiguous United States is significant because its loss would result in a significant gap in the range of the taxon.

Summary of the Distinct Population Segment Analysis

We conclude that the wolverine population in the contiguous United States is both discrete and significant under our DPS policy. Conservation status of wolverines in the contiguous United States is less secure than wolverines in adjacent Canada due to fragmented habitat, small population size, reduced genetic diversity, and their vulnerability to threats analyzed in this finding. Loss of the contiguous U.S. wolverines would result in a significant gap in the range of the taxon. Therefore, we determine that the wolverine in the 48 States, as currently described, meets both the discreteness and significance criteria of our DPS policy, and is a listable entity under the Act. We now consider the conservation status of this DPS.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to the U.S. DPS of the wolverine in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

We are required by the Act to assess threats information that may occur within the foreseeable future. We define foreseeable future as a timeframe in which impacts can be reasonably expected to occur. As discussed below, we have identified one primary threat to the wolverine DPS: climate change. Other threats are secondary and only rise to the level of threats to the DPS as they may work in concert with climate changes to affect the conservation status of the species. For this reason we use a foreseeable future identified for climate change (out to 2099) for all of the threat factors. For most threat factors, future projections are not available and it is assumed that current trends will continue unless information exists to the contrary.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Under Factor A we will discuss a variety of impacts to wolverine habitat including: (1) Climate change, (2) human use and disturbance, (3) dispersed recreational activities, (4) infrastructure development, (5) transportation corridors, and (6) land management. Many of these impact categories overlap or act in concert with each other to affect wolverine habitat. Climate change is discussed under Factor A because although climate change may affect wolverines directly by creating physiological stress, the primary impact of climate change on wolverines is expected to be through changes to the availability and distribution of wolverine habitat.

Two efforts to map wolverine habitat in the contiguous United States have been completed, although only one has been peer-reviewed (Brock *et al.* 2007, entire; Copeland *et al.* 2010, entire). As the single peer reviewed source, we rely on Copeland *et al.* (2010, entire) and supplemental information about that publication supplied in Copeland (pers. comm. 2010, p. 1) unless specified otherwise. We also report some statistics from the Brock *et al.* (2007) analysis because the authors report habitat broken down by land ownership whereas Copeland *et al.* (2010) do not. Both the Copeland *et al.* (2010) and Brock *et al.* (2007) analyses largely agree on the location of wolverine habitat within their geographic area of overlap; however, Brock *et al.* (2007) tends to be more inclusive and hence habitat area estimates for their model tend to be somewhat larger than for Copeland *et al.* (2010). Within the three States that currently harbor wolverines in the northern Rocky Mountains (Montana, Idaho, and Wyoming), an estimated 104,363 km^2 (40,295 mi^2) of wolverine habitat exists (Copeland 2010, pers. comm.). Based on the habitat model developed by Brock *et al.* (2007), 95 percent (120,000 km^2; 46,332 mi^2) is in Federal ownership with the largest portion of that (108,969 km^2; 42,073 mi^2) managed by the U.S. Forest Service (Forest Service) (Inman 2007b, pers. comm.).

Reduction in Habitat Due to Climate Change

Department of the Interior Secretarial Order Number 3289, issued September 14, 2009 (Department of the Interior (DOI) 2009), provides guidance that DOI bureaus and offices shall "* * * [c]onsider and analyze potential climate change impacts when undertaking long-

range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department's purview."

The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the World Meteorological Organization and the United Nations Environment Program in response to growing concerns about climate change and, in particular, the effects of global warming. Although the extent of warming likely to occur is not known with certainty at this time, the IPCC has concluded that warming of the climate is unequivocal, and that continued greenhouse gas emissions at or above current rates will cause further warming (IPCC 2007, p. 30). Climate-change scenarios estimate that the mean air temperature could increase by more than 3 degrees Celsius (5.4 degrees Fahrenheit) by 2100 (IPCC 2007, p. 46). The IPCC also projects that there will very likely be regional increases in the frequency of hot extremes, heat waves, and heavy precipitation (IPCC 2007, p. 46), as well as increases in atmospheric carbon dioxide (IPCC 2007, p. 36).

We recognize that there are scientific uncertainties on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely both on synthesis documents (*e.g.,* IPCC 2007; Karl *et al.* 2009) that present the consensus view of a very large number of experts on climate change from around the world, and on three analyses that relate the effects of climate changes directly to wolverines (Gonzalez *et al.* 2008, entire; Brodie and Post 2009, entire; McKelvey *et al.* 2010b, entire). McKelvey *et al.* (2010b) is the most sophisticated analysis so far available of climate change effects to wolverines. This report is based on data from global climate models including both temperature and precipitation downscaled to reflect the regional climate patterns and topography found within the range of wolverines in the contiguous United States. For this reason we believe the McKelvey *et al.* (2010) report represents the best scientific information available regarding the impacts of climate change to wolverine habitat for this 12-month finding.

Brodie and Post (2009) uses correlation to infer historical impacts of climate changes on Canadian wolverine populations based on harvest returns, but does not provide predictions of the future effects of climate changes on wolverines or wolverine habitat. Their report is suggestive of likely negative impacts to wolverine populations from continued warming; however, they do not provide estimates of the scale or spatial extent of future impacts. The Brodie and Post (2009) paper has also received several published criticisms of its methods (McKelvey *et al.* 2010a, entire; Devink *et al.* 2010, entire). The authors responded to these criticisms, although the controversy remains (Brodie and Post 2010b, entire). The report by Gonzalez *et al.* (2008) was the first available wolverine climate change analysis; however, the methods used in the report took into account only changes in temperature and not precipitation.

Snowpack changes (and concomitant changes to wolverine habitat suitability) result from both changes in temperature (negative relationship) and changes in snowfall (positive relationship). Because many climate models predict higher precipitation levels associated with climate warming, the interaction between these two variables can be quite complex. Consequently, predictions about snow coverage that rely only on temperature projections are less reliable than those that rely on both temperature and precipitation. McKelvey *et al.* (2010b, entire) report projections for wolverine habitat and dispersal routes through the time interval from 2070 to 2099. Therefore, we use 2099 as the outer limit of the foreseeable future for climate change in this finding.

Climate Effects to Wolverines

Across their worldwide distribution, wolverines are dependent on persistent spring snow cover for successful reproduction (Pulliainen 1968, pp. 338–341; Myrberget 1968, p. 115; Copeland 1996, pp. 93–94; Magoun and Copeland 1998, pp. 1315–1319; Aubry *et al.* 2007, p. 2153; Inman *et al.* 2007c, pp. 71–72; Copeland *et al.* 2010, entire). No records exist of wolverines denning anywhere but in snow, despite the wide availability of snow-free denning opportunities within the species' geographic range. The snow tunnel and complex structure associated with dens is likely required to protect young from interspecific and intraspecific predation (Persson *et al.* 2003, pp. 25–26; Magoun and Copeland 1998, p. 1318). A layer of deep snow may also add crucial insulation from cold temperatures and wind prevalent in denning habitat (Pulliainen 1968, p. 342; Bjärvall *et al.* 1978, p. 24–25; Copeland 1996, p. 100; Magoun and Copeland 1998, p. 1318).

Female wolverines have been observed to abandon reproductive dens when temperatures warm and snow conditions become wet (Magoun and Copeland 1998, p. 1316), indicating that the condition of the snow is also important to successful reproduction, and that the onset of spring snowmelt forces female wolverines to move kits into alternate denning sites with better snow conditions, if they are available. Female wolverines establish reproductive dens at elevations higher than those used by non-reproductive wolverines (Copeland 1996, p. 94; Magoun and Copeland 1998, pp. 1315–1316; Inman *et al.* 2007c, p. 71), suggesting that females find the conditions necessary for successful denning in the upper portion of their home range where snow is most persistent and occurs in the heaviest accumulations.

In the contiguous United States, wolverine year-round habitat is found at high elevations in conifer forests near treeline and in rocky alpine habitats such as cirque basins and avalanche chutes that have food sources such as marmots, voles, and carrion (Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 124; Magoun and Copeland 1998, p. 1318; Copeland *et al.* 2007, p. 2211; Inman *et al.* 2007a, p. 11). In fact, the areas defined by persistent spring snow cover that wolverines use for denning also correspond closely to wolverine habitat use in the nonreproductive season; essentially, wolverines use the coldest available landscapes within their geographic range in the contiguous United States (Copeland *et al.* 2010, Figure 6), likely due to a physiological need for cooler temperatures during the warm season.

Mean seasonal elevations used by wolverines in the northern Rocky Mountains and North Cascades vary between 1,400 and 2,600 m (4,592 and 8,528 ft) depending on location, but are always relatively high on mountain slopes (Hornocker and Hash 1981, p. 1291; Copeland *et al.* 2007, p. 2207, Aubry *et al.* 2007, p. 2153). Elevation ranges used by historical wolverine populations in the Sierra Nevada and southern Rocky Mountains are unknown, but presumably wolverines used higher elevations, on average, than more northerly populations to compensate for the higher temperatures found at lower latitudes. In the contiguous United States, valley bottom habitat appears to be used only for dispersal movements and not for foraging or reproduction (Inman *et al.* 2009, pp. 22–28). Wolverine reproductive dens have been located in alpine, subalpine, taiga, or tundra habitat (Myrberget 1968, p. 115; Pulliainen 1968, pp. 338–341; Bjärvall 1982, p. 318; Lee and Niptanatiak 1996, p. 349; Landa *et al.* 1998, pp. 451–452;

Magoun and Copeland 1998, pp. 1317–1318). Wolverines rarely, or never, den in lower elevation forested habitats, although they may occupy these habitats seasonally (Magoun and Copeland 1998, p. 1317).

Due to dependence of wolverines on deep snow that persists into late spring both for successful reproduction and for year-round habitat, and their restricted distribution in areas that maintain significant snow late into the spring season, we conclude that deep snow maintained through the denning period is an essential feature of wolverine habitat. Reduction of this habitat feature would reduce wolverine habitat proportionally.

Based on the information described above, we analyzed the effects of climate change on wolverines through three primary mechanisms: (1) Reduced snowpack and earlier spring runoff, which would reduce suitable habitat for wolverine denning; (2) increase in summer temperatures beyond the physiological tolerance of wolverines; and (3) ecosystem changes due to increased temperatures, which would move lower elevation ecosystems to higher elevations, eliminating high-elevation ecosystems on which wolverines depend and increasing competitive interactions with species that currently inhabit lower elevations. These mechanisms would tend to push the narrow elevational band that wolverines use up in elevation and, due to the conical structure of mountains, upward shifts would result in reduced overall suitable habitat for wolverines.

Reduced Snow Pack

Warmer winter temperatures are reducing snow pack in western North American mountains through a higher proportion of precipitation falling as rain and higher rates of snowmelt during winter (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Mote 2003, p. 3–1; Christensen *et al.* 2004, p. 347; Knowles *et al.* 2006, pp. 4548–4549). This trend is expected to continue with future warming (Hamlet and Lettenmaier 1999, p. 1611; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 48). Shifts in the initiation of spring runoff toward earlier dates are also well documented (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Cayan *et al.* 2001, pp. 409–410; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 41; Knowles *et al.* 2006, p. 4554). Earlier spring runoff leads to lack of snow or degraded snow conditions during April and May, the critical time period for wolverine reproductive denning. In addition, a feedback effect hastens the loss of snow cover due to the reflective nature of snow and the relative heat-absorbing properties of non-snow-covered ground. This effect leads to the highest magnitude of warming occurring at the interface of snow-covered and exposed areas, increasing the rate at which melting occurs in spring (Groisman *et al.* 1994a, pp. 1637–1648; Groisman *et al.* 1994b, pp. 198–200). Due to the importance of deep snow cover in spring for wolverine reproduction, currently suitable habitat that lost this feature would be rendered unsuitable for wolverines.

Ecosystem Changes Associated With Climate Change

Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward (IPCC 2007c, p. 230) and up mountain slopes (McDonald and Brown 1992, pp. 411–412; Danby and Hik 2007, pp. 358–359, IPCC 2007c, p. 232). As climate changes over a landscape, the ecosystems that support wolverines are likely to move, tracking the change of temperature, but with a time lag depending on the ability of individual plant species to migrate (McDonald and Brown 1992, pp. 413–414; Hall and Fagre 2003, p. 138; Peterson 2003, p. 652). Wolverines in the contiguous United States, due to their reliance on mountainous habitat, will most likely adjust to climate changes by using higher elevations on mountain slopes, not by shifting their latitudinal distribution. Along a latitudinal gradient through the historic distribution of wolverines, records tended to be found at higher elevations in southern latitudes (Aubry *et al.* 2007, p. 2153), which suggests that wolverines were compensating for increased temperature at low latitudes by selecting higher elevations. Therefore, the regional availability of suitable habitat is not likely to change significantly (*i.e.,* at least some wolverine habitat will continue to be available in all regions where wolverines currently occur), but within regional landscapes, smaller areas will be suitable for wolverines. Mountain ranges with maximum elevations within the elevation band that wolverines currently use, such as much of the wolverine habitat in central Idaho, may become entirely unsuitable for wolverines with the projected level of warming reported in McKelvey *et al.* (2010b, Figure 3).

Timing of Climate Effects

Unlike snow conditions, which respond directly to temperature change without a time lag, ecosystem responses to temperature change lag depending on constituent species' individual migratory abilities. Wolverines are described as a "treeline" species because they are most often found in an elevation band that is approximately centered on the alpine treeline at any given locality within their range. Alpine treelines are maintained by a complex set of climactic and biotic factors, of which temperature is significantly important (Cogbill and White 1991, p. 169; Hättenschwiler and Körner 1995, p. 367; Jobbágy and Jackson 2000, p. 259; Pellat *et al.* 2000, pp. 80–81). However, the conditions that favor tree establishment and lead to elevational advance in the treeline may exist only sporadically, increasing time lags associated with treeline response to warming (Hessl and Baker 1997, p. 181; Klasner and Fagre 2002, p. 54). Within wolverine habitats, treelines have advanced up mountain slopes since 1850, due to climate warming, and this trend is expected to continue into the future (Hessl and Baker 1997, p. 176; Hall and Fagre 2003, p. 138). We expect that species reliant on resources associated with this biome will need to shift accordingly. Given the irregular nature of treeline response to warming, treeline migration is likely to lag significantly behind the climate warming that causes it.

Magnitude of Climate Effects on Wolverine

Several studies relating the effects of climate changes on wolverines in the past, present, and future are now available (Brock and Inman 2007, entire; Gonzales *et al.* 2008, pp. 1–5; Brodie and Post 2010, entire; McKelvey *et al.* 2010b, entire). The Gonzalez *et al.* report and the report by Brock and Inman (2007) were both preliminary attempts to analyze climate change impacts to wolverines, but are not currently considered the best available science because they did not consider the effects of both changes in temperature and precipitation that may affect the distribution of persistent spring snow cover (McKelvey 2010, entire). Both Brock and Inman (2007) and Gonzalez *et al.* (2008) have been superseded by a more sophisticated analysis provided by McKelvey *et al.* (2010b). This analysis includes climate projections at a local scale for wolverine habitats and analyzes the effects of both temperature changes and changes to precipitation patterns. Lack of accounting for changes in precipitation was a weakness cited by the authors of both Brock and Inman (2007) and Gonzalez *et al.* (2008).

Brodie and Post (2010, entire) correlate the decline in wolverine populations in Canada over the past

century with declining snowpack due to climate change over the same period. However, correlation does not infer causation; other factors could have caused the decline. The analysis used harvest data to infer population trends as well as its reliance on correlation to infer causation (McKelvey *et al.* 2010a, entire); in this case, historic climate changes are inferred to have caused the declines in harvest returns, which are thought by the authors to reflect actual population declines. Due to the above-stated concerns, we view the analysis of Brodie and Post (2010, entire) with caution, although we do agree that the posited mechanism, of loss of snowpack affecting wolverine populations and distribution, likely has merit.

McKelvey *et al.* (2010, entire) used downscaled global climate models to project the impacts of changes in temperature and precipitation to wolverine habitat as modeled by Copeland *et al.* (2010, entire). The authors also present an alternative method for evaluating climate impacts on wolverine habitat, by merely projecting onset of spring snowmelt to occur 2 weeks earlier than it currently does, essentially asking the question: What would happen if spring snowmelt occurred 2 weeks earlier than it occurs now? Based on this information, wolverine habitat in the contiguous United States, which supports approximately 250 to 300 wolverines, is shrinking and is likely to continue to shrink with increased climate warming (McKelvey *et al.* 2010b, Figures 1, 3). Habitat losses are likely to occur throughout the range of the DPS and are projected to be most severe in central Idaho (McKelvey *et al.* 2010b, Figures 1, 3). However, large areas of snow cover are likely to remain in British Columbia, North Cascades, Greater Yellowstone Area (GYA), and the Glacier Park-Bob Marshall Wilderness of Montana (McKelvey *et al.* 2010b, p. 14, Figure 2). The southern Rocky Mountains of Colorado retained significant high-elevation snow in some models but not others, and so may be another area that could support wolverine populations in the face of climate changes (McKelvey *et al.* 2010b, p. 19). The mountainous areas of Idaho that currently support wolverines are likely to lose proportionally more snow-covered area than other areas within the contiguous United States, making this area of wolverine habitat relatively more sensitive to climate warming (McKelvey *et al.* 2010b, p. 14).

Overall, wolverine habitat in the contiguous United States is expected to get smaller and more highly fragmented as individual habitat islands become smaller and the intervening areas between wolverine habitat become larger (McKelvey *et al.* 2010b, Figures 1, 3). Composite projections for the time interval centered on 2045 predict that 23 percent of current wolverine habitat in the contiguous United States will be lost due to climate warming (McKelvey *et al.* 2010b, p. 14). That loss expands to 63 percent of wolverine habitat by the time interval between 2070 and 2099. Given the spatial needs of animals with the home range size of wolverines and the limited availability of suitable wolverine habitat in the contiguous United States, this projected gross loss of habitat area should result in a loss of wolverine numbers that is greater than the overall loss of habitat area. As habitat patches become smaller and more isolated, they are likely to lose the ability to support wolverines as some home ranges become so reduced that they cannot support individual animals, and others become so fragmented or isolated that they no longer continue to function.

In addition to the effects of gross habitat loss, we expect wolverine populations to be negatively affected by changes in the spatial distribution of habitat patches as remaining habitat islands become progressively more isolated from each other as a result of climate changes (McKelvey *et al.* 2010b, Figure 8). Currently, wolverine habitat in the contiguous United States can be described as a series of habitat islands. Some of these islands are large and clumped closely together, such as in the North Cascades, Glacier Park-Bob Marshall Wilderness complex in Montana, and the GYA. Other islands are smaller and more isolated such as the island mountain ranges of central and southwestern Montana. Inbreeding and consequent loss of genetic diversity has occurred in the past within these smaller islands of habitat (Cegelski *et al.* 2006, p. 208), and genetic exchange between subpopulations is most difficult to achieve (Schwartz *et al.* 2009, Figure 4). Climate change projections indicate that, as warming continues, large contiguous blocks will become reduced in size and isolated to the extent that their ability to support robust populations is reduced and their connectivity to other source populations resembles the current situation for our most isolated wolverine populations (McKelvey *et al.* 2010b, Figure 8). This habitat alteration would result in a high likelihood of loss of genetic diversity due to inbreeding within a few generations (Cegelski *et al.* 2006, p. 209). Further isolation of wolverines on small habitat islands with reduced connectivity to other populations would also increase the likelihood of subpopulations loss due to demographic stochasticity, impairing the functionality of the wolverine metapopulation in the contiguous United States.

We believe that McKelvey *et al.* (2010b, entire) represents the best available science for predicting the future impacts of climate change on wolverine habitat for four primary reasons. First, their habitat projections are based on Global Climate Models which are thought to be the most reliable predictors of future climate available (IPCC 2007a, p. 12). Second, they conducted downscaling analyses to infer geographic climate variation at a scale relevant to wolverine habitat. Third, they used a hydrologic model to predict snow coverage during the spring denning period (the strongest correlate with wolverine reproductive success). Fourth, they used the habitat model developed by Copeland *et al.* (2010, entire), to relate projected climate changes to wolverine habitat. This report has not been peer-reviewed or published at the time of this finding; however, based on our analysis of the methods and analysis used by the authors, we conclude it constitutes the best available information on the likely impact of climate change on wolverine distribution in the contiguous United States. Based on the analysis presented, we conclude that climate changes are likely to result in permanent loss of a significant portion of essential wolverine habitat within the foreseeable future. Additional impacts of climate change will be increased habitat fragmentation as habitat islands become smaller and intervening habitat disappears. Eventually, these processes are likely to lead to a breakdown of metapopulation dynamics as subpopulations are no longer able to rescue each other after local extinctions due to a lack of connectivity. It is also likely that loss of genetic diversity leading to lower fitness will occur as population isolation increases.

Summary of Impacts of Climate Changes

Wolverine habitat is projected to decrease in area and become more fragmented within the foreseeable future as a result of climate changes. These impacts are expected to have direct and indirect effects to wolverine populations in the contiguous United States including reducing the number of wolverines that can be supported by available habitat and reducing the ability of wolverines to travel between patches of suitable habitat. This

reduction in connectivity is likely to affect metapopulation dynamics making it more difficult for subpopulations to recolonize areas where wolverines have been extirpated and to bolster the genetics or demographics of adjacent subpopulations. Due to the extent and magnitude of climate change impacts to wolverines and their habitat, we conclude that climate change constitutes a threat to the contiguous U.S. DPS of wolverines in the foreseeable future.

Habitat Impacts Due to Human Use and Disturbance

Because wolverine habitat is generally inhospitable to human use and occupation and most of it is also Federally managed, wolverines are somewhat insulated from impacts of human disturbances from industry, agriculture, infrastructure development, or recreation. Human disturbance in the contiguous United States has likely resulted in the loss of some wolverine habitat, although this loss has not yet been quantified. Sources of human disturbance to wolverines include winter and summer recreation, housing and industrial development, road corridors, and extractive industry such as logging or mining. In the contiguous United States, these human activities and developments often occur within or immediately adjacent to wolverine home ranges, such as in alpine or boreal forest environments at high elevations on mountain slopes. They can also occur in a broader range of habitats that are occasionally used by wolverines during dispersal or exploratory movements—habitats that are not suitable for the establishment of home ranges and reproduction.

Little is known about the behavioral responses of individual wolverines to human presence, or about the species' ability to tolerate and adapt to repeated disturbance. Some postulate that disturbance may reduce the wolverine's ability to complete essential life-history activities, such as foraging, breeding, maternal care, routine travel, and dispersal. It may decrease habitat value, cause animals to avoid disturbed areas, or act as a barrier to movement (Packila *et al.* 2007, pp. 105–110). How effects of disturbance extend from individuals to characteristics of populations, such as vital rates (*e.g.,* reproduction, survival, emigration, and immigration) and gene flow, and ultimately to wolverine population or meta-population persistence, is unknown.

Wolverine habitat is generally characterized by the absence of human presence and development (Hornocker and Hash 1981, p. 1299; Banci 1994, p. 114; Landa *et al.* 1998, p. 448; Rowland *et al.* 2003, p. 101; Copeland 1996, pp. 124–127; Krebs *et al.* 2007, pp. 2187–2190). This negative association is sometimes interpreted as active avoidance of human activity, but it may simply reflect the wolverine's preference for cold, snowy, and high-elevation habitat. In the contiguous United States, wolverine habitat is typically associated with high-elevation (*e.g.,* 2,100 m to 2,600 m (6,888 ft to 8,528 ft)) subalpine forests that comprise the Hudsonian Life Zone (weather similar to that found in northern Canada), environments not typically used by people for housing, industry, agriculture, or transportation. However, occupied wolverine habitat supports a variety of activities associated with extractive industry, such as logging and mining, as well as recreational activities in both summer and winter.

At broad spatial scales, it is difficult to separate human disturbance from negative, although interdependent, effects of habitat loss and fragmentation, and historic overexploitation; factors that could contribute to current differences in distributions of wolverines and humans.

Maternal females and their young often vacate dens if they feel threatened (Myrberget 1968, p. 115), which is a common predator avoidance strategy among carnivores. The security of the den and the surrounding foraging areas (*i.e.,* protection from disturbance by humans and predation by other carnivores) is an important aspect of den site selection. Abandonment of natal and maternal dens may also be a preemptive strategy that females use in the absence of disturbance by humans or predators. Preemptive den abandonment might confer an advantage to females if prolonged use of the same den makes that den more evident to predators.

The reasons for den abandonment are uncertain. Managing human activity in wolverine habitat to limit premature den abandonment and associated stress and energy expenditure of maternal females may be important for successful reproduction. Premature den abandonment may also increase incidental mortality of offspring. Ultimately, low reproductive success and high mortality may reduce population viability in areas with high incidence of disturbance (Banci 1994, pp. 110–111). The potentially negative effects of disturbance may be more important at the southern margin of the species' North American range where wolverine productivity is particularly low (Inman *et al.* 2007c, p. 70). Wolverines typically occupy severe, unproductive environments that support low numbers of adult females with characteristically low birth rates (Persson *et al.* 2006, p. 77; Inman *et al.* 2007a, p. 68). The life-history strategy of wolverines makes it unlikely that they could compensate for increased mortality due to disturbance (Krebs *et al.* 2007, p. 2190; Persson *et al.* 2006, pp. 77–78), and they may be more vulnerable to extirpation than species with high reproductive rates (Ruggiero *et al.* 2007, p. 2146).

For the purposes of this finding, we divide human disturbance into four categories: (1) Dispersed recreational activities with primary impacts to wolverines through direct disturbance (*e.g.,* snowmobiling and heli-skiing); (2) disturbance associated with permanent infrastructure such as residential and commercial developments, mines, and campgrounds; (3) disturbance and mortality associated with transportation corridors; and (4) disturbance associated with land management activities such as forestry, or fire/fuels reduction activities. Overlap between these categories is extensive, and it is often difficult to distinguish effects of infrastructure from the dispersed activities associated with that infrastructure. However, we believe that these categories account for most of the potential effects related to disturbance of wolverines.

Dispersed Recreational Activities

Dispersed recreational activities occurring in wolverine habitat include snowmobiling, heli-skiing, hiking, biking, off- and on-road motorized use, hunting, fishing, and other uses. Among the most often cited as potential threats to wolverines are snowmobiling and heli-skiing; however, other dispersed recreation activities may have similar effects.

One study documented (in two reports) the extent that winter recreational activity spatially and temporally overlapped wolverine denning habitat in the contiguous United States (Heinemeyer and Copeland 1999, pp. 1–17; Heinemeyer *et al.* 2001, pp. 1–35). This study took place in the GYA in an area of high dispersed recreational use. The overlap of modeled wolverine denning habitat and dispersed recreational activities was extensive. Strong temporal overlap existed between snowmobile activity (February–April) and the wolverine denning period (February–May). During 2000, six of nine survey units, ranging from 3,500 to 13,600 hectares (ha) (8,645 to 33,592 acres (ac)) in size, showed evidence of recent snowmobile use.

Among the six survey units with activity, the highest use covered 20 percent of the predicted denning habitat, and use ranged from 3 to 7 percent over the other survey units. Snowmobile activity was typically intensive where detected.

Three of nine survey units in this study showed evidence of skier activity (Heinemeyer and Copeland 1999, p. 10; Heinemeyer *et al.* 2001, p. 16). Among the three units with activity, skier use covered 3 to 19 percent of the survey unit. Skiers also intensively used the sites they visited. Combined skier and snowmobile use covered as much as 27 percent of potential denning habitat in one unit, where no evidence of wolverine presence was detected. Although we do not have any information on the overlap of wolverine and winter recreation in the remaining part of the U.S. range, these areas likely do not get the high levels of recreational use seen in the portion of the GYA examined in this study.

Although we can demonstrate that recreational use of wolverine habitat is heavy in some areas, we do not have any information on the effects of these activities on the species. No rigorous assessments of anthropogenic disturbance on wolverine den fidelity, food provisioning, or offspring survival have been conducted. Disturbance from foot and snowmobile traffic associated with historic wolverine control activities (Pulliainen 1968, p. 343), and field research activities, may cause maternal females to abandon natal dens and relocate kits to maternal dens (Myrberget 1968, p. 115; Magoun and Copeland 1998, p. 1316; Inman *et al.* 2007c, p. 71).

At both a site-specific and landscape scale, wolverine natal dens were located particularly distant from public (greater than 7.5 km (4.6 mi)) and private (greater than 3 km (1.9 mi)) roads (May 2007, p. 14–31). Placement of dens away from public roads (and away from associated human-caused mortality) was also a positive influence on successful reproduction. It is not known if the detected effect is due to the influence of the roads themselves or if there are other habitat variables that cause the effect that are also correlated with a lack of roads.

Disturbance at maternal dens may be more likely to cause displacement than disturbance at natal dens (Magoun and Copeland 1998, p. 1316), and maternal dens may be less secure from predators than natal dens (Myrberget 1968, p. 115), presumably because maternal dens are shallower and smaller. After pursuit by Scandinavian hunters, females near parturition used birthing sites that were less secure than natal dens (Pulliainen 1968, p. 343). Maternal females apparently carry or pull their offspring to new den sites, and may be constrained by the distance and difficulty of simultaneously moving several reluctant offspring (Myrberget 1968, p. 115).

Stress from human activities has not been shown to affect reproductive rates, or to render home range or larger areas of habitat unsuitable. However, the absence of human disturbance that is afforded by refugia may be important for wolverine reproduction (Banci 1994, p. 122; Copeland 1996, p. 126). The extent that dispersed winter recreational activities affect selection of natal den sites by female wolverines is little studied. Rugged terrain and dense forests may naturally separate natal dens and wolverine foraging areas from centers of snowmobile or backcounty skier activity. Maternal females may specifically choose to locate dens far from winter recreation (Inman *et al.* 2007c, p. 72; Heinemeyer and Copeland 1999, p. 2–9). Six of seven natal dens documented in the Yellowstone Ecosystem occurred where snowmobiles were not permitted, such as in designated wilderness or national parks (Inman *et al.* 2007c); recreational snowmobile use outside of these areas was common. Wolverine den, foraging, and traveling areas have anecdotally been found to be spatially separated from snowmobile activity (Heinemeyer *et al.* 2001, p. 17).

Dispersed recreation is likely to affect wolverines, at least in local areas where this activity occurs at high intensity in wolverine habitat. The magnitude of this effect in relation to the wolverine DPS is difficult to determine due to a lack of information on the effects of disturbance on wolverine vital rates, behavior, and habitat use, as well as a general lack of reliable information about the geographic distribution and intensity of dispersed recreational use of wolverine habitats. For these reasons, we conclude that dispersed recreation, by itself, is not a threat to wolverines in the contiguous United States, but that this potential threat may act in concert with other threats to contribute to wolverine declines. As climate changes continue to reduce wolverine habitats, dispersed recreational uses such as snowmobiling and skiing are likely to become more concentrated in any remaining snow-covered areas. This is an area of concern that deserves more scientific investigation as wolverine conservation efforts proceed into the future.

Infrastructure

Infrastructure includes all residential, industrial, and governmental developments such as buildings, houses, oil and gas wells, and ski areas. Infrastructure development on private lands in the Rocky Mountain West has been rapidly increasing in recent years and is expected to continue as people move to this area for its natural amenities (Hansen *et al.* 2002, p. 151). Infrastructure development may affect wolverines directly by eliminating habitats, or indirectly, by displacing wolverines from suitable habitats near developments. The latter effect tends to be most detrimental to sensitive wildlife, because the area of displacement may be much larger than the area of direct habitat loss.

Wolverine home ranges generally do not occur near human settlements, and this separation is likely due both to differential habitat selection by wolverines and humans and to some extent, disturbance-related effects (May *et al.* 2006, pp. 289–292; Copeland *et al.* 2007, p. 2211). In one study, wolverines did not strongly avoid developed habitat within their home ranges (May *et al* 2006, p. 289). Wolverines may respond positively to human activity and developments that are a source of food. They scavenge food at dumps in and adjacent to urban areas, at trapper cabins, and at mines (LeResche and Hinman 1973 as cited in Banci 1994, p. 115; Banci 1994, p. 99).

Wolverine dispersal may also be affected by development. Linkage zones are places where animals can find food, shelter, and security while moving across the landscape between suitable habitats. Wolverines prefer to travel in habitat that is most similar to habitat they use for home-range establishment, *i.e.,* alpine habitats that maintain snow cover well into the spring (Schwartz *et al.* 2009, p. 3227). Wolverines may move large distances in an attempt to establish new home ranges, but the probability of making such movements decreases with increased distance between suitable habitat patches, and the degree to which the characteristics of the habitat to be traversed diverge from preferred habitat (Copeland *et al.* 2010, entire; Schwartz *et al.* 2009, p. 3230). Wolverine populations in the northern Rocky Mountains appear to be connected to each other at the present time through dispersal routes that correspond to habitat suitability (Schwartz *et al.* 2009, Figures 4, 5).

The level of development in these linkage areas that wolverines can tolerate is unknown, but it appears that the current landscape does allow some

wolverine dispersal (Schwartz *et al.* 2009, Figures 4, 5; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28). However, contiguous U.S. gene flow between populations may not be high enough to prevent genetic drift (Cegelski *et al.* 2006, p. 208). Each subpopulation within the contiguous United States would need an estimated 400 breeding pairs, or 1 to 2 effective migrants per generation, to ensure long-term genetic viability (Cegelski *et al.* 2006, p. 209). Our current understanding of wolverine ecology suggests that no subpopulation historically or presently at carrying capacity would approach 400 breeding pairs within the contiguous United States (Brock *et al.* 2007, p. 26); nor is the habitat capable of supporting anywhere near this number. It is highly unlikely that 400 breeding pairs exist in the entire contiguous United States. For this reason, long-term viability of wolverines in the contiguous United States requires exchange of individuals between blocks of habitat.

Wolverines are capable of long-distance movements through variable and anthropogenically altered terrain, crossing numerous transportation corridors (Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28). Wolverines are able to successfully disperse between habitats, despite the level of development that is currently taking place in the northern Rocky Mountains (Copeland 1996, p. 80; Copeland and Yates 2006, pp. 17–36; Inman *et al.* 2007a, pp. 9–10; Pakila *et al.* 2007, pp. 105–109; Schwartz *et al.* 2009, Figures 4, 5). Dispersal between populations is needed to avoid further reduction in genetic diversity; however, it is not clear that development or human activities are preventing wolverine movements between suitable habitat patches rather than simply small population sizes making movements infrequent. Future human developments may increase landscape resistance to wolverine dispersal; however, we have no information to suggest that this situation is likely to reach a level of impeding wolverine movements within the foreseeable future. Infrastructure developments that occur within wolverine habitat will affect wolverines in local areas and those impacts should be accounted for during planning activities. Infrastructure development, by itself, does not threaten the wolverine DPS; however, it may act in concert with the primary threat of climate change to further depress wolverine populations as habitats become more restricted.

Transportation Corridors

Transportation corridors may affect wolverines if located in wolverine habitat or between habitat patches. If located in wolverine habitat, transportation corridors result in direct loss of habitat and possibly displacement of wolverines for some distance. Direct mortality due to collisions with vehicles is also possible. Transportation corridors provide access to areas otherwise not affected by humans, which exacerbates the effects of human disturbance from a variety of activities. Outside of wolverine habitat, transportation corridors may affect wolverines if they present barriers to movement between habitat patches or result in direct mortality to dispersing wolverines. Because wolverines are capable of making long-distance movements between patches of suitable habitat, transportation corridors located many miles away from wolverine home ranges may affect their ability to disperse or recolonize vacant habitats after local extirpation events.

The Trans Canada Highway at Kicking Horse Pass in southern British Columbia, an important travel corridor over the Continental Divide, has a negative effect on wolverine movement (Austin 1998, p. 30). Wolverines partially avoided areas within 100 m (328 ft) of the highway, and preferred distant sites (greater than 1,100 m (3,608 ft)). Wolverines that approached the highway to cross repeatedly retreated and successful crossing occurred in only half of the attempts. Where wolverines did successfully cross, they used the narrowest portions of the highway right-of-way. Although not assessed, disturbance-related effects of the highway may have been greater in summer when traffic volumes were higher. A railway with minimal human activity, adjacent to the highway, had little effect on wolverine movements. Wolverines did not avoid, and even preferred, compacted, lightly-used ski trails in the area.

In the tri-State area of Idaho, Montana, and Wyoming, most crossings of Federal or State highways are done by subadult wolverines making exploratory or dispersal movements (ranges of resident adults typically did not contain major roads) (Packila *et al.* 2007, p. 105). Roads in the study area, typically 2-lane highways or roads with less improvement, were not absolute barriers to wolverine movement. The wolverine that moved to Colorado from Wyoming in 2008 successfully crossed Interstate 80 in southern Wyoming (Inman *et al.* 2008, Figure 6). Wolverines in Norway successfully cross deep valleys that contain light human developments such as railway lines, settlements, and roads (Landa *et al.* 1998, p. 454). Wolverines in central Idaho avoided portions of a study area that contained roads, although this was possibly an artifact of unequal distribution of roads that occurred at low elevations and peripheral to the study site (Copeland *et al.* 2007, p. 2211). Wolverines frequently used un-maintained roads for traveling during the winter, and did not avoid trails used infrequently by people or active campgrounds during the summer.

At both a site-specific and landscape scale, wolverine natal dens were located particularly distant from public (greater than 7.5 km (4.6 mi)) and private (greater than 3 km (1.9 mi)) roads (May 2007, p. 14–31). Placement of dens away from public roads (and away from associated human-caused mortality) was a positive influence on successful reproduction (May 2007, p. 14–31). Predictive, broad-scale habitat models, developed using historic records of wolverine occurrence, indicated that roads were negatively associated with wolverine occurrence (Rowland *et al.* 2003, p. 101). Although wolverines appear to avoid transportation corridors in their daily movements, the low density of these types of structures in wolverine habitat leads us to conclude that the effects are most likely local in scale. Development of transportation corridors in linkage areas may inhibit wolverine movements between habitat patches, potentially reducing connectivity among habitat islands. This isolating effect has not been measured for wolverines and remains theoretical at this point in time. Transportation corridors, by themselves, do not threaten the wolverine DPS, however, these corridors may work in concert with the primary threat of climate change to further depress populations or reduce habitat connectivity as habitat becomes more restricted. Therefore, we consider transportation corridors to be a potential threat to the wolverine DPS, in concert with the primary threat of climate change.

Land Management

Effects to wolverines from land management actions such as grazing, timber harvest, and prescribed fire are largely unknown. Wolverines in British Columbia used recently logged areas in the summer and moose winter ranges for foraging (Krebs *et al.* 2007, pp. 2189–2190). Although males did not appear to be influenced strongly by the presence of roadless areas, the researchers did not measure traffic volume, so may have been unable to detect responses of males

to heavily used roads. In Idaho, wolverines used recently burned areas despite the loss of canopy cover (Copeland 1996, p. 124).

Intensive management activities such as timber harvest and prescribed fire do occur in wolverine habitat; however, for the most part, wolverine habitat tends to be located at high elevations and in rugged topography that is unsuitable for intensive timber management. Much of wolverine habitat is managed by the U.S. Forest Service or other Federal agencies and is protected from some practices or activities such as residential development. In addition, much of wolverine habitat within the contiguous United States is already in a management status such as wilderness or national park (see Factor D for more discussion) that provides some protection from management, industrial, and recreational activities. Wolverines are not thought to be dependent on specific vegetation or habitat features that might be manipulated by land management activities. We conclude that land management activities as discussed above do not constitute a threat to the wolverine DPS.

Summary of Factor A

The threat of past, current, and future climate change occurs over the entire range of the contiguous U.S. population of the wolverine. This threat is likely to have already reduced the overall areal extent and distribution of wolverine suitable habitat. Determining whether or not wolverine populations have been impacted by this threat is complicated by the historical extirpation of wolverines in the early 20th Century followed by recolonization and expansion. It is possible that expansion of wolverine populations through the second half of the 20th Century has masked climate change effects that would have otherwise reduced populations had they existed at presettlement levels. So despite the lack of detectable population-level impacts, it is still likely that habitat is already reduced from historic levels due to this threat.

Future climate changes are projected to reduce suitable wolverine habitat by 23 percent by 2045 and 63 percent by the time interval between 2070 and 2099 due to climate warming. This reduction will likely result in suitable wolverine habitat shifting up mountain slopes, and, due to the conical structure of mountains, will result in smaller, more isolated remaining habitat patches. Due to the large size of wolverine home ranges, many small mountain ranges are likely to lose the ability to support wolverine populations. We expect that, due to secondary effects of this habitat loss such as increased habitat fragmentation and isolation, the impacts of habitat loss on wolverines will be greater than the areal extent of habitat loss.

Deep snow that persists into the month of May is essential for wolverine reproduction. This life-history need is likely to be most sensitive to climate changes. Wolverine are vulnerable to habitat modification (specifically, reduction in persistent spring snow cover) due to climate warming in the contiguous United States. Further, it is likely that year-round wolverine habitat, not just denning habitat, will also be significantly reduced due to the effects of climate warming. Reductions in habitat would result in greater habitat isolation, reducing the frequency of dispersal between habitat patches and the likelihood of recolonization after local extinction events. This reduced dispersal ability is likely to result in loss of genetic diversity within remaining habitat patches and population loss due to demographic stochasticity. The contiguous U.S. population of wolverines is already very small and fragmented and is, therefore, particularly vulnerable to these impacts, to the extent that the degree of these impacts could lead to endangerment of the DPS within the foreseeable future.

The best available scientific and commercial information shows that the impacts of climate change will continue within the foreseeable future. Due to the magnitude and extent of the effects of climate change, we conclude that climate change constitutes a significant threat to the contiguous U.S. DPS of the wolverine in the foreseeable future.

Collectively, human activities, including dispersed recreation activities, infrastructure, and the presence of transportation corridors, may result in reduced habitat value for wolverines. However, the alpine and subalpine habitats preferred by wolverine typically receive little human use relative to lower elevation habitats. The evidence at this time does not lead us to determine that human activities and developments by themselves pose a current threat to wolverines in the contiguous United States. The majority of wolverine habitat (90 percent) occurs within Forest Service and National Park Service lands that are subject to disturbance but not direct habitat loss to infrastructure development. The lack of information concerning the distribution and intensity of human activities, especially dispersed recreational activities, precludes us from determining they currently pose a threat to wolverines.

Wolverines can coexist with some modification of their environment, as wilderness characteristics such as complete lack of motorized use or any permanent human presence are likely not critical for maintenance of populations. It is clear that wolverines can coexist with some level of human disturbance and habitat modification. How much is too much is not known. The proximity of wolverine habitats to areas heavily or moderately used for dispersed recreation needs more study, especially where there is overlap during the denning season. Effects of these activities on wolverine vital rates are unknown.

We know of no examples where large areas of habitat, the size of a wolverine's home range or larger, have been rendered unsuitable due to human activities such as dispersed recreation. However, given the sensitivity of wolverines during the denning season and the increasing intensity of dispersed recreational activities in and around wolverine habitats, we believe this is an area that warrants further study so that determinations made in the future may be on firmer scientific ground.

The effects of direct human disturbance associated with habitat modifications and usage occur throughout the range of wolverines. Little scientific or commercial information indicate effects to wolverines from habitat modifications, development, or human disturbances associated with them. What little information exists suggests that wolverines can adjust to moderate habitat modification, infrastructure development, and human disturbance. In addition, large amounts of wolverine habitat are protected from human disturbances and development, either legally through wilderness and National Park designation, or by being located at remote and high-elevation sites. Therefore, wolverines are afforded a relatively high degree of protection from the effects of human activities by the nature of their habitat. Wolverines are known to successfully disperse long distances between habitats through human-dominated landscapes and across transportation corridors. The current level of residential, industrial, and transportation development in the western United States does not appear to have precluded the long-distance dispersal movements that wolverines require for maintenance of genetic diversity.

The impacts of climate change constitute a threat to the contiguous U.S. DPS of the wolverine, and will likely be irreversible within the foreseeable future. Due to the magnitude

and extent of the effects of climate change, we find that the contiguous U.S. DPS of the North American wolverine is likely to become in danger of extinction in the foreseeable future due to destruction, modification, and curtailment of its habitat and range by climate change.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over much of recent history, trapping has been a primary cause of wolverine mortality (Banci 1994, p. 108; Krebs *et al.* 2004, p. 497; Lofroth and Ott 2007, pp. 2196–2197; Squires *et al.* 2007, p. 2217). Unregulated trapping is believed to have played a role in the historic decline of wolverines in North America in the late 1800s and early 1900s (Hash 1987, p. 580). Wolverines are especially vulnerable to targeted trapping and predator reduction campaigns due to their habit of ranging widely in search of carrion, which would bring them into frequent contact with poison baits and traps (Copeland 1996, p. 78; Inman *et al.* 2007a, pp. 4–10; Packila *et al.* 2007, p. 105; Squires *et al.* 2007, p. 2219).

Human-caused mortality of wolverines is likely additive to natural mortality due to the low reproductive rate and relatively long life expectancy of wolverines (Krebs *et al.* 2004, p. 499; Lofroth and Ott 2007, pp. 2197–2198; Squires *et al.* 2007, pp. 2218–2219). This means that trapped populations likely live at densities that are lower than carrying capacity, and may need to be reinforced by recruits from untrapped populations to maintain population viability and persistence.

A study in British Columbia determined that, under a regulated trapping regime, trapping mortality in 15 of 71 wolverine population units was unsustainable, and that populations in those unsustainable population units are dependent on immigration from neighboring populations or untrapped refugia (Lofroth and Ott 2007, pp. 2197–2198). Similarly, in southwestern Montana, intensive legal trapping in isolated mountain ranges reduced local populations and was the dominant form of mortality for the duration of the study (Squires *et al.* 2007, pp. 2218–2219). The harvest levels observed, which included two pregnant females in a small mountain range, could have significant negative effects on a small population (Squires *et al.* 2007, p. 2219). Harvest refugia, such as national parks and large wilderness, are important to wolverine persistence on the landscape because they can serve as sources of surplus individuals to bolster trapped populations (Squires *et al.* 2007, p. 2219; Krebs and Ott 2004, p. 500). Glacier National Park, though an important refuge for a relatively robust population of wolverines, was still vulnerable to trapping because most resident wolverine home ranges extended into large areas outside the Park (Squires *et al.* 2007, p. 2219).

Despite the impacts of trapping on wolverines in the past, trapping is no longer a threat within most of the wolverine range in the contiguous United States. Montana is the only State where wolverine trapping is still legal. Before 2004, average wolverine harvest was 10.5 wolverines per year. Due to preliminary results of the study reported in Squires *et al.* (2007, pp. 2213–2220), the Montana Department of Fish, Wildlife, and Parks adopted new regulations for the 2004–2005 trapping season that divided the State into three units, with the goal of spreading the harvest more equitably throughout the State.

For the 2008–2009 trapping season, Montana Department of Fish, Wildlife, and Parks adjusted its wolverine trapping regulations again to further increase the geographic control on harvest to prevent concentrated trapping in any one area, and to completely stop trapping in isolated mountain ranges where small populations are most vulnerable (Montana Department of Fish Wildlife and Parks 2010, pp. 8–11). Their new regulations spread harvest across three geographic units (the Northern Continental Divide area, the Greater Yellowstone area, and the Bitterroot Mountains), and establish a statewide limit of 5 wolverines. The 2008–2009 and 2009–2010 trapping seasons have resulted in four and three wolverines harvested, respectively (Montana Department of Fish Wildlife and Parks 2010, pp. 8–11). Under the current regulations, no more than three female wolverines can be legally harvested each year, and harvest in the more vulnerable isolated mountain ranges is prohibited.

Montana Department of Fish, Wildlife, and Parks conducts yearly monitoring using track surveys. Their protocol does not utilize verification methods such as DNA collection or camera stations to confirm identifications. Consequently, misidentifications are likely to occur. Given the relative rarity of wolverines and the relative abundance of other species with which they may be confused, such as bobcats, lynx, and bears, lack of certainty of identifications of tracks makes it highly likely that the rare species is over-represented in unverified tracking records (McKelvey *et al.* 2008, entire). The Montana Department of Fish, Wildlife, and Parks wolverine track survey information does not meet our standard for verifiable or documented occurrence records described in the geographic distribution section, and we have not relied on this information in this finding.

Montana wolverine populations have rebounded from historic lows in the early 1900s while at the same time being subject to regulated trapping (Aubry *et al.* 2007, p. 2151; Montana Department of Fish, Wildlife, and Parks 2007, p. 1). In fact, much of the wolverine expansion that we have described above took place under less-restrictive harvest regulations than are in place today. Through their refinement of harvest regulations over the past 10 years, Montana Department of Fish, Wildlife, and Parks has demonstrated its commitment to adjust harvest management when evidence indicates it is necessary for conserving wolverine populations. Therefore, we conclude that, in the absence of other threats, harvest would not be likely to threaten State-wide wolverine populations in Montana, or to threaten the continued existence of the wolverine population in the contiguous United States. However, the additive mortality caused by trapping could become a concern in the future as the size of the wolverine population shrinks in response to the loss of habitat due to climate change described above.

Current levels of incidental trapping (*i.e.,* capture in traps set for species other than wolverine) and poisoning have been suggested to be a threat to wolverines, but no supporting information for this assertion is available.

Summary of Factor B

Wolverine harvest affects one of the four States within the current range of North American wolverines in the contiguous United States. However, the State of Montana contains most of the habitat and wolverines that exist in the four States, and regulates trapping to reduce the impact of harvest on wolverine populations. We do not believe that the level of harvest in Montana, by itself, is a threat that causes the species within the contiguous United States to be in danger of extinction or likely to become in danger of extinction in the foreseeable future.

Harvest, when combined with the other threats outlined in this finding, may contribute to the likelihood that the wolverine will become extirpated in the foreseeable future by increasing the speed with which small populations of wolverine are lost from isolated habitats, and also by increasing

mortality levels for dispersing wolverines that are required to maintain the genetics and demographics of wolverine populations in the contiguous United States. The willingness of the Montana Department of Fish, Wildlife, and Parks to adjust wolverine harvest management in reaction to new scientific information on the status of wolverines leads us to believe that the agency will continue to adjust harvest levels as needed, including suspension of harvest altogether should populations decline.

Factor C. Disease or Predation

Limited information is currently available on the potential effects of disease on wolverine populations. Wolverines are sometimes killed by wolves, black bears, and puma (Burkholder 1962, p. 264; Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 44–46; Inman *et al.* 2007d, p. 89). In addition, wolverine reproductive dens are likely subject to predation, although so few dens have been discovered in North America that determining the intensity of this predation is not possible.

Summary of Factor C

Wolverine mortality from predation and disease do not appear to be above natural or sustainable levels, such that these factors would cause the species within the contiguous United States to be in danger of extinction or likely to become in danger of extinction in the foreseeable future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The majority (95 percent) of wolverine habitat currently occupied by wolverine populations in the lower contiguous United States is Federally owned and managed, mostly (90 percent) by the Forest Service. An estimated 126,302 km^2 (49,258 mi^2) of wolverine habitat occurs in Montana, Idaho, and Wyoming. Of that, 120,000 km^2 (46,332 mi^2) is in Federal ownership and 109,000 km^2 (42,085 mi^2) of that is managed by the Forest Service. Additionally, 33,263 km (12,973 mi^2) (26.3 percent) occurs in designated wilderness; 4,180 km^2 (1,630 mi^2) (3.3 percent) are in wilderness study areas. An additional 8,432 km^2 (3,288 mi^2) (6.7 percent) are within national parks (Brock *et al.* 2007, pp. 33–35; Inman 2007b, pers. comm.). Thus, a total of 36.3 percent of the estimated wolverine habitat in the three-State area occurs in locations with high levels of protection.

No Federal or State regulatory mechanisms exist that address the threat of modification of wolverine habitat due to climate change. Several mechanisms exist that protect wolverine from other forms of disturbance and from overutilization from harvesting; these are described in more detail below.

Federal Laws and Regulations

The Wilderness Act

The Forest Service and National Park Service both manage lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). Within these areas, the Wilderness Act states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. A large amount of suitable wolverine habitat occurs within Federal wilderness areas in the United States (Inman, personal communication 2007b). As such, a large proportion of existing wolverine habitat is protected from direct loss or degradation by the prohibitions of the Wilderness Act.

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for wolverines as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal nexus.

For example, wolverines are designated as a sensitive species by the Forest Service, which requires that effects to wolverines be considered in documentation completed under NEPA. NEPA does not itself regulate activities that might affect wolverines, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats.

National Forest Management Act

Under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the Forest Service shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Individual national forests may identify species of concern that are significant to each forest's biodiversity. It is unknown what level of protection, if any, each of the individual national forests offer for wolverines. In many of the States in which wolverines are found, wolverines occur in wilderness areas and are thus protected under the Wilderness Act. Outside of wilderness but still on Forest Service-managed lands, wolverines occur mainly in alpine areas, which are sensitive to negative habitat alterations. Their habitat is generally offered more protections from harvest or road building than would otherwise be the case in lowland areas.

National Park Service Organic Act

The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Where wolverines occur in National Parks, they and their habitats are protected from large-scale loss or degradation due to the Park Service's mandate to "* * * conserve scenery * * * and wildlife * * * [by leaving] them unimpaired."

Clean Air Act of 1970

The petitioners claim that wolverines are threatened by a lack of regulatory mechanisms to curb greenhouse gases that contribute to global temperature rises (Wolf *et al.* 2007, p. 50). As stated earlier under Factor A, our status review did reveal information that increased temperatures and loss of persistent spring snow are a significant threat to wolverines across the DPS range in the foreseeable future. No existing regulatory mechanisms adequately address global climate change. The Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), as amended, requires the Environmental Protection Agency (EPA) to develop and enforce regulations to protect the general public from exposure

to airborne contaminants that are known to be hazardous to human health. In 2007, the Supreme Court ruled that gases that cause global warming are pollutants under the Clean Air Act, and that the EPA has the authority to regulate carbon dioxide and other heat-trapping gases (*Massachusetts et al.* v. *EPA* 2007 [Case No. 05–1120]). The EPA published a regulation to require reporting of greenhouse gas emissions from fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters, and manufacturers of heavy-duty and off-road vehicles and engines (74 FR 56260; October 30, 2009). The rule, effective December 29, 2009, does not require control of greenhouse gases; rather it requires only that sources above certain threshold levels monitor and report emissions (74 FR 56260; October 30, 2009). On December 7, 2009, the EPA found under section 202(a) of the Clean Air Act that the current and projected concentrations of six greenhouse gases in the atmosphere threaten public health and welfare. The finding itself does not impose requirements on any industry or other entities but is a prerequisite for any future regulations developed by the EPA. At this time, it is not known what regulatory mechanisms will be developed in the future as an outgrowth of the finding or how effective they would be in addressing climate change.

State Laws and Regulations

State Comprehensive Wildlife Conservation Strategies and State Environmental Policy and Protection Acts

The wolverine is listed as State Endangered in Washington, California, and Colorado. In Idaho and Wyoming it is designated as a protected nongame species (Idaho Department of Fish and Game 2010, p. 4; Wyoming Game and Fish 2005, p. 2). Oregon, while currently not considered to have any individuals other than possible unsuccessful dispersers, has a closed season on trapping of wolverines. These designations largely protect the wolverine from mortality due to hunting and trapping. In Montana, the wolverine is classified as a regulated furbearer (Montana Fish, Wildlife, and Parks 2010, p. 8). Montana is the only State in the contiguous United States where wolverine trapping is still legal.

Wolverines receive some protection under State laws in Washington, California, Idaho, Montana, Wyoming, and Colorado. Each State's fish and wildlife agency has some version of a State Comprehensive Wildlife Conservation Strategy (CWCS) in place. These strategies, while not State or national legislation can help prioritize conservation actions within each State. Named species and habitats within each CWCS may receive focused attention during State Environmental Protection Act (SEPA) reviews as a result of being included in a State's CWCS. However, only Washington, California, and Montana appear to have SEPA-type regulations in place. In addition, each State's fish and wildlife agency often specifically names or implies protection of wolverines in their hunting and trapping regulations. Only the State of Montana currently allows wolverine harvest.

Before 2004, the Montana Department of Fish, Wildlife, and Parks regulated wolverine harvest through the licensing of trappers, a bag limit of one wolverine per year per trapper, and no statewide limit. Under this management, average wolverine harvest was 10.5 wolverines per year. Due to preliminary results of the study reported in Squires *et al.* (2007, pp. 2213–2220), Montana Department of Fish, Wildlife, and Parks adopted new regulations for the 2004–2005 trapping season that divided the State into three units with the goal of spreading the harvest more equitably throughout the State. In 2008, Montana Department of Fish, Wildlife, and Parks further refined their regulations to prohibit trapping in isolated mountain ranges, and reduced the overall statewide harvest to 5 wolverines with a statewide female harvest limit of 3. We conclude that trapping in Montana, by itself, is not a threat to the wolverine DPS, but that by working in concert with the primary threat of climate change, the trapping program may contribute to population declines caused by other threats. Therefore, we conclude that wolverine harvest is a secondary threat to wolverines.

Summary of Factor D

The existing regulatory mechanisms appear to protect wolverine from several of the threats described in Factors A through C above. Specifically, State regulations for wolverine harvest appear to be sufficient to prohibit range-wide overutilization from hunting and trapping in the absence of other threats. Federal ownership of much of occupied wolverine habitat protects the species from direct losses of habitat and provides further protection from many of the forms of disturbance described above. Wolverines can use habitats affected by moderate levels of human disturbance, and additional protection is afforded wolverines by the significant portion of their range that occurs in designated wilderness and national parks. The current regulatory regime does not address the potential impacts of dispersed winter recreation; however, at this time the available information does not suggest that dispersed winter recreation is a threat. That being the case, all of these potential threats are likely to have local impacts on wolverines, and cumulatively, they may act in concert with the primary threat of climate change to threaten wolverine populations. Therefore, we conclude it is appropriate to view them as secondary threats to the wolverine DPS.

Our review of the regulatory mechanisms in place at the national and State level demonstrates that the short-term, site-specific threats to wolverine from direct loss of habitat, disturbance by humans, and direct mortality from hunting and trapping are, for the most part, adequately addressed through State and Federal regulatory mechanisms. However, as described under Factor A, the primary threat with the greatest severity and magnitude of impact to the species is loss of habitat due to continuing climate warming. No known regulatory mechanisms are currently in place at the national or international level that effectively address this threat to wolverine habitat from climate change. Therefore, the current inadequacy of regulatory mechanisms to protect wolverines and their habitat is a threat to the DPS.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

Wolverines in the contiguous United States are thought to be derived from a recent re-colonization event after they were extirpated from the area in the early 20th century (Aubry *et al.* 2007, Table 1, Michael Schwartz, pers. comm.). Consequently, wolverine populations in the contiguous United States have reduced genetic diversity relative to larger Canadian populations as a result of founder effects or inbreeding (Schwartz *et al.* 2009, pp. 3228–3230). As described in the DPS analysis above, wolverine effective population size in the contiguous United States is exceptionally low (Schwartz 2007, pers. comm.) and is below what is thought to be adequate for short-term maintenance of genetic diversity. Loss of genetic diversity can lead to inbreeding depression and is associated with increased risk of extinction (Allendorf and Luikart 2007, pp. 338–343). Effective population size is important because it determines rates of loss of genetic variation, fixation of deleterious alleles, and the rate of

inbreeding. Small effective population sizes are caused by small actual population size (census size), or by other factors that limit the genetic contribution of portions of the population, such as polygamous mating systems. Populations may increase their effective size by increasing census size or by the regular exchange of genetic material with other populations through inter-population mating. Populations with small effective population sizes show reductions in population growth rates and increases in extinction probabilities (Leberg 1990, p. 194; Jimenez *et al.* 1994, pp. 272–273; Newman and Pilson 1997, p. 360; Saccheri *et al.* 1998, p. 492; Reed and Bryant 2000, p. 11; Schwartz and Mills 2005, p. 419; Hogg *et al.* 2006, p. 1495, 1498; Allendorf and Luikart 2007, pp. 338–342).

The concern with the low effective population size was highlighted in a recent analysis which determined that without immigration from other populations at least 400 breeding pairs would be necessary to sustain the long-term genetic viability of the contiguous U.S. wolverine population (Cegelski *et al.* 2006, p. 197). However, the entire population is likely only 250 to 300 (Inman 2010b, pers. comm.), with a substantial number of these being unsuccessful breeders or nonbreeding subadults.

Genetic studies demonstrate the essential role that genetic exchange plays in maintaining genetic diversity in small wolverine populations. The concern that low effective population size would result in negative effects is already being realized for the contiguous U.S. population of wolverine. Genetic drift has already occurred in subpopulations of the contiguous United States: wolverines here contained 3 of 13 haplotypes found in Canadian populations (Kyle and Strobeck 2001, p. 343; Cegelski *et al.* 2003, pp. 2914–2915; Cegelski *et al.* 2006, p. 208; Schwartz *et al.* 2007, p. 2176; Schwartz *et al.* 2009, p. 3229). The haplotypes found in these populations were a subset of those in the larger Canadian population, indicating that genetic drift had caused a loss of genetic diversity. One study found that a single haplotype dominated the northern Rocky Mountain wolverine population, with 71 of 73 wolverines sampled expressing that haplotype (Schwartz *et al.* 2007, p. 2176). The reduced number of haplotypes indicates not only that genetic drift is occurring but some level of genetic separation; if these populations were freely interbreeding, they would share more haplotypes (Schwartz *et al.* 2009, p. 3229). The reduction of haplotypes is likely a result of the fragmented nature of wolverine habitat in the United States and is consistent with an emerging pattern of reduced genetic variation at the southern edge of the range documented in a suite of boreal forest carnivores (Schwartz *et al.* 2007, p. 2177).

Immigration of wolverines from Canada is not likely to bolster the genetic diversity of wolverines in the contiguous United States. There is an apparent lack of connectivity between wolverine populations in Canada and the United States based on genetic data (Schwartz *et al.* 2009, pp. 3228–3230). The apparent loss of connectivity between wolverines in the northern Rocky Mountains and Canada prevents the influx of genetic material needed to maintain or increase the genetic diversity in the contiguous United States. The continued loss of genetic diversity may lead to inbreeding depression, potentially reducing the species' ability to persist through reduced reproductive output or reduced survival. Currently, the cause for this lack of connectivity is uncertain, and existing regulatory mechanisms may be inadequate to address population connectivity. Wolverine habitat appears to be well-connected across the border region (Copeland *et al.* 2010, Figure 2) and there are few man-made obstructions such as transportation corridors or alpine developments. However, this lack of genetically detectable connectivity may be related to harvest management in southern Canada. The current inadequacy of existing regulatory mechanisms to address connectivity across the international boundary may pose a risk to wolverines in the contiguous United States in the future through reduced effective population size resulting in potential loss of genetic diversity through inbreeding.

Summary of Factor E

Small population size and inbreeding depression are potential threats to wolverines in the contiguous United States. There is good evidence that genetic diversity is lower in wolverines in the DPS than it is in the more contiguous habitat in Canada and Alaska. The significance of this lower genetic diversity to wolverine conservation is unknown. We do not discount the possibility that loss of genetic diversity could be negatively affecting wolverines now and will continue to do so in the future. It is important to point out however, that wolverine populations in the DPS area are thought to be the result of colonization events that have occurred since the 1930s. Such recent colonizations by relatively few individuals and subsequent population growth are likely to have resulted in founder effects, which could have contributed to the low genetic diversity. The threat of small population sizes and low genetic diversity is likely to become more significant if populations become smaller and more isolated, as predicted due to climate changes. Restoration of connectivity with Canadian populations may require international cooperation to establish appropriate control of exploitation in the international border region. Therefore, it is our determination that small population size and inbreeding depression are a secondary threat to the DPS that may contribute to wolverine declines, especially as projected climate changes reduce overall habitat size and connectivity between habitat patches.

Finding

As required by the Act, we conducted a review of the status of the DPS and considered the five factors in assessing whether wolverines in the contiguous United States are threatened or endangered throughout all or a significant portion of their range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by wolverines. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with wolverine and wolverine habitat experts and other Federal, State, and tribal agencies. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that

listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

This status review identified threats to the contiguous U.S. population of the North American wolverine attributable to Factors A, B, D, and E. The primary threat to the DPS is from habitat and range loss due to climate warming (Factor A). Wolverines inhabit habitats with near-arctic conditions wherever they occur. In the contiguous United States, wolverine habitat is restricted to high-elevation areas in the West. Wolverines are dependent on deep persistent snow cover for successful denning, and they concentrate their year-round activities in areas that maintain deep snow into spring and cool temperatures throughout summer. Wolverines in the contiguous United States exist as small and semi-isolated subpopulations in a larger metapopulation that requires regular dispersal of wolverines between habitat patches to maintain itself. These dispersers achieve both genetic enrichment and demographic support of recipient populations. Climate changes are predicted to reduce wolverine habitat and range by 23 percent over the next 30 years and 63 percent over the next 75 years, rendering remaining wolverine habitat significantly smaller and more fragmented. We anticipate that, by 2045, maintenance of the contiguous U.S. wolverine population in the currently occupied area will require human intervention to facilitate genetic exchange and possibly also facilitate metapopulation dynamics by moving individuals between habitat patches that are no longer accessed regularly by dispersers. Other threats are minor in comparison to the driving primary threat of climate change; however, they could become significant when working in concert with climate change if they further suppress an already stressed population. These secondary threats include harvest (Factor B), disturbance, infrastructure, and transportation corridors (Factor D), and demographic stochasticity and loss of genetic diversity due to small effective population sizes (Factor E). All of these factors affect wolverines across their current range in the contiguous United States

On the basis of the best scientific and commercial data available, we find that the petitioned action, to list the North American wolverine population in the contiguous United States as threatened or endangered is warranted. We arrive at this determination due to the current status of wolverines in the contiguous United States, which exist as a small (250–300 individuals) and genetically depauperate (3 of 13 haplotypes) metapopulation with limited dispersal between subpopulations. This information, when combined with information about the primary and secondary threats indicates that wolverines are likely to lose 63 percent of their current habitat area over the next century. We will make a determination on the status of the species as threatened or endangered when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time, because the effects of climate warming on wolverines and their habitat are expected to unfold over many years and populations currently appear to be stable or expanding. However, if at any time we determine that issuing an emergency regulation temporarily listing the North American wolverine in the contiguous United States is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we assigned wolverines in the contiguous United States a Listing Priority Number (LPN) of 6 based on our finding that the DPS faces threats that are of high magnitude but that are not imminent. The primary threat includes the present or threatened destruction, modification, or curtailment of wolverine habitat from climate change; and the secondary threats are associated with Factors B, D, and E.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that wolverines face to be high in magnitude because the threat of climate change is present throughout the range of the DPS.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those species for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. The primary threat facing the DPS is not imminent. The threat from climate change is reasonably certain to occur, and its effects may be particularly acute for small, isolated populations, but we have no evidence that these effects are imminent (ongoing). The other identified threats were determined only to be potential threats when acting in concert with the driving threat of climate change. Therefore, based on our LPN Policy, the threats are not imminent (ongoing).

The third criterion in our LPN guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. We determined wolverines of the contiguous United States are a valid DPS according to our DPS Policy. Therefore, under our LPN guidance, the wolverine in the contiguous United States is assigned a lower priority than a species in a monotypic genus or a full species that faces the same magnitude and imminence of threats.

Therefore, we assigned the DPS an LPN of 6 based on our determination that the DPS faces threats that are overall of high magnitude but are not imminent. We will continue to monitor the threats to wolverines in the contiguous United States, and the DPS' status on an annual basis, and should the magnitude or the imminence of the

threats change, we will revisit our assessment of LPN.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted but precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12-month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis to $305,000 for another species that is wide-ranging and involving a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: "The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107—103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2011 we anticipate that we will be able to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2010, $10,471,000 is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Therefore, a proposed listing is precluded if pending proposals with higher priority will require expenditure of at least $10,471,000, and expeditious progress is the amount of work that can be achieved with $10,471,000. Since court orders requiring critical habitat work will not require use of all of the funds within the critical habitat subcap, we used $1,114,417 of our critical habitat subcap funds in order to work on as many of our required petition findings and listing determinations as possible. This brings the total amount of funds we had for listing actions in FY 2010 to $11,585,417.

The $11,585,417 was used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related,

administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. For FY 2011, on September 29, 2010, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level. Until Congress appropriates funds for FY 2011, we will fund listing work based on the FY 2010 amount. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we use a portion of our funding to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions. Although there are currently no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our administrative record).

Based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with an LPN of 2. Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

We assigned wolverines in the contiguous United States an LPN of 6, based on our finding that the DPS faces nonimminent but high-magnitude threats from the primary threat of the present or threatened destruction, modification, or curtailment of its habitat from climate change; and the secondary threats associated with Factors B, D, and E. These threats are expected to affect wolverine populations in the future. Under our 1983 Guidelines, a "species" facing nonimminent high-magnitude threats is assigned an LPN of 4, 5, or 6, depending on its taxonomic status. Work on a proposed listing determination for wolverines in the contiguous United States is precluded by work on higher priority candidate species (i.e., species with LPN of 5 or less); listing actions with absolute statutory, court-ordered, or court-approved deadlines; and final listing determinations for those species that were proposed for listing with funds from previous FYs. This work includes all the actions listed in the tables below under expeditious progress.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2010, we have completed two proposed delisting rules and two final delisting rules.) Given the limited resources available for listing, we find that we made expeditious progress in FY 2010 in the Listing Program and are making expeditious progress in FY 2011. This progress included preparing and publishing the determinations presented in Table 3.

TABLE 3—FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR Pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range.	Final Listing, Threatened	74 FR 52013–52064
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered.	Notice of 90-day Petition Finding, Not Substantial.	74 FR 55177–55180
10/28/2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System.	Notice of Intent to Conduct Status Review.	74 FR 55524–55525

TABLE 3—FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757–56770
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule.	Proposed Listing Threatened	74 FR 56770–56791
11/23/2009	Status Review of Gunnison sage-grouse (*Centrocercus minimus*).	Notice of Intent to Conduct Status Review.	74 FR 61100–61102
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered.	Notice of 12-month Petition Finding, Not warranted.	74 FR 63343–63366
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	74 FR 63337–63343
12/15/2009	90-Day Finding on Petitions To List 9 Species of Mussels From Texas as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	74 FR 66260–66271
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not Substantial & Subtantial.	74 FR 66865–66905
12/17/2009	12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico.	Notice of 12-month Petition Finding, Warranted but Precluded.	74 FR 66937–66950
01/05/2010	Listing Foreign Bird Species in Peru & Bolivia as Endangered Throughout Their Range.	Proposed Listing, Endangered	75 FR 605–649
01/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range.	Proposed Listing, Endangered	75 FR 286–310
01/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, Withdrawal	75 FR 310–316
01/05/2010	Final Rule to List the Galapagos Petrel & Heinroth's Shearwater as Threatened Throughout Their Ranges.	Final Listing, Threatened	75 FR 235–250
01/20/2010	Initiation of Status Review for *Agave eggersiana & Solanum conocarpum*.	Notice of Intent to Conduct Status Review.	75 FR 3190–3191
02/09/2010	12-month Finding on a Petition to List the American Pika as Threatened or Endangered.	Notice of 12-month Petition Finding, Not Warranted.	75 FR 6437–6471
02/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment.	Notice of 12-month Petition Finding, Not Warranted.	75 FR 8601–8621
02/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened.	Withdrawal of Proposed Rule to List.	75 FR 8621–8644
03/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 13068–13071
03/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened.	Notice of 90-day Petition Finding, Not Substantial.	75 FR 13717–13720
03/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 13720–13726
03/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered.	Notice of 12-month Petition Finding, Warranted but Precluded.	75 FR 13910–14014
03/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month Petition Finding, Warranted but Precluded.	75 FR 16050–16065
04/05/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 17062–17070
04/06/2010	12-month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened.	Notice of 12-month Petition Finding, Not Warranted.	75 FR 17352–17363
04/06/2010	90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) & a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Not Substantial.	75 FR 17363–17367
04/07/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range.	Notice of 12-month Petition Finding, Warranted but Precluded.	75 FR 17667–17680
04/13/2010	Determination of Endangered Status for 48 Species on Kauai & Designation of Critical Habitat.	Final Listing, Endangered	75 FR 18959–19165
04/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States.	Notice of Initiation of Status Review.	75 FR 19591–19592
04/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat.	Notice of 12-month Petition Finding, Not Warranted.	75 FR 19592–19607

TABLE 3—FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
04/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 19925–19935
04/20/2010	Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus*).	Notice of Initiation of Status Review.	75 FR 20547–20548
04/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 21568–21571
04/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered.	Notice of 12-month Petition Finding, Not Warranted.	75 FR 22012–22025
04/27/2010	90-day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 22063–22070
05/04/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 23654–23663
6/1/2010	90-Day Finding on a Petition To List *Castanea pumila* var. *ozarkensis*.	Notice of 90-day Petition Finding, Substantial.	75 FR 30313–30318
6/1/2010	12-month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened.	Notice of 12-month Petition Finding, Not warranted.	75 FR 30338–30363
6/9/2010	90–Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 32728–32734
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 34077–34088
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 35398–35424
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 35746–35751
6/23/2010	Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range.	Proposed Listing, Endangered; Proposed Listing, Threatened.	75 FR 35721–35746
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges.	Final Listing, Endangered	75 FR 35990–36012
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges.	Proposed Listing, Endangered	75 FR 36035–36057
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing, Threatened.	75 FR 37353–37358
7/20/2010	90-Day Finding on a Petition to List *Pinus albicaulis* (Whitebark Pine) as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 42033–42040
7/20/2010	12-Month Finding on a Petition to List the Amargosa Toad as Threatened or Endangered.	Notice of 12-month Petition Finding, Not warranted.	75 FR 42040–42054
7/20/2010	90–Day Finding on a Petition to List the Giant Palouse Earthworm (*Driloleirus americanus*) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 42059–42066
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule.	Final Listing, Endangered	75 FR 43844–43853
7/27/2010	Final Rule to List the Medium Tree-Finch (*Camarhynchus pauper*) as Endangered Throughout Its Range.	Final Listing, Endangered	75 FR 43853–43864
8/3/2010	Determination of Threatened Status for Five Penguin Species.	Final Listing, Threatened	75 FR 45497–45527
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 46894–46898
8/10/2010	90-Day Finding on a Petition to List *Arctostaphylos franciscana* as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 48294–48298
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range.	Final Listing, Endangered	75 FR 50813–50842
8/17/2010	90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 50739–50742
8/24/2010	90-Day Finding on a Petition to List the Oklahoma Grass Pink Orchid as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 51969–51974
9/1/2010	12-Month Finding on a Petition to List the White-Sided Jackrabbit as Threatened or Endangered.	Notice of 12-month Petition Finding, Not warranted.	75 FR 53615–53629
9/8/2010	Proposed Rule To List the Ozark Hellbender Salamander as Endangered.	Proposed Listing, Endangered	75 FR 54561–54579

TABLE 3—FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
9/8/2010	Revised 12-Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 54707–54753
9/9/2010	12-Month Finding on a Petition to List the Jemez Mountains Salamander (*Plethodon neomexicanus*) as Endangered or Threatened with Critical Habitat.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 54822–54845
9/15/2010	12-Month Finding on a Petition to List Sprague's Pipit as Endangered or Threatened Throughout Its Range.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 56028–56050
9/22/2010	12-Month Finding on a Petition to List *Agave eggersiana* (no common name) as Endangered.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 57720–57734
9/28/2010	Determination of Endangered Status for the African Penguin.	Final Listing, Endangered	75 FR 59645–59656
9/28/2010	Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 59803–59863
9/30/2010	12-Month Finding on a Petition to List the Pygmy Rabbit as Endangered or Threatened.	Notice of 12-month Petition Finding, Not warranted.	75 FR 60515–60561
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing, Endangered	75 FR 61664–61690
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month Petition Finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting).	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing, Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing, Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month Petition Finding, Warranted but precluded.	75 FR 67925–67944

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

TABLE 4—ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement:	
6 Birds from Eurasia	Final listing determination.
Flat-tailed horned lizard	Final listing determination.
Mountain plover [4]	Final listing determination.
6 Birds from Peru	Proposed listing determination.
Sacramento splittail	12-month petition finding.
Pacific walrus	12-month petition finding.
Wolverine	12-month petition finding.
Solanum conocarpum	12-month petition finding.
Desert tortoise—Sonoran population	12-month petition finding.
Thorne's Hairstreak butterfly [3]	12-month petition finding.
Hermes copper butterfly [3]	12-month petition finding.
Utah prairie dog (uplisting)	90-day petition finding.
Actions with Statutory Deadlines:	
Casey's june beetle	Final listing determination.
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination.
7 Bird species from Brazil	Final listing determination.
Southern rockhopper penguin—Campbell Plateau population	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace).	Final listing determination.
Salmon crested cockatoo	Proposed listing determination.

TABLE 4—ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
CA golden trout	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding.
Dusky tree vole	12-month petition finding.
3 MT invertebrates (mist forestfly (*Lednia tumana*), *Oreohelix* sp.3, *Oreohelix* sp. 31) from 206 species petition.	12-month petition finding.
5 UT plants (*Astragalus hamiltonii, Eriogonum soredium, Lepidium ostleri, Penstemon flowersii, Trifolium friscanum*) from 206 species petition.	12-month petition finding.
2 CO plants (*Astragalus microcymbus, Astragalus schmolliae*) from 206 species petition	12-month petition finding.
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere (Arabis) pusilla, Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition)	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Wrights marsh thistle	12-month petition finding.
67 of 475 southwest species	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition)	12-month petition finding.
Rattlesnake-master borer moth (from 475 species petition)	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Berry Cave salamander [1]	12-month petition finding.
Striped Newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Puerto Rico Harlequin Butterfly	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
Smooth-billed ani [1]	90-day petition finding.
Bay Springs salamander [1]	90-day petition finding.
32 species of snails and slugs [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Red knot *roselaari* subspecies	90-day petition finding.
Peary caribou	90-day petition finding.
Plains bison	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
Bay skipper	90-day petition finding.
Unsilvered fritillary	90-day petition finding.
Texas kangaroo rat	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler	90-day petition finding.
Sand-verbena moth	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly) [4]	90-day petition finding.
American eel [4]	90-day petition finding.
Gila monster (Utah population) [4]	90-day petition finding.
Arapahoe snowfly [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
Aztec gilia [5]	90-day petition finding.

TABLE 4—ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Coleman's coral-root (*Hexalectris colemanii*) [5]	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.
High-Priority Listing Actions [3]:	
19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9).	Proposed listing.
19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Dune sagebrush lizard (formerly Sand dune lizard) [3] (LPN = 2)	Proposed listing.
2 Arizona springsnails [2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing.
New Mexico springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
2 mussels [2] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing.
2 mussels [2] (sheepnose (LPN = 2), spectaclecase (LPN = 4))	Proposed listing.
Altamaha spinymussel [2] (LPN = 2)	Proposed listing.
8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)).	Proposed listing.
Umtanum buckwheat (LPN = 2) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Miami blue (LPN = 3) [3]	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3].	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) [3].	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2)) [3].	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
Kittlitz's murrelet (LPN = 2) [5]	Proposed listing.
Umtanum buckwheat (LPN = 2) [3]	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—5 plants & 3 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
Oregon spotted frog (LPN = 2) [5]	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The North American wolverine in the contiguous United States will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this species as new information becomes available. Continuing review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for the North American wolverine in the contiguous United States will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of all references cited is available upon request from the Supervisor at the U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**).

Author

The primary authors of this notice are the staff members of the Montana Field Office (see **ADDRESSES**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 2010.

Paul R. Schmidt,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–30573 Filed 12–13–10; 8:45 am]

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Federal Register

Tuesday,
December 14, 2010

Part IV

Department of Homeland Security

Coast Guard

46 CFR Parts 71, 114, et al.
Passenger Weight and Inspected Vessel Stability Requirements; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 71, 114, 115, 122, 170, 171, 172, 174, 175, 176, 178, 179, and 185

[Docket No. USCG–2007–0030]

RIN 1625–AB20

Passenger Weight and Inspected Vessel Stability Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations governing the maximum weight and number of passengers that may safely be permitted on board a vessel and other stability regulations, including increasing the Assumed Average Weight per Person (AAWPP) to 185 lb. The Coast Guard determines the maximum number of persons permitted on a vessel by several factors, including an assumed average weight for each passenger, which is in need of an update because the average American weighs significantly more than the assumed weight per person utilized in current regulations. Updating regulations to more accurately reflect today's average weight per person will maintain intended safety levels by accounting for this weight increase. The Coast Guard is also taking this opportunity to improve and update intact stability and subdivision and damage stability regulations.

DATES: This final rule is effective March 14, 2011, except for the amendments to 46 CFR 170.120 and 178.210 that have not yet been approved by the Office of Management and Budget (OMB). The Coast Guard will publish a document in the **Federal Register** announcing the date when those amendments become effective. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 14, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–0030 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2007–0030 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. William Peters, U.S. Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), telephone 202–372–1371. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Abbreviations

2008 IS Code—International Code on Intact Stability, 2008
AAWPP—Assumed Average Weight per Person
ABS—American Bureau of Shipping
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
COI—Certificate of Inspection
DHS—Department of Homeland Security
DOT—Department of Transportation
EO—Executive Order
FAA—Federal Aviation Administration
FR—Federal Register
GM—Metacentric height
LBP—Length Between Perpendiculars
LCG—Longitudinal Center of Gravity
MARPOL—International Convention for the Prevention of Pollution from Ships
MSC—Marine Safety Center
MISLE—Marine Information for Safety and Law Enforcement
NAICS—North American Industry Classification System
NCHS—National Center for Health Statistics
NEPA—National Environmental Policy Act of 1969
NHANES—National Health and Nutrition Examination Survey
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
OCMI—Officer in Charge, Marine Inspection
OMB—Office of Management and Budget
PSSC—Passenger Ship Safety Certificate
PSST—Pontoon Simplified Stability Proof Test
SBA—United States Small Business Administration
SNAME—The Society of Naval Architects and Marine Engineers
SOLAS—International Convention for the Safety of Life at Sea
SST—Simplified Stability Proof Test
U.S.C.—United States Code
VCG—Vertical Center of Gravity

II. List of Terms

The following definitions are intended only as an aid to readers of this rulemaking, and are not defined in regulations. They are not intended to replace or otherwise change regulatory provisions in any way. Readers who are unfamiliar with stability or marine inspection terms are encouraged to access the definitions contained in regulations at 46 CFR 170.055 and 175.400, which are available to the public on line from the National Archives and Records Administration at, respectively, *http://edocket.access.gpo.gov/cfr_2009/octqtr/pdf/46cfr170.055.pdf* and *http://edocket.access.gpo.gov/cfr_2009/octqtr/pdf/46cfr175.400.pdf.*

Angle of heel means the angle from the upright to the vessel's centerline when the vessel is inclined.

Deadweight survey: See *lightweight survey.*

Freeboard means the vertical distance from the deck edge to the waterline.

Heel is the degree to which a ship inclines transversely as a result of an applied force or moment.

Heeling moment is the product of a force acting through a distance that causes a vessel to roll or heel to one side.

Inclining or *stability test* is a methodical process that involves moving a series of known weights on a vessel and measuring the resulting change in the equilibrium heel angle to determine the vessel's stability characteristics.

Intact stability generally means the stability properties of a vessel without any damage to its watertight buoyant envelope.

Lightweight survey is a part of the stability test that is used to determine the lightship displacement and longitudinal center of gravity (LCG). Often referred to as a *deadweight survey.*

Longitudinal center of gravity (LCG) means the location along the vessel's length at which the total weight of the vessel may be assumed to act.

Operator means the person or business entity who provides operational instructions to and receives reports from the master of the vessel and is responsible for the vessel's

maintenance and repair, crewing, and other operations. An operator may also be a vessel's master.

Owner means the person or entity holding title to the vessel.

Passenger heel is the result of the heeling moment that occurs when passengers move to one side of the vessel's centerline, causing the vessel to heel.

Pontoon vessel means any vessel having two or more watertight hulls, which are structurally independent from the vessel's deck or cross structure.

Subdivision and damage stability means the stability characteristics of a vessel when damaged, generally focusing on flooding of watertight compartments.

Vertical center of gravity (VCG) means the height above the keel at which the total weight of the vessel may be assumed to act.

Vessel stability refers to the tendency of a ship to remain upright or return to upright when inclined by forces such as those caused by the action of waves, wind or passenger movement.

Wind heel refers to the result of the wind acting on the lateral area of the vessel above the waterline, causing the vessel to heel.

III. Regulatory History

On August 20, 2008, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Passenger Weight and Inspected Vessel Stability Requirements" in the **Federal Register** (73 FR 49243). The NPRM followed notices to the public, published in the **Federal Register** on April 26, 2006 (71 FR 24732) and November 2, 2006 (71 FR 64546), recommending voluntary interim measures for passenger vessel owners and operators to follow while the Coast Guard studied the issue of increased passenger weight. In summary, those voluntary measures advised owners and operators of pontoon vessels and other small passenger vessels to (1) more stringently monitor wind and wave conditions prior to departure, and (2) begin using 185 pounds as the new AAWPP when calculating passenger capacity. A discussion of how 185 pounds was chosen is contained in the April 26, 2006 notice and in the discussion of § 170.090 in this preamble.

Approximately 108 commenters responded to those notices and 66 commenters responded to the NPRM. All comments are posted for public view at *http://www.regulations.gov* under docket number USCG–2007–0030, and can be viewed by following the directions in the **ADDRESSES** section of this preamble. No public meeting was requested and none was held.

The Coast Guard considered the comments submitted in response to the two 2006 notices in the drafting of both the NPRM and in this final rule. After publication of the NPRM, many of the comments on the 2006 notices became moot. Those comments to the notices that remain pertinent are repeated by later comments on the NPRM and are addressed in the Discussion of Comments and Changes section of this preamble, although they are not included in the comment count for each section.

IV. Background

A number of different design factors, including stability, limit the total number of persons permitted on a passenger vessel inspected and certificated under 46 CFR subchapters H, K, or T. Stability requirements include intact stability for almost all vessels, as well as subdivision and damage stability, generally, for any vessel carrying more than 49 passengers and all passenger vessels over 65 ft in length. We intend this rule to clarify and update both intact stability regulations and subdivision and damage stability regulations, primarily related to the carriage of passengers for hire, and to update the weight per person used for all vessels. Further, the intent of this rulemaking is to prevent passenger vessels from operating in overloaded conditions. Although this final rule will become effective 90 days from today on March 14, 2011, the new Assumed Average Weight per Person (AAWPP) of 185 lb will not become effective until December 1, 2011.

A vessel's stability information, including any restrictions on route and the number of persons permitted, is provided to the vessel operator most often in the form of a stability letter issued by the Coast Guard's Marine Safety Center (MSC), and/or a Coast Guard Certificate of Inspection (COI) issued by the Officer in Charge, Marine Inspection (OCMI). When both are provided, the more conservative restrictions govern because, in that case, the regulations require the operator to comply with both (46 CFR 78.17–22, 122.315, 185.315). This stability information is issued after the vessel's stability has been evaluated.

For vessels greater than 65 ft in length, stability is evaluated through detailed design calculations, which are submitted to the MSC and identify the vessel's stability-related limitations. This process, which takes into account the assumed total weight of persons on board, is described in 46 CFR, subchapter S, parts 170 and 171.

Vessels not greater than 65 feet in length and carrying less than 150 passengers normally undergo a performance test conducted in the presence of the Marine Inspector, instead of submitting design stability calculations to the MSC (46 CFR part 178). Vessels in this category consist of monohull vessels, powered catamarans carrying less than 49 passengers, and pontoon vessels operating on protected waters. This performance test, which also takes into account the assumed total weight of persons on board, is either a simplified stability proof test (SST) or, if the vessel is a pontoon vessel, a pontoon simplified stability proof test (PSST). The SST is used to evaluate the stability of monohull vessels and powered catamarans carrying less than 49 passengers, and the PSST is used to evaluate the stability of pontoon vessels operating on protected waters. Further, simplified subdivision calculations may be necessary for some vessels not greater than 65 feet in length.

Vessels to which these tests do not apply, or vessels that do not pass these tests, may need to be evaluated through design calculations to show that they meet minimum intact stability requirements. Alternatively, a vessel might satisfy stability requirements by complying with a standard acceptable to the Marine Safety Center. Finally, where stability may be safely assessed through other means, stability tests may be waived.

Vessel stability calculations and stability proof tests employ a number of assumptions and approximations to account for factors ranging from uncertainties associated with calculation procedures to variations in operating conditions. When originally developed, regulatory stability standards included an inherent margin of safety to account for these uncertainties and the current safety record of the passenger vessel industry reflects the validity of this approach.

The assumed weight of passengers is a component of stability calculations and stability proof tests and, as such, directly impacts the resulting margin of safety. Over time, as passenger weight increases, the inherent margin of safety decreases across all measures of stability, including vertical center of gravity, freeboard and passenger heeling moment, increasing the risk of stability problems. As described in the NPRM, the primary goal of the rule is to restore the margin of safety inherent in the vessel stability requirements that has

been eroded by increased passenger weight.

Section 178.330 of Title 46 of the CFR currently specifies that the AAWPP is 160 pounds, except that vessels operating exclusively on protected waters and carrying a mix of men, women, and children may use an AAWPP of 140 pounds per person. Section 171.080 uses a weight of 75 kilograms (165 pounds) per person for damage stability calculations. These weights were established in the 1960s, and have not been updated since.

In a report issued in October 2004, the Centers for Disease Control and Prevention (CDC) concluded that the average weight of an individual in the United States has increased significantly in the last 40 years, with the greatest increase seen in adults.[1]

On December 20, 2004, the National Transportation Safety Board (NTSB) issued Safety Recommendation M–04–04 (available in the docket), which included findings that the current 140 pound per person weight allowance for operations on protected waters does not reflect actual loading conditions. The NTSB recommended that the Coast Guard revise its guidance to OCMIs for determining the maximum passenger capacity of small passenger pontoon vessels either by: Dividing the vessel's assumed total weight of persons on board (total test weight) by 174 lb per person; or, restricting the actual cumulative weight of passengers and crew to the vessel's total test weight. In correspondence to the NTSB dated April 7, 2005 (available in the docket), the Coast Guard concurred that the average weight per person used in SSTs needed to be updated, and noted that an internal Coast Guard study identified the same issue. That study, which is entitled *Study of Effects on Commercial Passenger Vessels Due to Weight Standards,* is available in the docket.

Additionally, this rulemaking presents an opportunity to identify where corrections, clarifications, and updates need to be made to existing regulations. The Coast Guard discussed these changes, which include changes in international requirements, in the NPRM preamble, under "Corrections, Clarifications, and Updates."

V. Discussion of Comments and Changes

The Coast Guard received no comments on the following sections of the proposed rule, and will adopt them as proposed in the NPRM: §§ 71.75–1, 71.75–5, 115.112, 115.900, 115.910, 115.920, 115.930, 170.070, 170.075, 170.080, 170.085, 170.093, 170.100, 170.105, 170.120, 170.135, 170.160, 170.173, 170.175, 170.180, 170.185, 170.190, 170.235, 171.060, 171.065, 171.075, 171.082, 172.020, 172.070, 176.112, 176.900, 176.910, 176.920, 176.930, 178.115, and 179.220, as well as part 170 subpart E and part 171 subpart headings.

Section 71.25–50. Stability Verification Annual Stability Information Verification

We received 27 comments concerning the proposed annual stability information verification in §§ 71.25–50(a), 115.505(a), and 176.505(a).

A majority of commenters expressed concern that the proposed regulations would be too costly and unjustified by risk. Eight commenters felt that simple calculations or loading marks should be an option that could be used in lieu of stability testing for verification, but one commenter said that draft marks would be very unreliable for passenger vessels less than 65 feet in length. Two commenters opined that all passenger vessels without a stability letter or other similar guidance should have stability tests conducted. Many commenters strongly preferred a risk-based method of determining the need for stability verification instead of the proposed approach. One commenter viewed the proposed annual stability information verification and the 10-year verification as redundant, and one supported adoption of the changes as proposed.

As we explained in the NPRM, the provisions in proposed §§ 71.25–50(a), 115.505(a) and 176.505(a) were intended to help ensure that the current assumed weight per person would be properly considered, and that vessels maintain safety levels after initial certification. Further, the provisions were intended to ensure not only that the proper weight standard had been applied to a particular vessel, but also that the Master is familiar with the stability-related operating restrictions, and has a reasonable means of determining if the vessel is in compliance at any given time.

After additional consideration, however, we determined that additional regulatory authority in this area is unnecessary because existing 46 CFR 71.17–22, 122.315, and 185.315 require masters to ensure their vessels comply with all applicable stability requirements at all times necessary to assure the safety of the vessel.

These existing sections provide the Coast Guard with the broad authority and necessary flexibility to verify vessel compliance with applicable stability requirements. Accordingly, we have removed proposed §§ 71.25–50(a), 115.505(a), and 176.505(a) from the final rule.

Verification of 10-Year Lightship Stability

We received 42 comments on the proposed 10-year stability verification in §§ 71.25–50(b), 115.505(b) and 176.505(b). All commenters, except one, opposed this part of the proposed rule for several reasons: Commenters expected it to be prohibitively expensive in some cases; the verification was perceived to be redundant with the annual stability information verification; commenters believed there is low risk of stability casualties associated with increased vessel weight; and, no study has been performed that identifies the degree to which passenger vessels tend to get heavier over time.

Five commenters suggested using load marks to verify that vessels are not overloaded and to check that the vessel's weight has not changed substantially. Fourteen commenters challenged the justification for the proposed requirement because of perceived low safety risk associated with vessel weight change. Sixteen commenters urged use of a risk-based process to trigger lightship verifications.

We have observed that the lightweight of some passenger vessels has increased substantially since the initial lightship characteristics were determined at the time of construction. This undocumented weight growth, caused by unapproved additions and modifications to the vessel, or by carriage of additional deadweight, could cause a vessel to exceed its authorized draft when loaded with the authorized complement of passengers. However, no unbiased study has been performed of the U.S. flag inspected passenger vessel fleet to assess the degree to which the lightweight of these vessels has increased, or identify segments of the fleet, if any, which have experienced significant weight growth. For these reasons, the Coast Guard agrees that further study is necessary before determining whether promulgation of additional regulations applicable to the fleet is necessary and we have removed the 10-year lightship verification provisions in proposed §§ 71.25–50, 115.505, and 176.505 from this final rule.

Baseline stability data, though, can and should be gathered as documenting this information will enable owners, operators and the Coast Guard to

[1] The report, *Advance Data From Vital Health Statistics Mean Body Weight, Height, and Body Mass Index, United States 1960–2002,* No. 347, October 27, 2004, is available in the docket.

monitor future growth in vessel weight. Accordingly, the Coast Guard intends to improve internal processes to accomplish this goal.

Section 71.50–1. Definitions Relating to Hull Examination

One commenter inquired about the necessity of verifying draft marks at each drydock examination if the draft marks are already permanent and properly located.

The datum used for draft marks is often the lowest navigational projection and may not have any relation to the drafts referred to in the stability information. The Coast Guard intends this part of the rule to ensure that draft marks, where used to verify compliance with stability requirements, were properly referenced in the stability guidance. Detailed marking drawings enable masters to properly associate draft marks with the draft or freeboard restrictions provided in the stability letter. The Coast Guard agrees that verification of draft marks does not need to be repeated at each drydock examination, and we revised §§ 71.50–1, 115.610, and 176.610 accordingly. Further, because the stability verification sections contained in the NPRM have been removed from this final rule, we have removed the proposed requirement to confirm that draft marks correspond with approved stability guidance.

Section 114.400 Definitions of Terms Used in This Subchapter

Although we received no comments on this section, we added a definition of "variable load" to improve its consistency and retain original intent.

Section 115.110. Routes Permitted

We received two comments concerning proposed changes to "Routes permitted." We proposed adding a new subparagraph to this section and § 176.110 explicitly calling attention to the OCMI's prerogative to consider a vessel's suitability for use in all environmental conditions.

One commenter stated that strong wind and waves challenge pontoon vessels to a greater degree than they do monohull vessels, and therefore the OCMI should place specific environmental limitations on certificates of inspection (COIs) for all such vessels. The Coast Guard disagrees. As we explained in the NPRM, it is not possible to accurately enumerate all combinations of safe environmental conditions on a given passenger vessel's COI. Further, limiting winds, speeds, and wave heights alone cannot adequately define a safe operating envelope for any vessel. This regulation, however, does not preclude the OCMI from placing specific restrictions on any vessel's COI if clearly warranted for that vessel and route. Ultimately, the master must be responsible for determining whether or not to embark upon or continue a voyage or to seek shelter based on consideration of all relevant factors including prevailing and forecasted environmental conditions.

Another commenter recommended that OCMIs should have the option to consider the experience of the passengers being carried. In support of this suggestion, the commenter stated that his vessel does not carry school groups or tourists but rather boat owners and their guests, who are generally familiar with vessel operating characteristics. We do not agree because passenger experience can neither enhance nor compensate for a domestic passenger vessel's operating characteristics or design limitations in a given environment, nor does such experience relieve a master from the obligation to exercise due diligence in operational decisions.

Section 115.505. Stability Verification

Please see the discussion of comments concerning the proposed annual stability information and ten year lightship verifications in § 71.25–50 of this preamble.

Section 115.610. Scope of Drydock and Internal Structural Examinations

Please see the discussion of comments concerning draft mark verification at drydock examinations in § 71.50–1 of this preamble.

Section 122.304. Navigation Underway

We received three comments concerning changes to the navigation underway regulations in this section and § 185.304. The Coast Guard proposed adding forecasted visibility and weather conditions to the list of factors to which vessel masters should give special attention in both sections, and a requirement in § 185.304 for vessels not greater than 65 feet in length to have means to obtain or monitor the latest marine broadcast.

Two commenters stated that new regulations are not necessary because their companies have always taken additional safety precautions in the event of rough seas or inclement weather, and also because a vessel's master knows it is prudent to check weather forecasts. We agree that giving special attention to environmental conditions is part of the due diligence required of a master prior to beginning a voyage. The changes we are making to these sections are consistent with these responsibilities, and do not limit the exercise of a master's discretion in this area. Further, stating these responsibilities explicitly in regulations reinforces the need to monitor and give due consideration to forecasted conditions so appropriate decisions can be made in the face of changing environmental conditions.

One commenter stated this part of the proposed rule is nothing more than good marine practice since it would require the operator only to obtain the latest marine weather forecast and plan voyages accordingly. While we agree this is good marine practice, codifying it here reinforces its importance.

The same commenter also objected to continued use of "reasonable operating conditions" on a pontoon vessel's COI, instead of providing definitive operational guidance to each vessel's master by listing specific environmental limitations on the COI. The commenter believed this use of "reasonable operating conditions" may place passengers at unnecessary risk and recommended listing limiting environmental conditions on the vessel's COI.

In support of this recommendation, the commenter referred to an April 28, 2005 study conducted by a team of Coast Guard members and entitled, *Study on the U.S. Domestic Intact Stability and Subdivision Requirements for Twin Hull Pontoon Passenger Boats Less Than 65 Feet in Length.* That study included a preliminary recommendation that the Coast Guard consider restricting pontoon vessels with a COI based on a pontoon simplified stability test to operating in wind conditions not greater than Beaufort force 4 (16 knots of wind), but acknowledged the ramifications of implementing such guidance were unknown.[2]

After further consideration, and as we previously explained in response to comments on §§ 115.110 and 176.110, limiting environmental conditions on a vessel's COI in the manner suggested would neither be practical nor likely to effectively improve vessel safety. We no longer believe that the recommendation contained in the 2005 study is appropriate, because pontoon vessels come in all sizes, types and seakeeping abilities. An attempt to take a one-size-fits-all approach by specifying limiting environmental conditions for vessel operation, even if applied only to pontoon vessels, is fraught with difficulty and may well have unintended consequences. Many other conditions involving both the vessel and

[2] *Id.* at p. 37.

its environment must be constantly observed, monitored, interpreted and responded to by the master in order to evaluate the advisability of embarking on a voyage, or of continuing on a voyage when conditions progressively deteriorate. Masters are, and remain, responsible for evaluating all relevant factors in order to operate their vessels safely at all times.

Section 122.315. Verification of Vessel Compliance With Applicable Stability Requirements

We received nine comments on this proposed section, all of which related to draft and loading marks. Existing regulations require a vessel master to verify compliance with the stability letter and COI prior to departure. Operators have traditionally verified compliance with the COI by ensuring the count of passengers does not exceed that which is specified, rather than ensuring that the total permitted weight is not exceeded.

To prevent overloading, this final rule requires a master to consider the total weight of passengers and all variable loads prior to getting underway. This can be accomplished through the verification of draft or load marks. Acceptable alternatives include adding the weights or estimated weights of each individual passenger, or multiplying the passenger count by the current AAWPP or another value accepted by the OCMI and representative of the weight of passengers and crew aboard the vessel.

One comment suggested requiring a loading mark on the side of the vessel. The Coast Guard agrees that this is a viable method for many vessels, but also concurs with other commenters that due to inaccuracies involved in reading such marks, this method may only identify gross overloading situations, depending on the size of the vessel and the weather conditions. Because of these limitations, other options are also acceptable, as discussed above.

One comment stated that small passenger vessel masters are not sufficiently trained for stability checks beyond ensuring the passenger count is within the limit on the COI, and that maximum drafts have not been exceeded. This level of training, however, does not preclude masters from complying with this regulation. Possible compliance options include checking draft marks or multiplying the passenger count by the current AAWPP, which are skills a small passenger vessel master should possess.

Four comments objected to using draft marks because environmental factors and mooring arrangements often make the marks difficult to read, which may cause delays in departures. We disagree. Existing regulations take these difficulties into account and require alternative arrangements to determine vessel drafts. Both §§ 122.602 and 185.602 require certain vessels over 65 feet in length to be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined where the draft marks are obscured due to operational constraints or by protrusions.

Two comments expressed concern that small changes in draft could disproportionately affect passenger count, and movement of passengers during loading would make reading draft or loading marks difficult. The Coast Guard recognizes that movement of passengers may inhibit accurate draft or loading mark verification. In these circumstances, where vessels are nearing their maximum allowable drafts and concerns about accuracy exist, operators may wish to employ additional tools to verify compliance as previously discussed.

One comment suggested that the Coast Guard consider options other than checking drafts that an operator may use to verify a vessel is not overloaded. As discussed in the preamble to the NPRM, the Coast Guard agrees. The commenter recommended various methods in three categories: Load marks, weight measurement, and weight estimation. The Coast Guard agrees, that use of the methods proposed by the commenter could satisfy this section of the rule.

The same commenter also proposed the use of several physical methods to measure passenger weight prior to loading. These methods are described in detail in document number USCG–2007–0030–0208.1, which can be viewed; this document is available in the docket by following the directions under the **ADDRESSES** section of this preamble. OCMIs will generally consider physical methods that accurately measure or estimate passenger weight to be acceptable means for satisfying the requirements of this section.

Section 122.602. Hull Markings

We received 12 comments on proposed requirements for vessels that comply with subchapter S to have loading marks or draft marks. This section expands existing applicability of the requirement to have draft marks to passenger vessels less than or equal to 65 ft in length if their stability compliance was determined in accordance with subchapter S instead of a simplified stability test.

Two comments supported requiring loading marks as a means to verify compliance. For the reasons discussed below, we agree.

One commenter stated that draft marks are impractical on smaller vessels and suggested viewing the boot stripe as a means to determine if a vessel is overloaded. The Coast Guard does not agree. In most cases, due to trim restrictions, a vessel's bootstripe is not a sufficiently accurate measure to verify compliance with stability criteria unless it is referenced as a loading mark on a stability letter.

One commenter suggested that load marks be required where draft marks are not measured to a vessel's baseline. The Coast Guard partially agrees in that §§ 115.610 and 176.610 now require any operating restrictions associated with stability information to correspond to draft or loading marks. Draft marks must be shown to be in compliance with those sections, but loading marks are also an acceptable option.

Four comments objected to requiring draft marks because docking arrangements, wakes, and constant waves often make the marks difficult or impossible to read. The Coast Guard acknowledges these conditions often make the use of draft or loading marks difficult, but they do not prevent the need for a draft or loading mark requirement. Existing regulations take these difficulties into account, and permit alternative arrangements to determine vessel drafts. As we discussed in § 122.315 of this preamble, §§ 122.602 and 185.602 currently require certain vessels over 65 feet in length to be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined when the draft marks are obscured due to operational constraints or by protrusions.

Four comments expressed concern over accuracy of draft marks when weight changes lead to draft changes of less than an inch. While use of draft marks or a draft indicating system may not always be the best way to satisfy the requirements and intent of §§ 122.315 and 185.315, it is a valuable tool to assist the master in determining compliance with draft and freeboard restrictions contained in the vessel's stability information. If there is concern about the accuracy of draft readings as a vessel approaches its maximum draft or full load of passengers, operators should employ additional tools to ensure vessels are not overloaded, such as ensuring their assumed weight per person is truly representative of the passengers and crew aboard.

Section 170.001. Applicability

We received no comments on this section, but added the word "Either" after paragraph (a)(1) to improve the clarity of the provision.

Section 170.015. Incorporation by Reference

One commenter recommended leaving year designations out of citations to ASTM standards in this section and suggested the most current version of a standard should be used. The Coast Guard agrees in part and has revised the rule to remove year designations from provisions other than the centralized incorporation by reference (IBR) sections. However, the regulations covering IBR require that we provide the year of each standard incorporated in centralized IBR sections (1 CFR part 51).

Also, when we considered the options available for the incorporation by reference of the new SOLAS subdivision and damage stability requirements contained in chapter II–1, we realized that a consolidated SOLAS text that accurately contains these requirements is not available. Instead, reference to the IMO resolution that adopted the new requirements would be the most direct way to incorporate the new provisions in the final rule. As a result, the incorporation by reference sections and the sections incorporating the new SOLAS requirements have been changed to refer to IMO Resolution MSC.216(82), which contains the full text of SOLAS chapter II–1, parts A, B, B–1, B–2, B–3, and B–4 (sections 170.015, 170.140, 170.248, 171.001, 171.012, 171.080, 174.007, 174.360, 179.15, and 179.212).

Section 170.055. Definitions Concerning a Vessel

This section has been modified to include a definition of Assumed Average Weight Per Person (AAWPP), which is discussed in § 170.090, and to correct a deficiency in the definition of "lightweight". When the Coast Guard proposed the creation of subchapter S in 1982, the NPRM indicated the definition of "lightweight" was to be the same as that in 33 CFR 157.03.[3] However, the words "the displacement of a vessel" were inadvertently omitted from the definition in the final rule.[4] Because the definition of this term should be the same in both titles of the CFR, this final rule corrects the earlier omission.

Since the Coast Guard received no comments on this section as published in the NPRM, the proposed definition of "constructed" has been adopted in this final rule.

Section 170.090. Calculations

Discussion of comments in this section has been divided into subsections on the increase in the AAWPP, the new AAWPP effective date, the process for documenting compliance, and updates to the AAWPP.

Increased Assumed Weight per Person

The Coast Guard received 55 comments on the proposal to increase the assumed weight per person to 185 lb. Of those, 40 supported using 185 lb as the new Assumed Average Weight per Person (AAWPP). We agree, and this final rule contains an AAWPP of 185 lb.

Two commenters advocated an AAWPP of 187 lb because the most recent Centers for Disease Control and Prevention (CDC) report, which was issued after publication of the NPRM, showed an increase in average American weight of approximately two lb since the previous report. Using the AAWPP proposed in the NPRM, however, is strongly preferred for the following reasons:

The Coast Guard understands the passenger vessel industry has been, and is, planning for implementation of a 185 lb AAWPP, and increasing that number at this time would disrupt implementation of what is already a challenging transition. If the marginal safety improvement to be realized from a further two lb increase was significant, the cost-benefit analysis of these alternatives might be different. But it is not—a two lb increase from 185 is approximately 1%, which would produce a negligible draft change even on a small vessel. This very small additional improvement in stability is an insufficient reason to disrupt business plans and vessel modifications essential to the implementation of this final rule. Public safety is not enhanced when implementation of the change from the obsolete assumed weight of 140 lb to a weight closely approximating the actual average American weight is delayed by moving the target at this late date to incorporate relatively insignificant changes.

Additionally, as is also discussed under AAWPP updates, the AAWPP will not be updated until the procedure in § 170.090 produces a value at least 10 lb greater than the effective AAWPP. If current trends in the growth of Americans' weight continue, the next increase in the AAWPP would occur sooner if 185 lb is used in the regulation at this point than it would if 187 lb is used. Although a minor difference exists between the new AAWPP and the body weight data in the most current NHANES report, that difference will be eliminated when the 10 lb stability risk threshold is met and the AAWPP is next updated.

Several commenters also questioned why the Coast Guard did not include different AAWPPs for protected and unprotected waters in the regulation. Many were also concerned that a single AAWPP would not adequately account for passenger groups with a high percentage of children. Others recommended that stability guidance simply refer to the total weight of people a vessel would be permitted to carry and that the master would then have the responsibility to limit loading to that number by weighing everyone on board, using load lines or a draft indicating system or, as is possible with amphibious craft, weighing the vessel.

Several of these commenters also recommended that OCMIs be vested with authority to take route, passenger group composition, and other relevant circumstances into account when assessing vessel stability. The Coast Guard agrees, and notes that OCMIs currently have the authority and responsibility to take all relevant factors into account when evaluating vessel stability.

With regard to the question of preserving a separate, lower AAWPP for vessels operating exclusively on protected waters, and carrying a passenger load consisting of men, women and children, the Coast Guard does not concur. The weight of an average American is independent of the route, and existing regulations already include reduced stability requirements for protected routes. Additionally, as explained in the NPRM, this rule incorporates provisions that allow the OCMI to consider and approve another assumed weight per person based on an alternative mix of passengers.

One of the more important parts of this rule is the principle, embodied in § 170.090(c), that "[t]he assumed weight per person for calculations showing compliance with this subchapter must be representative of the passengers and crew aboard the vessel while engaged in the service intended." Although 185 lb will be the minimum default AAWPP until later updated, the Coast Guard emphasizes that the same paragraph also provides the OCMI the authority to permit the use of other values when deemed appropriate.

This principle, and the authority explicitly granted to OCMIs to assure passenger vessel stability in accordance with that principle rather than by rigidly applying a single AAWPP

[3] 47 FR 35090 at 35092 (Aug. 12, 1982).

[4] 48 FR 50996 at 51011 (Nov. 4, 1983).

regardless of circumstances, should result in reasonable assumptions regarding the average weight of people aboard each vessel. Where an owner or operator has a passenger group with a large number of children, or can show some other reason that applying the AAWPP does not result in a load limit representative of the passengers and crew aboard the vessel while engaged in the service intended, the OCMI has the authority to approve use of an average weight less than the AAWPP that more accurately represents the actual passenger load on a case-by-case basis.

Three commenters stated that increasing the AAWPP to more closely match the average American's weight will produce no improvement in safety. We disagree. The 45-lb difference between the current AAWPP for vessels operating on protected waters with a mixed passenger load and the weight of an average American is likely to result in a 24% underestimation of passenger load. Using an AAWPP that is as close as practicable to the actual average passenger weight is the most effective way to protect against vessel overloading and to restore the margin of safety intended in existing stability criteria.

One commenter was concerned that the proposed increase in the AAWPP might be inconsistent with the International Maritime Organization's (IMO) standard assumed passenger weight. The 1974 International Convention for the Safety of Life at Sea (SOLAS) used an assumed weight per person, set in 1990, of at least 75 kg (approximately 165 lb) for damage stability calculations.[5] Additionally, the IMO Intact Stability Code uses an assumed passenger weight, established in 1963, of at least 75 kg for intact stability calculations.[6]

Although this final rule establishes an AAWPP greater than the minimum international requirements, the higher AAWPP used in loading calculations is necessary for safety reasons because the AAWPP more closely approximates the actual average American weight. While the AAWPP is based on recent CDC studies of the US population, the current international standards were set in 1990 and 1963 respectively and based on worldwide data not representative of the U.S. population. Rather than being inconsistent with international standards, the AAWPP complies with those standards by exceeding their minimum requirements.

One commenter stated the NPRM's use of a single AAWPP would be inconsistent with an assumption in the U.S. Coast Guard *Study of Effects on Commercial Passenger Vessels Due to Increasing Passenger Weight Standards in the Code of Federal Regulations,* dated May 19, 2005. The Coast Guard disagrees. The study was conducted based on the assumption, among others, that "[t]he current method of reducing passenger weight for vessels operating on protected waters and carrying men, women and children was not used." Further, the study was not referring to the NPRM, which post-dated the study.[7]

The same commenter pointed out that the study recommended "the Coast Guard should investigate whether vessels that operate solely on protected waters should be subject to a reduction factor based on operational constraints which may be stipulated in the Certificate of Inspection."[8] As the study itself stated, "[t]he results of this initial analysis are preliminary* * *." Additionally, after further consideration, the Coast Guard concluded that passenger vessel stability assessments would be conducted more efficiently and accurately by adopting a single AAWPP and relying to an extent, as we have in the past, on OCMIs to take varying factors into account, instead of complicating the regulations with exceptions that may be overly broad or not well tailored to realities in the field.

One commenter questioned the basis for a clothing allowance of 7.5 lb, particularly in view of seasonal differences. Although we recognize seasonal and regional variations in clothing weight, we determined that 7.5 lb is a reasonable approximation of the average weight of clothing based on the FAA Advisory Circular 120–27E, paragraph 210, dated June 10, 2005.

Two commenters supported an increase in the AAWPP, but expected the increase to cause an adverse financial impact. Please see the Regulatory Assessment in part VI of this preamble for a discussion of the expected costs associated with this rule. Although the rule will have some economic impact on some vessels, use of a realistic AAWPP is essential to prevent overloading and protect the public.

One comment pointed out that in proposed § 178.330(b), in the formula for Mp, units for the term "W" should be in pounds (kilograms). We agree and have corrected the final rule.

The Initial AAWPP Effective Date

We received 31 comments on the length of a phase-in period for the AAWPP. This period would determine the date by which each vessel would have to comply with the final rule and subsequent AAWPP updates. As proposed in the NPRM, the new AAWPP would become effective 90 days after publication of the final rule, and vessel owners and operators would be required to demonstrate compliance at the next annual inspection. Only one commenter supported these proposals.

Several commenters supported differing time periods for phasing in the requirement for existing vessels to comply with the new weight standard. Seventeen advocated five to five and a half years. One recommended a four year period. Two proposed a two year period, and three supported a one year phase-in, one of which suggested one operating season as an alternative. Several advocated using risk-based methods to address the highest risk vessels first. Nine comments did not propose a phase-in period, but agreed with the majority of other comments that it would be infeasible for all operators to assess stability and for the Coast Guard to revise stability letters or amend Certificates of Inspection associated with implementing a new AAWPP within a year after publication of the final rule.

Several commenters made the point that business plans, booked charters, ticket prices, rate settings, and interactions with government agencies other than the Coast Guard can be affected by changes in passenger capacity. One commenter noted that group charters are reserved up to a year in advance. The Coast Guard agrees that the need to bring the AAWPP up to date must be balanced with the practical effects of implementing the change on vessel owners and operators. For this reason, the Coast Guard does not agree with the commenter who advocated implementing the new AAWPP immediately.

Making the initial AAWPP effective on December 1, 2011 will provide owners and operators an operating season in which to plan, allocate revenues and costs, and prepare for the new requirements. Further, nearly all commenters on this subject emphasized that failure to afford a reasonable implementation period would cause them financial hardship. For these reasons, a period of approximately one year leading to the AAWPP effective date represents a necessary balance

[5] SOLAS, Ch. II–1, Regulation 7–2, para. 4.1.1; International Maritime Organization (IMO) Maritime Safety Committee (MSC) Resolution MSC.194(80), Annex 2.

[6] International Code on Intact Stability (IS Code), para. 3.1.1.1; IMO MSC Resolution MSC.267(85), Annex 2.

[7] *Id.* at p. 4.

[8] *Id.* at p. 19.

between implementing a new AAWPP as quickly as possible to protect public safety, and providing a reasonable amount of time for owners and operators to adjust their operations. All subsequent AAWPP updates will become effective one calendar year after public notice.

Many commenters also maintained that at least five years would be necessary to assess stability and accomplish the documentation associated with implementing a new AAWPP throughout the affected fleet because of an insufficient supply of naval architects and Coast Guard personnel. We agree that the rule, as proposed, would have required more than a year to fully implement. However, as discussed in § 71.25–50 of this preamble, provisions in the NPRM proposing annual stability information verifications have not been included in this final rule. Additionally, the Coast Guard's regulatory analysis and studies show that some vessels may only need an update or revision of their stability letters and COIs, and may not require a stability test as a result of this rule. Further, as we discuss in greater detail below in the section on documenting compliance, many owners and operators will be permitted to certify compliance with stability requirements for a total weight of passengers and crew associated with the new AAWPP and will not need new documentation before operating in accordance with this certification. Because we gave notice of our intent to update the average weight, and emphasized managing total weight in our April 2006 notice of voluntary compliance, owners and operators received sufficient time to prepare for the updated AAWPP. For these reasons, a period longer than approximately one year leading to the new AAWWPP's effective date is not warranted.

Although the Coast Guard is unable to predict the amount of time necessary to revise stability letters or amend Certificates of Inspection, no commenter presented, and the Coast Guard is not aware of, any compelling reason for the effective date of the new AAWPP to be delayed until documentation is complete. However, the Coast Guard realizes the time needed to complete documentation for all vessels will likely exceed the approximate one year period prior to the effective date, and documentation will be completed as available resources permit.

Accordingly, beginning December 1, 2011, passenger vessel owners and operators must ensure that the total weight of passengers, crew, and variable loads does not exceed the total weight for which stability has been satisfactorily evaluated. The total permitted weight is often based on a maximum number of persons in association with an AAWPP of 185 lb or another weight approved in writing by an OCMI. It should be emphasized that, while this final rule will become effective 90 days from today on March 14, 2011, the 185 lb AAWPP will not become effective at the same time. Under § 170.090 of this final rule, the initial AAWPP issued pursuant to the provisions of that section, which will be 185 lb, will become effective on December 1, 2011.

Subsequent AAWPP updates will normally be issued as interpretive rules without further rulemaking procedures and will become effective one calendar year after publication of a notice in the **Federal Register** unless an earlier effective date is necessary for urgent public safety reasons. The Coast Guard reserves the authority, however, to update the AAWPP using notice and comment rulemaking procedures, and to delay or dispense with any update of the AAWPP. In the event the Coast Guard elects to dispense with or delay an update, the Coast Guard will inform the public of the decision and explain the reasons in a **Federal Register** notice.

Process for Documenting Compliance

Beginning on December 1, 2011, each passenger vessel must be in compliance with stability criteria based on the new AAWPP of 185 lb or another weight approved in writing by the cognizant OCMI. If the Coast Guard has not issued a stability letter associated with the new AAWPP or greater average weight, or the Coast Guard has not confirmed that existing stability guidance is acceptable relative to the new AAWPP, then the owner or operator must certify to the OCMI that the vessel complies with applicable stability requirements. Certification of stability compliance by an owner or operator means that–

(1) The owner or operator has provided a written statement to the OCMI together with documentation clearly supporting the total weight and number of passengers and crew permitted to be carried at the new AAWPP; and

(2) A copy of this information has been provided to the MSC if the vessel is a pontoon vessel or demonstrates compliance with the provisions of subchapter S.

In each case, a copy of the vessel's current stability letter should be included with the documentation.

Owners and operators must provide the documentation referred to in paragraph 1 above to the OCMI, in writing, not later than December 1, 2011. Pending the effective date of this regulation, owners and operators are encouraged to voluntarily comply with the new AAWPP as soon as practicable.

A number of options exist for this certification, including but not limited to the following:

(1) *Weight ratio.* The simplest method for demonstrating compliance with the new AAWPP requirement is to reduce the total passengers and crew permitted by existing stability guidance to a number not greater than the former passenger and crew capacity multiplied by the ratio of the old assumed weight per person (the assumed weight per person the current stability guidance was based on) to the new AAWPP. If documentation of the old assumed weight per person is not available, the most conservative existing weight per person commensurate with the vessel's service should be assumed.

In formula, this means:

New passenger and crew capacity = existing passenger and crew capacity × old assumed weight per person/new AAWPP.

(2) *Weight compensation.* A method to demonstrate compliance with the new AAWPP requirement available to vessels carrying either deck or vehicular cargo in addition to passengers is to reduce the cargo weight carried by an amount equal to the difference between the total permitted weight of passengers and crew associated with the new and old AAWPPs. Owners or operators who opt to proportionally reduce cargo capacity would see no reduction in passenger capacity.

(3) *Direct verification.* The owner or operator ensures that the total weight of persons loaded aboard the vessel does not exceed the total permitted weight of persons associated with the existing stability guidance. For vessels that have undergone an SST, this is the total test weight. The method by which the owner or operator ensures the total weight does not exceed the limiting value may include weighing of all persons on board or another method accepted in writing by the cognizant OCMI.

(4) *Stability calculations.* The owner or operator may prepare or have prepared revised stability calculations demonstrating that the vessel complies with applicable stability requirements when loaded with persons at the new AAWPP. These calculations may use the results of previous or new stability tests. New stability tests associated with revised stability calculations must be conducted in the presence of a Coast Guard Marine Inspector.

(5) *New stability proof tests.* The owner or operator may choose to conduct a new SST or PSST to

demonstrate compliance with the same number of passengers and crew at the new AAWPP. New SSTs must be conducted in the presence of a Coast Guard Marine Inspector.

The number of passengers permitted aboard small passenger vessels is also limited by the criteria listed in §§ 115.113 and 176.113: Length of rail, deck area, or fixed seating. As the total test weight for these vessels is typically determined with consideration of that restriction, it may be possible for a vessel to continue to carry close to, if not the same, number of passengers at the new AAWPP. Adequate stability in this regard will, however, still need to be determined by either method (4) or (5). Vessels for which the Certificate of Inspection restricts the number of passengers carried to a number significantly less than that indicated in the stability guidance may have little or no reduction in passenger capacity.

Owners and operators who determine that their vessel will incur no reduction in the total number of passengers and crew permitted still must certify to the OCMI that there will be no impact on the total passenger and crew capacity, and must develop sufficient documentation to support their findings.

The Coast Guard will verify the owner or operator's certification that the vessel meets stability requirements based on a total weight at the new AAWPP no later than the vessel's next annual inspection following December 1, 2011. Stability letters will be revised and Certificates of Inspection will be amended as needed and as Coast Guard resources permit. Owners and operators of vessels with stability letters issued by the MSC or a Coast Guard District must submit this certification information to the MSC, with a copy to the OCMI, who will review and issue a new stability letter as appropriate. Pending revision of these documents, owners and operators must still comply with the provisions of this regulation and ensure that their vessels are not overloaded.

Owners and operators should keep appropriate copies of this documentation aboard their vessels as evidence of compliance after the new AAWPP becomes effective, pending receipt of revised stability letters. Additional information and or tests as appropriate may be required by the OCMI or Commanding Officer, Marine Safety Center if the OCMI questions the vessel's stability.

Subsequent AAWPP Updates

We received 36 comments addressing the subject of how the AAWPP would be updated. Instead of promulgating future updates without further rulemaking procedures, as proposed, 23 commenters advocated updating the average weight only when a threshold corresponding with significantly increased safety risk is met. One commenter suggested a threshold of 3% of the current assumed weight, another supported a value between 3 and 5%, and another recommended 5% or more. Fourteen commenters felt this matter should be re-addressed in a supplemental rulemaking entirely, and ten commenters believed that updates should only occur through notice and comment rulemakings. Only one commenter supported this part of the proposed rule as written.

As noted above in the discussion of this section, 55 comments were submitted on the proposal to increase the AAWPP and 40 of those supported the proposed change. As we explained in the NPRM, and as a substantial majority of commenters agreed, the AAWPP must be increased because it is no longer consistent with the average American passenger weight, and a significant risk of overloading passenger vessels exists without an increase.

The same reasons strongly support inclusion of a mechanism in regulation that maintains an up-to-date AAWPP over time. With such a mechanism, the AAWPP will be updated to reflect changes in the American population's weight in the most efficient manner practicable. The current disparity between the AAWPP prescribed in regulations and the average American weight would have been much less likely to develop if an updating mechanism had been previously included in regulations. Advantages in public safety and use of Coast Guard resources make inclusion of such a mechanism the better choice.

Additionally, use of such a mechanism to update objective numerical values based upon data issued by an authoritative source is not unusual. As one example, Federal agencies, including the Coast Guard, commonly keep their regulations consistent with the current consumer price index using similar methods. In those cases and in this rulemaking, the Bureau of Labor Statistics and the National Center for Health Statistics are widely recognized as the leading authoritative sources of statistics in their respective fields.

Under these circumstances, and in light of the strong public policy interests served by keeping the AAWPP current, notice and comment rulemaking procedures are not expected to be required by law for every update. In the future, the Coast Guard anticipates it will periodically update the AAWPP for purposes of 46 CFR 170.090 by interpreting the term to keep it consistent with the current average American weight as reported by NHANES. The Coast Guard will justify an interpretive rule each time it is published in the **Federal Register**, and conduct a notice and comment rulemaking if a particular update would not qualify as interpretive because of future circumstances.

At the same time, the Coast Guard recognizes the need of vessel owners and operators for a reasonable degree of predictability in the rate of change to the AAWPP, and agrees with commenters who advocated that future updates should be tied to a risk-based threshold. For these reasons, the Coast Guard added a provision to this final rule that permits an increase in the AAWPP through an interpretive rule only when CDC data yield an AAWPP that differs by at least 10 lb from the AAWPP then in effect. The rule also permits the Coast Guard to conduct rulemaking procedures at any time.

The Marine Safety Manual and the International Code on Intact Stability, 2008 (2008 IS Code) require stability testing when a vessel's lightship displacement changes more than 2 percent.[9] Although these standards address changes in lightship displacement as a threshold for conducting stability evaluations, this concept is also useful in this context when applied to changes in total displacement. A 10-lb threshold on AAWPP changes corresponds to 5 percent of the new 185-lb AAWPP. Considering that passenger weight is only a portion of a passenger vessel's displacement, however, a 5 percent change in the passenger loads typical of many small passenger vessels results in a total displacement change of approximately 2 percent. For this reason, a 10-lb threshold for AAWPP updates is a reasonable approximation of an established risk threshold. Although future changes in average American weight are unknown, a 10-lb threshold is likely to provide vessel owners and operators a more stable AAWPP than provisions proposed in the NPRM.

Additionally, the Coast Guard recognizes that unforeseen events may make implementation of an AAWPP update without further rulemaking

[9] COMDTINST M16000.9, *Marine Safety Manual,* Vol IV, § 6.D.4; Marine Safety Center Technical Note, *Lightship Change Determination, Weight-Moment Calculation vs. Deadweight Survey vs. Full Stability Test,* 11 May 1995; and, 2008 IS Code, para. B/8.1.5, IMO MSC Resolution MSC.267(85), Annex 2.

procedures contrary to public interest. To preclude the possibility of such an update proceeding automatically, a provision has been added preserving the Coast Guard's flexibility to dispense with or delay any update that would otherwise issue as an interpretive rule without further rulemaking procedures. Similarly, a provision has been added to explicitly maintain the Coast Guard's prerogative to conduct a rulemaking at any time to amend the AAWPP or any other part of CFR Title 46. With these provisions, the Coast Guard will ensure that AAWPP updates issued as interpretive rules without further rulemaking procedures are reasonable in light of circumstances existing at the time and will protect the public.

Two commenters suggested tying future updates to a fixed time period such as 10 or 20 years. We disagree. Although an update every ten years would likely be appropriate if past trends continue, there is no assurance that Americans' weight will continue to increase at the same rate in the future. Updating the AAWPP when reliable data show average weight has changed significantly will result in a more accurate AAWPP over time.

One commenter pointed out that proposed § 170.090(e) used the mean weights of adults "20 years and over" to calculate the AAWPP, while the discussion of this subject in the NPRM preamble used the weights of adults "between 20 and 74 years old." This commenter also advocated using the latter age range because the commenter expected that using the former would bias the AAWPP downward.

The CDC changed the reporting of American weight data after publication of the NPRM, and mean weights of adults aged 20 to 74 years are no longer provided in NCHS reports. Further, in the absence of any data showing that inclusion of those over 75 would produce a less accurate AAWPP, it is not clear that doing so would bias the standard. The different age ranges in the NPRM preamble and regulatory text resulted from that change in CDC reporting.

One commenter observed that the update procedures described in the NPRM represented a zero risk approach and would greatly limit the Coast Guard's flexibility in updating the AAWPP. We agree, and therefore have added a provision explicitly maintaining the Coast Guard's prerogative to conduct a rulemaking in this area at any time. The CDC will publish data, which will be used according to the procedure in § 170.090 to produce an AAWPP as close as reasonably practicable to the actual average American passenger weight. An AAWPP differing at least 10 lb from that in effect at the time will become effective pursuant to the provisions of this final rule unless the Coast Guard decides to postpone or delay the update or to conduct further rulemaking procedures.

Section 170.140. Applicability

See the discussion of changes in § 170.015 of this preamble.

Section 170.165. International Code on Intact Stability

We received no comments on this section of the NPRM. After further consideration, however, the Coast Guard determined that the proposed provisions in §§ 170.248, 171.001 and 179.212 would inadvertently terminate acceptance by the Coast Guard of compliance by certain vessels with 46 CFR, subchapter T, in lieu of the stability requirements of SOLAS Chapter II–1. Because the Coast Guard did not intend such termination, we revised §§ 170.165, 170.248, 171.001, 171.070, and 179.212 of this final rule to preserve the existing equivalence for certain small passenger vessels operating on international voyages 20 miles or less from the nearest land.

Section 170.170. Weather Criteria

Eight comments were received concerning reformulation of the wind and passenger heeling requirements contained in §§ 170.170 and 171.050. Four commenters believed these proposed changes were beyond the appropriate scope of a rulemaking focused on passenger weight, regardless of their merit, and suggested this matter be dealt with in a separate rulemaking. One commenter suggested the proposed rule change be applied only to vessels built after the rule takes effect, while existing criteria would continue to apply to vessels built prior to the effective date. One commenter cautioned that the changes to § 170.170 would affect all inspected vessels, all load lined uninspected vessels and, potentially, existing vessels that comply with current criteria. One commenter supported the proposed change to the criteria and explained that assessment of compliance based on a calculated equilibrium heel angle is more accurate than the existing, simplified calculation based on upright metacentric height (GM) (*e.g.,* at zero heel angle).

While the Coast Guard agrees that the assessment of compliance based on a calculated equilibrium heel angle is more accurate than the existing, simplified calculation, we also concur that additional study of the effects of the proposed changes to § 170.170 on the existing fleet is required prior to implementing these criteria. Accordingly, we have removed the proposed changes to § 170.170 from the final rule.

However, for the reasons discussed in the NPRM, we have modified § 170.170 to clearly indicate the limitation of the existing criteria to those conditions for which the formula is valid and reflect the requirement for additional calculations—generally addressed by demonstrating compliance with § 170.173—for vessels of unusual proportion and form.

One commenter pointed to a typographical error in the proposed rule for § 170.170(a)(2). While we agree, modifications to this section have been removed from the final rule.

Section 170.248. Applicability

See the discussion of changes in §§ 170.015 and 170.165 of this preamble.

Section 171.001. Applicability

See the discussion of changes in §§ 170.015 and 170.165 of this preamble.

Section 171.045. Weight of Passengers and Crew

See the discussion of changes to the AAWPP in § 170.090 of this preamble.

Section 171.050. Passenger Heel Requirements for a Mechanically Propelled or a Non-Self Propelled Vessel

Eight comments were received concerning reformulation of the wind and passenger heeling requirements contained in this section. Four commenters believed these proposed changes were beyond the appropriate scope of a rulemaking focused on passenger weight, regardless of their merit, and suggested this matter be dealt with in a separate rulemaking. With respect to proposed changes to § 171.050 and the proposed new section on passenger crowding in § 171.052, one commenter suggested that it would be more precise and simpler to develop a single passenger heel criteria by combining the two sections. This commenter advocated criteria based on a vessel's actual stability performance, use of an appropriate passenger loading density, and residual righting energy margins. The Coast Guard concurs; however additional study of the effects of passenger loading densities and residual righting energy margins is required prior to implementing performance-based criteria for non-pontoon vessels and possibly combining § 171.050 and § 171.052. Accordingly,

we have removed the proposed provisions in this section of the final rule.

Instead, this section of the final rule retains provisions in existing regulations concerning simplified calculation of metacentric height and the proposed provisions concerning the 2008 IS Code.

For the reasons explained in § 170.170 of this preamble and in the NPRM, we have also modified § 171.050 to clearly indicate the limitation of the existing criteria to those conditions for which the formula is valid and reflect the requirement for additional calculations—generally addressed by demonstrating compliance with § 170.173—for vessels of unusual proportion and form.

Section 171.052. Passenger Heel Requirements for Pontoon Vessels

Ten comments were received on the proposal for passenger crowding criteria. While acknowledging the motivation for this proposal, no commenter supported the proposal as written in the NPRM. All commenters advocated withdrawing the proposal to permit further investigation, and urged a careful approach to resolving this apparent safety gap.

Four commenters indicated that the passenger crowding study on which the proposed regulation was based only considered small vessels and was not sufficiently rigorous to serve as a basis for regulations applying to larger vessels. Two commenters questioned the use of passenger fraction as a basis for application of passenger crowding criteria. Those commenters also argued that the results of the pontoon study support the conclusion that the passenger crowding issue appears to be generally limited to small light vessels, such as pontoon vessels. Further, the commenters pointed out that the study did not assess the degree to which application of passenger crowding criteria would affect larger, heavier vessels, which make up most of the remainder of the fleet. One commenter indicated that, based on service and configuration, the proposed passenger crowding standard would also inappropriately penalize certain small vessels. Three commenters identified monohull vessels for which the SST was not conservative when compared to the proposed passenger crowding standards. In those cases, the proposed standard would result in reductions of up to 45 percent of the passenger capacity permitted by the SST.

The Coast Guard agrees that, for vessels other than pontoon vessels, further research is required to determine the risk associated with passenger crowding. Accordingly, we have limited the applicability of § 171.052 to pontoon vessels.

Section 171.070. Subdivision Requirements—Type II

See the discussion of changes in § 170.165 of this preamble.

Section 171.080. Damage Stability Standards for Vessels With Type I or Type II Subdivision

See the discussion of changes to the AAWPP under § 170.090, and of the IBR in § 170.015, of this preamble.

Section 174.007. Incorporation by Reference

One commenter recommended leaving year designations out of citations to ASTM standards in this section and suggested the most current version of a standard should be used. The Coast Guard agrees in part and has revised the rule to remove year designations from provisions other than the centralized IBR sections. In addition, see the discussion of changes in § 170.015 of this preamble.

Section 174.360. Calculations

See the discussion of changes in § 170.015 of this preamble.

Section 175.400. Definitions of Terms Used in This Subchapter

Although we received no comments on this section, the definition of "variable load" has been modified to improve clarity. We also added a definition of "pontoon vessel" to section 175.400 because that term is used frequently in part 178.

Section 176.110. Routes Permitted

Please see the discussion of comments on routes permitted in § 115.110 of this preamble.

Section 176.505. Stability Verification

Please see the discussion of comments concerning the proposed annual stability information and ten-year lightship verifications in § 71.25–50 of this preamble.

Section 176.610. Scope of Drydock and Internal Structural Examinations

Please see the discussion of comments concerning draft mark verification in § 71.50–1 of this preamble.

Section 178.210. Stability Information

Four comments were submitted on the proposed changes in this section and §§ 178.320(b) and 178.340 associated with PSSTs. One commenter opposed allowing simplified stability tests for pontoon vessels. Another commenter expressed disbelief that the safety of pontoon passenger vessels would be enhanced by the Marine Safety Center issuing stability letters for vessels that undergo a PSST.

One commenter urged that future regulations prohibit OCMIs from dispensing with the requirement for a simplified stability test on a pontoon passenger vessel. The commenter also opined that proposed changes to the PSST would introduce inconsistencies between the PSST and the SST used for monohulls, and could reduce safety margins for pontoon vessels. In addition, the commenter objected to the proposed regulatory requirement of a minimum passenger and crew heeling moment because the required heeling moment would be reduced from the guidance provided. Finally, this commenter advocated inclusion of a specific pontoon vessel dynamic stability standard.

One commenter was concerned about the large passenger capacity reduction on a pontoon passenger vessel due to changes in the average weight per person and the perceived rigor of the proposed pontoon vessel stability evaluation.

Over the past four years, the U.S. Coast Guard MSC reviewed records of PSSTs of all certificated pontoon type passenger vessels and found that pontoon vessel stability calculations and results are hypersensitive to even minor errors made in the conduct of the PSST. Because of this hypersensitivity, the Coast Guard has determined that centralized review of PSST results and pontoon vessel stability calculations is necessary to ensure compliance with applicable stability standards. This is the basis for the proposed rule's addition of 46 CFR 178.210(d), which requires that each pontoon passenger vessel be issued a stability letter by the MSC. Because the Coast Guard recognizes a small number of stability letters will not need revision, § 178.210(d) will apply only to stability letters issued after the effective date of this rule.

MSC's review of the PSST data also revealed significant discrepancies in how the simulated load was relocated to the "extreme outboard position of the deck," as required by existing 46 CFR 178.340. The PSST guidance, in G–MOC policy letter 10–04, *Evaluation of Stability and Subdivision Requirements for Small Passenger Vessels Inspected Under 46 CFR Subchapter T*,[10]

[10] The Coast Guard Office of Vessel Activities was previously designated G–MOC, and is now designated Commandant (CG–543). This policy letter is available in the docket.

suggested that the heeling moment be based on the entire simulated load, which would be centered at the extreme outboard edge of the deck and require some of the simulated load to be placed further outboard than the outboard edge of the deck—a difficult condition to achieve in practice. To correct this, a minimum heeling moment is specified in the final rule that requires the simulated load to be centered not more than one foot inboard from the extreme outboard edge of the deck available to passengers. This requirement would correct previous guidance and otherwise increase the conservatism and consistency of the PSST from previous practice.

MSC field guidance requires tanks to be either 100 percent full or empty, whichever is more conservative, for the conduct of PSSTs. Rather than the current requirement of 75 percent, the trim and immersion difference caused by these tank conditions typically reduce a pontoon vessel's stability by a greater amount than the free surface effect resulting from 75 percent full tanks required in the SST. To maintain the conservatism of the PSST, the proposed requirement is incorporated into this final rule in § 178.340. In other considerations, the new rule maintains consistency in the loading conditions between the SST and the PSST.

This final rule formalizes the MSC's prerogative to dispense with the requirement of a PSST if the vessel's stability can be adequately assessed by alternate means, which include, but are not limited to, the form, arrangement, construction, number of decks, route, and operating restrictions of the vessel. In the case of a pontoon vessel, the Coast Guard will rely on the expertise of the MSC, which will issue the stability letter. Doing so will help ensure that a PSST would only be dispensed with when compliance with minimum stability standards can be assured without testing.

With respect to dynamic stability for pontoon vessels, the Coast Guard does not agree on the viability of or need for such criteria for several reasons. First, to our knowledge, dynamic intact stability criteria based on state-of-the-art methodologies are presently under development for monohulls and have not yet been adopted for any vessel type anywhere in the world, except a guide for the assessment of parametric roll resonance in the design of container vessels. Because of the unique hull characteristics of a pontoon vessel and general lack of comprehensive research in pontoon vessel dynamic stability, development of dynamic stability criteria for this vessel type using state-of-the-art methodologies is premature.

Second, existing intact stability criteria contained in 46 CFR 170.173 include righting energy or the work done in heeling a vessel to a given angle of heel, which is a traditional consideration of dynamic stability. The use of righting energy criteria is a time-proven, internationally accepted method of evaluating quantities known to be related to dynamic stability, including the stability of vessels spanning a broad spectrum of hull forms and operating routes. Application of these standards provides an indication of the vessel's ability to safely operate under the loading scenarios and environmental conditions the vessel is anticipated to encounter in service. Because most pontoon vessels demonstrate compliance by satisfactory performance of a PSST, we have verified that a satisfactory PSST performed according to 46 CFR 178.340 ensures compliance with 46 CFR 170.173—frequently with large margins.

Section 178.215. Weight of Passengers and Crew

See the discussion of comments on changes to the AAWPP in § 170.090 of this preamble.

Section 178.230. Stability Letter or Certificate of Inspection Stability Details

Two comments were received addressing issues associated with stability letters. One commenter requested that this rulemaking clarify how second deck passenger capacity should be reflected in a stability letter based on the performance of a simplified stability test (SST). While the Coast Guard agrees that calculation methods should be examined for clarity, and additional guidance issued as necessary, the information required in the proposed regulation is adequate.

Another commenter recommended that draft and freeboard information from SSTs be clearly identified on stability letters. The Coast Guard agrees that providing such information to a vessel's master would improve awareness of vessel stability limitations. Accordingly, the Coast Guard will consider issuing additional guidance regarding the information required in stability letters issued for vessels that have undergone SSTs. Because this information is already required to be recorded during the SST, however, the proposed regulation does not need revision on this subject.

Section 178.310. Intact Stability Requirements—General

Six comments were submitted on the proposal to reorganize and clarify the intact stability requirements applicable to Subchapter T passenger vessels.

One commenter indicated the proposed rules have "little potential for clarifying" applicable standards and are "difficult to follow, in large part because of the multitude of cross-references." The Coast Guard agrees and has re-written §§ 178.310, 178.320 and 178.325 to minimize cross-references.

One commenter indicated that, while the newly introduced flowchart and table were welcome additions, they were "job assistants", helpful in determining regulatory applicability, rather than regulatory requirements and would be more appropriately published as guidance. The Coast Guard agrees and has removed the flowchart and table from the regulations.

One commenter urged the Coast Guard to require a 50 percent full load submergence criterion, in addition to the nine criteria already proposed, for governing application of the PSST. The Coast Guard does not agree. The new cross sectional area requirement effectively imposes the 50 percent submergence limit to any case with greater submergence. Consequently, compliance with the performance safety standard detailed in the PSST can be achieved by certain pontoon vessels which are loaded beyond the 50 percent pontoon submergence level, and an arbitrary submergence limitation of these vessels would be inappropriate and superfluous.

One commenter advocated eliminating SSTs, especially for sailing vessels, while another commenter lauded the inclusion of flush deck catamaran vessels in those eligible for an SST. Another commenter questioned the immersion standard for the SST, and questioned whether a "more reasonable number for the Passenger Heeling Moment" may be determined considering the construction, service, and route of the vessel.

The Coast Guard intends to study the SST requirements to ensure that they remain conservative with respect to currently applicable stability requirements. Pending the results of such a study, however, no action beyond that proposed in the NPRM will be taken to modify the SST requirements or applicability.

Section 178.320. Intact Stability Requirements—Non-Sailing Vessels

See the discussion of comments on changes concerning pontoon passenger

vessel simplified stability proof tests in § 178.210, and on revisions to the intact stability requirements for Subchapter T vessels in § 178.310 of this preamble.

Section 178.325. Intact Stability Requirements—Monohull Sailing Vessels

See the discussion of comments on changes to the intact stability requirements for Subchapter T vessels in § 178.310 of this preamble.

Section 178.330. Simplified Stability Proof Test (SST)

See the discussion of comments on changes to the AAWPP in § 170.090 of this preamble.

Section 178.340. Stability Standards for Pontoon Vessels on Protected Waters

Although no commenter suggested it, we corrected paragraph (c) by removing the words "without consideration of the cross-structure area on that side," and the definition of "Area" in paragraph (b) by removing the words "masts" and "but not protruding fixed objects such as antennas or running rigging" to align those provisions with the commonly accepted definition of "area" in that context. Additionally, see the discussion of comments on revisions concerning pontoon passenger vessel simplified stability proof tests in § 178.210 of this preamble.

Section 179.15. Incorporation by Reference

See the discussion of changes in § 170.015 of this preamble.

Section 179.212. Watertight Bulkheads for Subdivision and Damage Stability

We received one comment on proposed changes to this section. The commenter objected to limiting the use of the simplified subdivision requirements of part 179 to vessels that use the simplified intact stability requirements of part 178, and vice versa. The commenter maintained that the two simplified rules are not related and the simplified subdivision provides a level of transverse subdivision that is equal or greater than that permitted by the Type II subdivision calculations required in 46 CFR 171.070.

The proposed clarification of the linkage between simplified subdivision and the simplified stability proof test did not constitute the introduction of a new requirement, and that linkage cannot be removed without further study. This final rule contains revisions to this section in a further effort to improve its organization and readability. For more information, see the discussion of changes in § 170.165 of this preamble.

We revised this section to preserve the equivalence of Subchapter T to SOLAS Chapters II–1, II–2, and III for certain small passenger vessels operating on international voyages 20 miles or less from the nearest land. No other substantive changes have been made to the provisions of this section as proposed in the NPRM. For a discussion of minor changes to the incorporation by reference, see § 170.015 of this preamble.

Section 179.230. Damage Stability Requirements

This section has been removed because its requirements have been incorporated into revised § 179.212.

Section 185.304. Navigation Underway

See the discussion of comments on regulations concerning navigation underway in § 122.304 of this preamble.

Section 185.315. Verification of Vessel Compliance With Applicable Stability Requirements

See the discussion of comments on verification of compliance with stability information in § 122.315 of this preamble.

Section 185.602. Hull Markings

See the discussion of comments on requirements for vessels demonstrating compliance with Subchapter S to have draft marks in § 122.602 of this preamble.

General Comments

Some commenters agreed with the Society of Naval Architects and Marine Engineers (SNAME) Ad Hoc Panel No. 15's recommendations for a risk-based approach, and objected that these recommendations had not been incorporated into the proposed rule. One commenter stated that SNAME is the organization most qualified to assist with the technical aspects of this rulemaking. Another asserted that using SNAME's recommendations would constitute an unspecified conflict of interest.

The Coast Guard is grateful for the significant time and effort that members of SNAME's Ad Hoc Panel No. 15 expended. Its recommendations, together with other comments received from the public, have been considered in the development of both the proposed rule and this final rule. The Coast Guard is unaware of any conflict of interest involved in doing so, particularly in view of the fact that SNAME's activities and recommendations in this rulemaking have been completely disclosed and subject to public comment.

One commenter pointed out that angle of heel is measured from the upright to the vessel's centerline, not from the centerline to the upright. We agree, and have corrected the definition in the List of Terms.

Forty-three commenters offered suggestions on how the rule should be configured or how the rulemaking should proceed. There were 24 commenters who concurred that the AAWPP should be updated by a final rule as soon as possible, while all other elements of the NPRM should be deferred to a supplemental NPRM. Seven commenters requested a risk-based decision making process be used as a general approach. Four commenters felt that no rulemaking was required at all because they believed casualty history was not related to passenger weight. Three commenters objected to parts of the proposed rule that might require new stability tests because, in the commenters' views, the provisions were overly conservative and did not properly account for the safety margins included in existing stability regulations. For answers to these comments, see discussion of the proposed increase in the AAWPP, the annual stability information verification, and the ten year stability verification in §§ 71.25–50 and 170.090 of this preamble.

Two commenters acknowledged the need to examine pontoon vessels more closely. They emphasized, however, that pre-sailing stability checks should consist of no more than ensuring the passenger count doesn't exceed limits, checking the draft and, where appropriate, the number of passengers on an upper deck. We agree that checking the passenger count and draft marks are acceptable methods of verifying stability compliance in many situations. As discussed in §§ 122.315 and 185.315 of this preamble, though, other means may be more appropriate. Regardless of the means used, the master of a vessel must take into account the total weight of passengers, crew and variable loads.

One commenter recommended that the proposed rule take into account the characteristics and safety record of various types of vessels, such as pontoon vessels, amphibious vehicles (*e.g.,* DUKWs), and small ferry boats. Because the safety of amphibious vehicles and small ferries generally has been addressed through added guidance to existing regulations, the final rule does not specifically address each of those types of vessels.

Another commenter stated the "one size fits all" approach of the proposed rule is flawed and arbitrary because it attempts to apply standards across the board from small pontoon boats to large passenger ferries, and to do so retroactively when there is no data to support the imposition of such standards on large vessels. The Coast Guard disagrees. The AAWPP for all passenger vessels must be consistent with the actual average American weight to protect the public, as the vast majority of commenters agreed.

Another commenter stated the proposed rule was complicated by the addition of too many "housekeeping" items, re-definitions, updates and corrections. We disagree that these changes complicate or otherwise negatively affect other provisions of the final rule. Other changes are necessary to fulfill obligations under the SOLAS and International Load Line conventions.

One commenter complained the proposed rule would unfairly burden the operator with the responsibility to retrieve stability records for the vessel, and that the Coast Guard should maintain stability records for all passenger vessels. We disagree that requiring vessel owners and operators to maintain stability information for their vessels is, in any way, unfair. Owners and operators of other types of vehicles engaged in the business of public transportation—such as commercial aircraft and buses—have long been required to maintain their vehicles in a safe condition together with related documentation.

One commenter supported the Coast Guard's efforts to thoroughly review stability regulations. The commenter also approved of harmonizing United States regulations with international standards, and minimizing discrepancies and loopholes that can develop when a piece-meal approach is taken to regulatory development. This commenter believed regulatory changes should address risks inherent in smaller passenger vessel designs, namely lower freeboards, higher wind area/draft ratios, and smaller righting moment values. We generally agree for reasons discussed in previous sections of this preamble under §§ 170.170, 171.050, 171.052, 178.210, and 178.310.

Two commenters inquired about whether the Coast Guard intends to issue regulations in the future concerning seat size and spacing, window and aisle width, life jackets and life rafts. We have not determined what, if any, additional regulations are necessary in those areas.

One commenter suggested the Coast Guard require certification of all passenger vessels in the United States. The Coast Guard regulates only those vessels for which it has statutory authority.

Additionally, after further consideration, we removed unnecessary commentary from several terms listed in section II of this preamble. We also removed "length between perpendiculars" and "waterplane" because these terms are not used, and corrected and clarified the following terms: "heeling moment"; "intact stability"; "master"; "passenger heel"; "pontoon vessel"; "protected waters"; and "wind heel".

VI. Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 170.015, 171.012, 172.020, 174.007 and 179.15 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has not reviewed it under that Order.

A combined Regulatory Analysis and Final Regulatory Flexibility Analysis report ("regulatory analysis") is available in the docket as indicated under **ADDRESSES**. In this regulatory analysis, we evaluated public comments on the regulatory analysis supporting the NPRM and revised the estimates of impacts for this final rule. A summary of the regulatory analysis follows:

Since the publication of the NPRM in 2008, public comments led us to reconsider the cost impacts of the rule. We received several comments that the unit costs for stability tests were too low. We have amended the cost estimates of the rulemaking to include the higher unit costs for stability tests based on data and information provided by public comments. We have also amended the cost estimates for lost revenues from passengers to include revenue loss from concessions on board vessels based on information provided by public comments. In addition, we have updated the number of passenger trips per year for small passenger vessels. These changes are summarized below.

Stability Test Costs

We received 31 comments on the cost of stability tests. Commenters stated the Coast Guard's estimates of these tests were low. The comments also suggested that the costs of stability tests vary and depend upon many factors unique to vessel type and size. In response to these comments, we updated these costs by including a range of cost estimates for stability tests. We revised the final regulatory analysis to include low and high cost estimates. The low cost estimates per affected vessel are $200 for a simplified stability test, $2,500 for a lightweight survey, and $5,000 for an inclining test. The high cost estimates per affected vessel are about $2,000 for a simplified stability test, $7,500 for a lightweight survey, and $15,000 for an inclining test.

Revenue Loss Due to Concessions

We received three comments that our revenue estimates did not include concessions of the vessel. We received some estimates that concessions may represent twenty percent of passenger revenue for certain vessel operations. We have adjusted our costs to include concessions-related revenue loss for vessels in the excursion, ferry, general, harbor, and river cruise categories. Our original estimates for many vessel categories, such as gaming and party boats, included the estimate of all revenues—not just ticket revenue. We did not adjust revenue loss related to these estimates.

Revenue Loss Due to Reduced Passenger Capacity

We received 26 comments relating to the amount of lost revenue due to the reduction in passenger capacity. Several commenters told us that a percent reduction in passenger capacity would result in an equivalent percent reduction in revenues (i.e., a reduction in vessel passenger capacity of 15 percent would result in a total revenue loss of 15 percent). In order for this condition to be true, all vessel trips would have to currently be operating in a fully loaded (full passenger capacity) condition on every trip. We did not find any industry data to support that all passenger vessel trips operate on a fully loaded basis. Also, some commenters provided revenue loss if one passenger per trip is lost based on the assumption that all trips are fully loaded. We do not believe that this is a reasonable assumption and the assumption is not supported by average passenger loading

data. According to data from the BMT Group report presented in the regulatory analysis (available in the docket), small passenger vessels have an average passenger load of between 50 to 60 percent. Coast Guard recognizes that some portion of vessel trips would indeed face full or near full loads under some conditions and would therefore incur a reduction in the number of passengers carried with a corresponding reduction in revenue for some trips. Several commenters noted that full or near full loads occur during peak season, usually the summer months.

In the regulatory analysis supporting the NPRM, we estimated the fraction of vessel trips per year that would have full or near full loads and experience a reduction in passengers to be approximately 3 to 6 percent. We based these estimates on the average passengers per trip and vessel capacity data from the BMT Group report and the assumption that the number of passengers per trip is normally distributed. Several commenters stated that the normal distribution assumption underestimates the number of trips subject to passenger loss since demand can be concentrated in peak (seasonal) months. However, none of the commenters provided specific data or estimates of the fraction of annual trips that operate at or near capacity. We understand that vessel operations vary considerably by vessel service, demand, season, and location leading to considerable uncertainty in the occurrence of fully loaded vessels and passengers lost. Due to this variation in operations and the lack of specific data, we acknowledge that some vessels may experience greater than estimated loss of passengers and revenues under some conditions, but we are unable to provide a revised estimate based on the lack of available data. We do provide additional discussion of the uncertainty related to revenue loss in the regulatory analysis available in the docket. In addition, we also note that the subject passenger and revenue loss is related to unsafe operations. This rule mitigates these unsafe operations through the restoration of the original regulatory margin of safety for vessel stability (see "Risk basis of rulemaking" section below for additional discussion).

Number of Passengers

Several commenters noted that the estimate for the number of passengers per year is underestimated. Coast Guard concurs that the total number of 655,000 passengers per year cited in the Benefits section of the regulatory analysis supporting the NPRM is in error. The figure of 655,000 is actually an estimate of the number of available passenger vessel seats and was incorrectly characterized as the number of passenger trips per year for small passenger vessels. Supported by public comments, we revised the regulatory analysis to reflect an estimate of the total number of passenger trips per year which is considerably higher at 125 million passengers per year.

Risk Basis of Rulemaking

We received nine comments on the NPRM regarding the justification for the rule in terms of safety. Several commenters noted the findings in a 2005 Coast Guard study (available on the docket) that no casualties have been directly attributable to increased passenger weight and conclude from this that there is no identifiable safety risk or that no lives have been put at risk as a result of the increased passenger weight. We disagree with the premise that there is no risk related to increased passenger weight. The lack of casualties directly attributable to increased passenger weight does not equate to no risk. Vessel casualties are often complicated events with multiple factors contributing to the accident. It is not surprising that passenger weight cannot be identified as the sole causal factor for an incident and has, in fact, been identified as a potential contributory factor for two recent casualties with multiple loss of life: The *Lady D* (2004) and the *Ethan Allen (2005)*.[11]

Further, as described in the NPRM, the primary goal of the rule is to restore the margin of safety that had been built into vessel stability engineering calculations and has been eroded by increased passenger weight, increasing the risk of stability problems. When originally developed, stability standards included a margin of safety to allow for the safe operation of vessels even under adverse operating conditions. The average weight of passengers was a component of the stability calculations and resulting margin of safety. As passenger weight increases, the margin of safety decreases across all measures of stability, including vertical center of gravity, freeboard and passenger healing moment.

Summary of Rule Impacts: Affected Population, Costs and Benefits

Based on Coast Guard data, we estimate this rule will affect 6,073 inspected passenger vessels. For the purpose of the regulatory analysis, we assumed that all vessels will be required to have updated stability letters. Of these vessels, 1,140, or 19% of all vessels, would require both a new stability test and a reduction in maximum passenger load to obtain an updated stability letter. Additionally, 3,542 vessels, or 58% of all vessels, would require compliance through either a new stability test and/or stability calculations, but would not need to reduce maximum passenger load. Finally, 1,391 vessels, or 23% of all vessels, would require no additional stability test and/or stability calculations and no reduction in passenger load in order to receive an updated stability letter.

As previously discussed, we revised the total costs of this rulemaking after consideration of the comments on the NPRM. These changes resulted in an increase in costs. We estimate the undiscounted first-year cost of the rule to range from $10 million to $27.6 million (average of $18.8 million). We estimate the total present value 10-year cost of this rule to range from $24.6 to $44.2 million at a 7% discount rate. The following table summarizes regulatory costs for the NPRM and the final rule.

TABLE 1—SUMMARY OF COST ESTIMATES: NPRM AND FINAL RULE

[$ Million]*

Cost	NPRM	Final rule
First Year Costs (Undiscounted)	$10	Range of $10–$27.6 (Average of $18.8).
Annual Recurring Costs (Undiscounted)	2.5	Range of $2.5–$3 (Average of $2.75).
10-Year Present Value Costs (7% discount rate)	24.6	Range of $24.6–$44.2 (Average of $34.4).

[11] See the USCG Lady D Marine Board report, conclusions 3 and 8, and recommendation 3 (*http://marinecasualty.com/documents/ladyd.pdf*). See the NTSB Report on the Ethan Allen capsizing, pages 40, 44, 48 [Finding 11], and 49 [Probable Cause] (*http://www.ntsb.gov/publictn/2006/MAR0603.pdf*). Note that the Ethan Allen was not a Coast Guard inspected vessel.

TABLE 1—SUMMARY OF COST ESTIMATES: NPRM AND FINAL RULE—Continued

[$ Million] *

Cost	NPRM	Final rule
Annualized Costs (10 year; 7% discount rate)	3.5	Range of $3.5–$6.3 (Average of $4.9).

* See the "Regulatory Analysis and Final Regulatory Flexibility Analysis" for additional information on costs, including cost ranges, uncertainties, and estimates at different discount rates.

The primary benefit of the rule is the increased safety and reduced risk of casualties through the restoration of the margin of safety for vessel stability. An increase in passenger and crew weight has an adverse effect on the stability of passenger vessels due to several factors, including increased vertical center of gravity, reduced freeboard and increased passenger healing moment. As previously discussed, in 2004 the CDC found that the average mean body weight for men and women had increased by 24 pounds since the 1960s. A subsequent 2008 CDC report confirms that the average weight continues to rise. Passenger vessel owners and operators may not be aware of the increased total passenger weight being carried on their vessels and the resulting erosion of the margin of safety that can occur with increased passenger weight.

Without the restoration of the margin of safety from the revised weight standard, an increased casualty risk remains under certain conditions. The public places a value on reducing even small risks of transportation accidents, particularly those involving fatalities and injuries. For example, DHS agencies (including Coast Guard) have used a value per statistical life (VSL) of $6.3 as an average measure of the public's willingness to pay to reduce the risk of a fatality by 1 in a million, $0.63 to reduce risk by 1 in 10 million, and $.063 to reduce risk by 1 in 100 million.[12] As passenger vessels carry millions of passengers each year, very small reductions in risk can result in a fairly large aggregate willingness to pay for that risk reduction. In response to comments received, we revised our estimate of the number of passengers carried on small passenger vessels each year to approximately 125 million passenger trips per year. Therefore, as an example based on 125 million trips per year, passengers would be willing to pay $7.875 million to reduce the risk of a fatality by 1 in 100 million (125 million × $0.063). Thus, the risk of fatalities from passenger vessels and the amount of risk reduced by the rule need to be very small (about 1 in 100 million risk reduction) for the rule to reach a breakeven point where costs equal benefits.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

A Final Regulatory Flexibility Analysis (FRFA) discussing the impact of this rule on small entities is available in the docket where indicated under **ADDRESSES.**

As previously discussed, we revised our regulatory analysis of the rule as a result of public comments on stability test costs, the uncertainties of revenue loss, and the impacts on certain operators as a result of revenue loss. We estimate that approximately 5,760 entities are regulated by this rule and 17.3 percent (approximately 1,000 entities) are small entities under the Regulatory Flexibility Act. Given these revisions, we determined that 20 percent or more of the small entities affected by this rule will incur an annual cost impact on revenue of more than 1 percent.

Therefore, we have determined that this rule will have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. In accordance with section 212 of the Act, the Coast Guard prepared a Small Entity Compliance Guide, which will be available on a Coast Guard web site, to assist small entities comply with this final rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule will call for revisions of two collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). 46 CFR 170.120 and 178.210 require the collection of information. The updated average weight per person will require revisions of the existing OMB-approved collections of information.

OMB Control Number: 1625–0064.

Title: Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S.

Summary of the Collection of Information: This collection of information requires owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program. The collection also requires the reporting of certain information.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

[12] "Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses", DHS/CBP, June 2008, (*see http://www.regulations.gov,* docket entry # USCG–2005–21869–003).

Proposed Use of Information: The Coast Guard will use this information to determine whether an entity meets the statutory requirements.

Description of the Respondents: Owners, operators, and/or masters of passenger vessels.

Burden of Response: The burden of this collection of information is the provision of documentation of stability analysis and posting of a stability letter. During this period, we estimate the total number of respondents is 1,388.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 4,539 hours. The revision includes a one-time annual burden of approximately 5,791 hours.

OMB Control Number: 1625–0057.

Title: Small Passenger Vessels—Title 46 Subchapters K and T.

Summary of the Collection Of Information: This collection of information requires information necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels.

Need for Information: The Coast Guard needs this information to determine whether an entity meets the statutory requirements.

Proposed Use of Information: The Coast Guard will use this information to determine whether an entity meets the statutory requirements.

Description of Respondents: Owners, operators, and/or masters of small passenger vessels.

Burden of Response: The burden of this rule for this collection of information is the posting of a stability letter, as required by 46 CFR 115.306 (subchapter K) or 46 CFR 176.306 (subchapter T). Of the 5,487 respondents, there are 3,669 vessels inspected under 46 CFR subchapters K or T that will need to post a new stability letter.

Estimate of Total Annual Burden: The existing OMB-approved annual burden, related to the posting of a stability letter, is 11 hours. The revision includes a one-time increase in the annual burden of approximately 305 hours to post the new stability letter.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not yet completed its review of this collection, and the reporting and recordkeeping requirements of this rule will not be enforced until this collection is approved by OMB. We will publish a notice in the **Federal Register** announcing the effective date of those requirements after OMB approves the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

Title 46 U.S.C. 3301 subjects passenger vessels to Coast Guard inspection, and 46 U.S.C. 3306 provides the Coast Guard with clear authority to establish safety regulations for such vessels. This rule revises and updates stability standards for passenger vessels in 46 CFR subchapters H, K and T, which are issued pursuant to authority in 46 U.S.C chapter 33.

The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. *See, e.g., Kelly* v. *Washington ex rel Foss,* 302 U.S. 1 (1937) and the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke,* 529 U.S. 89, 113–116 (2000). Therefore the Coast Guard's view is that regulations issued under the authority of 46 U.S.C. 3306 in the areas of design, construction, alteration, repair, operation, superstructures, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, accommodations for passengers and crew, sailing school instructors, sailing school students, lifesaving equipment and its use, firefighting equipment, its use and precautionary measures to guard against fire, inspections and tests related to these areas and the use of vessel stores and other supplies of a dangerous nature have preemptive effect over state regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject or not, and regardless of the existence of conflict between the state and Coast Guard regulation.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the States (*see U.S.* v. *Locke,* above), the Coast Guard recognizes the key role state and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. The Coast Guard received no comments from state or local governments, or their representative national organizations, in response to the NPRM.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. As described in the NPRM, we made a preliminary determination that this rule does not have tribal implications under

Executive Order 13175. We received neither any comments on this subject, nor any other information contradicting that determination.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards: American Society for Testing and Materials (ASTM) and Military Specification, Naval Publications and Forms Center, Code 1052. The sections that reference these standards and the locations where these standards are available are listed in §§ 170.015, 170.270, 174.007 and 174.100.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(d) of the Instruction, and under section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" (67 FR 48244, July 23, 2002)." This rule amends regulations concerning inspection and documentation of vessels, and particularly those governing the stability of passenger vessels and the maximum number of people that may safely be permitted on board. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Parts 71, 114, 175, 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 115 and 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Parts 170 and 174

Marine safety, Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Parts 171 and 179

Marine safety, Passenger vessels, Incorporation by reference.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation Marine safety, Incorporation by reference.

46 CFR Part 178

Marine safety, Passenger vessels.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 71, 114, 115, 122, 170, 171, 172, 174, 175, 176, 178, 179, and 185 as follows:

PART 71—INSPECTION AND CERTIFICATION

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 71.50–1 [Amended]

■ 2. In § 71.50–1, in the definition for "Drydock examination", after the words "and appurtenances", add the words ", including verification of the accuracy of draft marks if not already verified at a previous drydock examination."

■ 3. Revise the heading to subpart 71.75 to read as follows:

Subpart 71.75—Certificates Under the International Convention for Safety of Life at Sea, 1974

§ 71.75–1 [Amended]

■ 4. In § 71.75–1(a), after the word "on", add the words "or certificated for".

§ 71.75–5 [Amended]

■ 5. In § 71.75–5—

■ a. In paragraph (a), after the word "on", add the words "or certificated for", and immediately before the word "Passenger", add the word "SOLAS";

■ b. In paragraph (b), after the words "vessels on", add the words "or certificated for"; and after the words "international voyage", add the words "in addition to the applicable requirements of SOLAS."

PART 114—GENERAL PROVISIONS

■ 6. Revise the authority citation for part 114 to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

■ 7. In § 114.400(b)—

■ a. Remove "; or" from the end of paragraph (2) of the definition of "Length" and add a period in its place;

■ b. Remove paragraph (3) from the definition of "Length"; and

■ c. Add, in alphabetical order, a definition for "Variable load" to read as follows:

§ 114.400 Definition of terms used in this subchapter.

* * * * *

Variable load means the weight of all items brought on board a vessel for which explicit account is not made in approved stability calculations, including but not limited to, personal effects, carry-on items, luggage, and equipment of any kind.

* * * * *

PART 115—INSPECTION AND CERTIFICATION

■ 8. Revise the authority citation for part 115 to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 9. In § 115.110, revise paragraphs (d)(2) and (d)(3), and add new paragraph (d)(4) to read as follows:

§ 115.110 Routes permitted.

* * * * *

(d) * * *

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, and other characteristics;

(3) The suitability of the vessel for night-time operations; and

(4) The suitability of the vessel for use in all environmental conditions.

■ 10. Revise § 115.112 to read as follows:

§ 115.112 Total persons permitted.

The cognizant Officer in Charge, Marine Inspection (OCMI) determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons, the OCMI may consider the total weight of passengers, crew, and variable loads; stability restrictions and subdivision requirements of the vessel; the vessel's route, general arrangement, means of escape, and lifesaving equipment; minimum manning requirements; and the maximum number of passengers permitted in accordance with § 115.113 of this subpart.

■ 11. In § 115.610(a), add a sentence at the end of the paragraph to read as follows:

§ 115.610 Scope of drydock and internal structural examinations.

(a) * * * The accuracy of draft or loading marks, if required by § 122.602 of this subpart, must be verified if not already verified at construction or a previous drydock examination.

* * * * *

§ 115.900 [Amended]

■ 12. In § 115.900(a), after the word "which", add the words "is certificated for or"; remove the word "an"; and remove the word "voyage" and add, in its place, the word "voyages".

§ 115.910 [Amended]

■ 13. In § 115.910(a), in the second sentence, remove the word "issues" and add, in its place, the words "authorizes the cognizant Officer in Charge, Marine Inspection (OCMI) to issue"; and in the last sentence, after the word "will", add the words "authorize the cognizant OCMI to".

§ 115.920 [Amended]

■ 14. In § 115.920(d), in the first sentence, after the word "will", add the words "authorize the cognizant OCMI to", and in the second sentence, after the word "Commandant", remove the word "shall" and add the words "will authorize the cognizant OCMI to".

§ 115.930 [Amended]

■ 15. In § 115.930, in the last sentence, remove the words "Commandant will indicate the" and after the word "equivalent", add the words "must be indicated".

PART 122—OPERATIONS

■ 16. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 17. In § 122.304, revise paragraph (a)(3) to read as follows:

§ 122.304 Navigation underway.

(a) * * *

(3) Prevailing and forecasted visibility and environmental conditions, including wind and waves;

* * * * *

■ 18. In § 122.315, designate the existing paragraph as paragraph (a), and add paragraph (b) to read as follows:

§ 122.315 Verification of vessel compliance with applicable stability requirements.

* * * * *

(b) In order to fulfill the requirements of paragraph (a) of this section and avoid overloading the vessel, the master must take into account the total weight of passengers, crew, and variable loads.

§ 122.602 [Amended]

■ 19. In § 122.602—

■ a. In paragraph (c), remove the words "that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or with § 178.310 of this chapter";

■ b. Remove paragraph (b); and

■ c. Redesignate paragraphs (c) through (g) as paragraphs (b) through (f).

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

■ 20. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 21. Revise § 170.001(a) to read as follows:

§ 170.001 Applicability.

(a) This subchapter applies to each vessel that is—

(1) Contracted for on or after March 11, 1996, except where specifically stated otherwise; and

(2) Either—

(i) Inspected under another subchapter of this chapter, or is a foreign vessel that must comply with the requirements in subchapter O of this chapter; or

(ii) Required by either subchapter C or subchapter E of this chapter to meet applicable requirements contained in this subchapter.

* * * * *

■ 22. Revise § 170.015 to read as follows:

§ 170.015 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* It is also available for inspection at the Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies, 2008, incorporation by reference (IBR) approved for § 170.270.

(2) ASTM F 1197–00, Standard Specification for Sliding Watertight Door Control Systems, 2007, IBR approved for § 170.270.

(c) Naval Publications and Forms Center, Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

(1) MIL–P–21929B, Military Specification, Plastic Material, Cellular

Polyurethane, Foam-in-Place, Rigid (2 Pounds per Cubic Foot), 15 January 1991, IBR approved for § 170.245.

(2) [Reserved]

(d) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) Resolution MSC.216(82), Adoption of Amendments to the International Convention for the Safety of Life At Sea, 1974, As Amended (IMO Res. MSC.216(82), Adopted on 8 December 2006, IBR approved for §§ 170.140 and 170.248.

(2) Resolution MSC 267(85), Adoption of the International Code on Intact Stability, 2008 (2008 IS Code), Adopted on 4 December 2008, IBR approved for § 170.165.

■ 23. In § 170.055—

■ a. Redesignate paragraphs (e) through (w) as paragraphs (g) through (y), respectively, and redesignate paragraphs (a) through (d) as paragraphs (b) through (e), respectively, and;

■ b. Add new paragraphs (a) and (f); and

■ c. Revise redesignated paragraph (k) to read as follows:

§ 170.055 Definitions concerning a vessel.

(a) *Assumed average weight per person* means the weight calculated in accordance with § 170.090 of this part.

* * * * *

(f) *Constructed* means the date—

(1) The vessel's keel was laid; or

(2) Construction identifiable with the vessel began and assembly of that vessel commenced comprising of 50 metric tons or at least 1 percent of the estimated mass of all structural material, whichever is less.

* * * * *

(k) *Lightweight* means the displacement of a vessel with fixed ballast and with machinery liquids at operating levels but without any cargo, stores, consumable liquids, water ballast, or persons and their effects.

* * * * *

§ 170.070 [Amended]

■ 24. In § 170.070(b) introductory text, after the word "OCMI", add the words ", or regulations by which the vessel is inspected require their application:".

§ 170.075 [Amended]

■ 25. In § 170.075(a), remove the words "or four copies for plan review being conducted by the American Bureau of Shipping (ABS)".

§ 170.080 [Amended]

■ 26. In § 170.080, remove the words "or four copies for plan review being conducted by the ABS.".

§ 170.085 [Amended]

■ 27. In § 170.085, remove the words "or the ABS".

■ 28. In § 170.090, revise paragraph (a), and add paragraphs (c), (d), (e), (f), and (g) to read as follows:

§ 170.090 Calculations.

(a) All calculations required by this subchapter must be submitted with the plans required by § 170.075 of this subpart. Calculations must account for the weight of all loads carried aboard the vessel.

* * * * *

(c) The assumed weight per person for calculations showing compliance with the regulations of this subchapter must be representative of the passengers and crew aboard the vessel while engaged in the service intended. Unless the Officer in Charge, Marine Inspection (OCMI) permits or requires the use of other values in writing, the assumed weight per person of passengers and crew must not be less than that the Assumed Average Weight per Person (AAWPP) calculated in accordance with paragraphs (d) and (e) of this section.

(d)(1) The AAWPP is 185 lb from December 1, 2011 until the AAWPP is first updated pursuant to the provisions of this section. As of the effective date of the first AAWPP update after December 1, 2011, this paragraph (d)(1) will be superseded and cease to be effective.

(2) The formula in paragraph (e) of this section will be used to determine an update to the AAWPP. It requires the use of data in the most recent report released by the Centers for Disease Control and Prevention (CDC) through the National Center for Health Statistics (NCHS), or any successors to those centers. This report can be found on the CDC's Web site.

(3) Each time the CDC releases a report containing mean weights of United States adult males and females, the Coast Guard will apply the formula in paragraph (e) of this section to that data. The resulting value will become the new AAWPP only if the sum equals or exceeds 10 pounds more than the AAWPP then in effect. The Coast Guard will notify the public of the new AAWPP in the **Federal Register** and other appropriate media.

(4) Updates to the AAWPP used in calculations showing compliance with this subchapter will be promulgated as interpretive rules and become effective in accordance with the provisions of this section without further rulemaking procedures.

(5) Notwithstanding any other provisions of this section, the Coast Guard may choose, in its discretion, to conduct further rulemaking procedures at any time to amend this subchapter, including updates of the AAWPP.

(6) Updates to the AAWPP used in calculations showing compliance with this subchapter will be published in a separate **Federal Register** notice and other appropriate media, except when the Coast Guard conducts further rulemaking procedures under paragraph (d)(5) of this section.

(7) Notwithstanding any other provisions of this section, the Coast Guard may choose, in its discretion, to delay or dispense with any update of the AAWPP. In the event the Coast Guard elects to dispense with or delay an update that would otherwise issue as an interpretive rule pursuant to the provisions of this section, the Coast Guard will inform the public of the decision and explain the reasons in a **Federal Register** notice.

(e) To obtain an AAWPP update, add the mean weight of all U.S. males aged 20 years and older to the mean weight of all U.S. females aged 20 years and older, and divide the sum by 2. To this average of the mean weights, add 7.5 pounds of assumed clothing weight, and round the resulting sum to the nearest whole number in pounds.

(f) Updates to the AAWPP will become effective beginning one calendar year after publication in the **Federal Register** of a notice described in paragraphs (d)(3) and (d)(6) of this section, except the initial AAWPP issued pursuant to paragraph (d)(1) of this section will become effective on December 1, 2011. Notwithstanding any other provisions of this title, the Coast Guard may implement updates to the AAWPP at any time with less than one year of public notice when required for public safety reasons.

(g) The most recent **Federal Register** notice that publishes the AAWPP as determined by this section is also on file at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–521), 2100 2nd St., SW., Stop 7126, Washington DC 20593–7126, or go to: *http://www.uscg.mil/hq/cg5/cg5212.asp.*

§ 170.093 [Amended]

■ 29. In § 170.093, remove the last sentence.

§ 170.100 [Amended]

■ 30. In § 170.100, remove paragraphs (c) and (d).

■ 31. Add § 170.105(b)(5) to read as follows:

§ 170.105 Applicability.

* * * * *

(b) * * *

(5) A small passenger vessel inspected under subchapter T of this chapter if § 178.210(c) of this chapter is applicable.

§ 170.110 [Amended]

■ 32. In § 170.110(b), remove the words "or the ABS".

§ 170.120 [Amended]

■ 33. In § 170.120(a), remove the words "or the ABS".

§ 170.135 [Removed and Reserved]

■ 34. Remove and reserve § 170.135.

■ 35. Add § 170.140 to subpart D to read as follows:

§ 170.140 Operating information for a vessel constructed on or after January 1, 2009 and issued a SOLAS safety certificate.

(a) This section applies to each vessel that is—

(1) Constructed on or after January 1, 2009; and

(2) Issued either a SOLAS Passenger Ship Safety Certificate or a SOLAS Cargo Ship Safety Construction Certificate.

(b) In addition to the information required in § 170.110 of this part, the stability booklet of each vessel to which this section applies must contain the information required by applicable regulations of IMO Res. MSC.216(82) (incorporated by reference, see § 170.015).

(c) As used in SOLAS chapter II–1, *Administration* means the Commandant, U.S. Coast Guard.

■ 36. Revise the heading of subpart E to read as follows:

Subpart E—Intact Stability Criteria

■ 37. In § 170.160, revise paragraphs (a) and (c)(3) and add paragraph (d) to read as follows:

§ 170.160 Specific applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to each vessel.

* * * * *

(c) * * *

(3) A vessel that performs one of the simplified stability proof tests described in subpart C of part 178 of this chapter.

(d) A vessel that complies with § 170.165 of this part need not comply with §§ 170.170 and 170.173 of this part.

■ 38. Add § 170.165 to read as follows:

§ 170.165 International Code on Intact Stability.

(a) Each vessel issued one or more of the certificates listed in paragraphs (a)(1) through (4) of this section, must comply with the Introduction and Part A of the International Code on Intact Stability, 2008 (2008 IS Code), unless permitted otherwise (incorporated by reference, see § 170.015).

(1) International Load Line Certificate.

(2) SOLAS Passenger Ship Safety Certificate.

(3) SOLAS Cargo Ship Safety Construction Certificate.

(4) High-speed Craft Safety Certificate.

(b) A vessel not subject to the requirements of paragraph (a) of this section is permitted to comply with the applicable criteria contained in the 2008 IS Code as an alternative to the requirements of §§ 170.170 and 170.173 of this part.

■ 39. In § 170.170:

■ a. Revise the section heading to read as set forth below;

■ b. In the first sentence of paragraph (d), add the words "the conditions of loading and operation of" after the words "application to";

■ c. In the first sentence of paragraph (d), remove the words "that carry cargo below the main deck" and add, in their place, "for which the righting arm (GZ) at the angle (T), calculated after the vessel is permitted to trim free until the trimming moment is zero, is not less than the minimum metacentric height (GM) calculated in paragraph (a) of this section multiplied by sin(T)"; and

■ d. In the second sentence of paragraph (d), remove the words "or the ABS".

§ 170.170 Weather criteria.

* * * * *

§ 170.173 [Amended]

■ 40. In § 170.173(a) introductory text, remove the words "or the ABS".

§ 170.175 [Amended]

■ 41. In § 170.175:

■ a. In paragraph (b) remove the words "or ABS"; and

■ b. In paragraphs (c) and (d) remove the words "or the ABS".

§ 170.180 [Amended]

■ 42. In § 170.180 introductory text, remove the words "or ABS" in both places where it appears.

§ 170.185 [Amended]

■ 43. In § 170.185(b), remove the words "or the ABS".

§ 170.190 [Amended]

■ 44. In § 170.190, remove the words "or ABS".

§ 170.235 [Amended]

■ 45. In § 170.235(b), remove the words "or the ABS".

■ 46. In § 170.248, revise paragraph (a) and add paragraph (d) to read as follows:

§ 170.248 Applicability.

(a) Except as provided in paragraphs (b) through (d) of this section, this subpart applies to vessels with watertight doors in bulkheads that have been made watertight to comply with the flooding or damage stability regulations in this subchapter.

* * * * *

(d) Unless permitted otherwise, each vessel constructed on or after January 1, 2009 and issued a SOLAS Passenger Ship Safety Certificate or a SOLAS Cargo Ship Safety Construction Certificate must comply with the applicable regulations of IMO Res. MSC.216(82) in addition to the requirements of this subpart (IMO Res. MSC.216(82) incorporated by reference, see § 170.015).

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

■ 47. The authority citation for part 171 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 48. In § 171.001, revise paragraph (a), and add paragraphs (c) and (d) to read as follows:

§ 171.001 Applicability.

(a) Except as provided in paragraph (d) of this section, this part applies to passenger vessels inspected under subchapter K or H of this chapter, or a passenger vessel the stability of which is questioned by the Officer in Charge, Marine Inspection (OCMI).

* * * * *

(c) Specific sections of this part may also apply to a small passenger vessel inspected under subchapter T of this chapter. The specific sections are listed in subparts B and C of part 178 of this chapter and in subpart B of part 179 of this chapter.

(d) Unless permitted otherwise, a passenger vessel constructed on or after January 1, 2009, and issued a SOLAS Passenger Ship Safety Certificate must meet the applicable requirements of IMO Res. MSC.216(82) (incorporated by

reference, see § 171.012), instead of the requirements of this part. For the purposes of this section, the applicable requirements of IMO Res. MSC.216(82) are equivalent to the requirements of this part when applied to such vessels.

■ 49. Add new § 171.012 to read as follows:

§ 171.012 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* It is also available for inspection at the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) Resolution MSC.216(82), Amendments to the International Convention for the Safety of Life At Sea, 1974, As Amended (IMO Res. MSC.216(82), Adopted on 8 December 2006, incorporation by reference (IBR) approved for §§ 171.001 and 171.080.

(2) Resolution MSC 267(85), Adoption of the International Code on Intact Stability, 2008 (2008 IS Code), Adopted on 4 December 2008, IBR approved for § 171.050.

■ 50. Add the heading of subpart B to read as follows:

Subpart B—Intact Stability

Subpart C—[Amended]

■ 51. Remove the heading for subpart C and transfer §§ 171.045, 171.050, 171.055, and 171.057 to subpart B.

■ 52. Revise § 171.045 to read as follows:

§ 171.045 Weight of passengers and crew.

(a) This section applies to each vessel, regardless of when constructed.

(b) Compliance with the intact stability requirements applicable to each vessel, using a total weight of passengers and crew carried, is based upon an Assumed Average Weight per Person, which is determined in accordance with § 170.090 of this chapter.

■ 53. Revise § 171.050 to read as follows:

§ 171.050 Passenger heel requirements for a mechanically propelled or a non-self propelled vessel.

(a) Each mechanically propelled or non-self propelled vessel other than a pontoon vessel must be shown by design calculations, in each condition of loading and operation, to have a metacentric height (GM) in feet (meters) of not less than the value given by the following equation:

$$GM = [(W/\Delta)(2/3)(b)]/(\tan(T))$$

Where—

Δ = displacement of the vessel in long (metric) tons.

W = total weight in long (metric) tons of persons other than required crew, including personal effects of those persons expected to be carried on the vessel.

T = 14 degrees or the angle of heel at which the deck edge is first submerged, whichever is less; and

b = distance in feet (meters) from the centerline of the vessel to the geometric center of the passenger deck on one side of the centerline.

(b) The criteria specified in paragraph (a) of this section are limited in application to the conditions of loading and operation of vessels for which the righting arm (GZ) at the angle (T), calculated after the vessel is permitted to trim free until the trimming moment is zero, is not less than the minimum metacentric height (GM) calculated in paragraph (a) of this section multiplied by sin(T). In conditions not meeting this requirement, the Coast Guard Marine Safety Center requires calculations in addition to those in this section.

(c) A vessel that complies with the requirements for passenger ships contained in the International Code of Intact Stability, 2008 (2008 IS Code) (incorporated by reference, see § 171.012) need not comply with paragraphs (a) or (b) of this section. Vessels complying with the 2008 IS Code must use the Assumed Average Weight per Person obtained according to § 170.090 of this title to be exempt from the other requirements of this section.

■ 54. Add new § 171.052 to subpart B to read as follows:

§ 171.052 Passenger heel requirements for pontoon vessels.

(a) Each pontoon vessel, in each condition of loading and operation, must have an area under the righting arm curve from the angle of equilibrium to an angle of 40 degrees, the downflooding angle, or the angle of the maximum righting arm, whichever is less, of at least:

(1) For operation on exposed or partially protected waters—

(i) 10 foot-degrees with a crowding density of 5 square feet per person (2.15 persons per square meter); and

(ii) 7 foot-degrees with a crowding density of 2 square feet per person (5.38 persons per square meter); and

(2) For operation on protected waters—

(i) 5 foot-degrees with a crowding density of 5 square feet per person (2.15 persons per square meter); and

(ii) 2 foot-degrees with a crowding density of 2 square feet per person (5.38 persons per square meter).

(b) When assessing compliance with the criteria of this section, passengers are assumed to be distributed in all areas accessible to passengers so as to produce the most unfavorable combination of heel and trim.

■ 55. Add a new heading for subpart C, above § 171.060, to read as follows:

Subpart C—Subdivision and Damage Stability

§ 171.060 [Amended]

■ 56. In § 171.060(a) introductory text, remove the words "or § 171.075 for Type III subdivision".

§ 171.065 [Amended]

■ 57. In § 171.065(b)(2), remove the second equation, "Y = (M + 2P)/(V + P1 − P)" and add, in its place, the equation "Y = (M + 2P1)/(V + P1 − P)".

§ 171.070 [Amended]

■ 58. In § 171.070 revise the introductory text of paragraph (e)(1) to read as follows:

§ 171.070 Subdivision requirements—Type II.

* * * * *

(e) * * *

(1) Unless otherwise permitted, if the LBP of the vessel is 143 feet (43.5 meters) or more, or the vessel makes international voyages, each main transverse watertight bulkhead must be at least 10 feet (3 meters) plus 3 percent of the vessel's LBP from—

* * * * *

§ 171.075 [Removed and Reserved]

■ 59. Remove and reserve § 171.075.

§ 171.080 [Amended]

■ 60. In § 171.080—

■ a. In paragraph (f)(4)(i), remove "w = passenger weight = 75 kilograms," and

add, in its place, "w = passenger weight used for calculations as determined in accordance with § 170.090(c) of this chapter";

■ b. Revise paragraph (f)(4)(ii)(A) to read as set forth below; and

■ c. In the heading to paragraph (g), after the word "vessels", add the words "constructed before January 1 2009", and in paragraph (g) text, remove the words "chapter II–1, part B, regulation 8" and, in their place, add the words "the applicable regulations of IMO Res. MSC.216(82) (incorporated by reference, see § 171.012)".

§ 171.080 Damage stability standards for vessels with Type I or Type II subdivision.

* * * * *

(f) * * *

(4) * * *

(ii) * * *

(A) The weight of each passenger is the weight used for calculations as determined in accordance with § 170.090(c) of this chapter;

* * * * *

§ 171.082 [Removed]

■ 61. Remove § 171.082.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

■ 62. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 63. Revise § 172.020 to read as follows:

§ 172.020 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* It is also available for inspection at the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) Amendment to Chapter VI of the International Convention for the Safety of Life at Sea, 1960, Resolution A.264(VIII), incorporation by reference (IBR) approved for § 172.015.

(2) Publication No. 240–E, International Code for the Safe Carriage of Grain in Bulk, IBR approved for § 172.015.

(3) Resolution MEPC.117(52), Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (IMO Res. MEPC.117(52)), Adopted on 15 October 2004, IBR approved for § 172.070.

■ 64. Revise § 172.070 to read as follows:

§ 172.070 Intact stability.

All tank vessels of 5,000 deadweight tons (DWT) and above, contracted after December 3, 2001, must comply with the intact stability requirements of IMO Res. MEPC.117(52) (incorporated by reference, see § 172.020).

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

■ 65. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 66. Revise § 174.007 to read as follows:

§ 174.007 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* It is also available for inspection at the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), 2100 2nd St. SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below.

(b) American Society for Testing and Materials (ASTM) 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(1) ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies, 2008, incorporation by reference (IBR) approved for § 174.100.

(2) ASTM F 1197–00, Standard Specification for Sliding Watertight Door Control Systems, 2007, IBR approved for § 174.100.

(c) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) Resolution MSC.216(82), Adoption of Amendments to the International Convention for the Safety of Life At Sea, 1974, As Amended (IMO Res. MSC.216(82)), Adopted on 8 December 2006, IBR approved for § 174.360.

(2) [Reserved]

■ 67. Revise § 174.360 to read as follows:

§ 174.360 Calculations.

Each ship to which this subpart applies must comply with the minimum standard of subdivision and damage stability applicable to that ship under IMO Res. MSC.216(82), (incorporated by reference, see § 174.007). Compliance with the applicable requirements must be demonstrated by calculations and reflected in information on loading restrictions, such as a maximum height of the center of gravity (KG) or minimum metacentric height (GM) curve, that is part of the stability information required by § 170.110 of this chapter.

PART 175—GENERAL PROVISIONS

■ 68. Revise the authority citation for part 175 to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 175.900 also issued under 44 U.S.C. 3507.

■ 69. In § 175.400, add new definitions for "Pontoon vessel", "Total test weight" and "Variable load" in alphabetical order to read as follows:

§ 175.400 Definition of terms used in this subchapter.

* * * * *

Pontoon vessel means any vessel having two or more watertight hulls, which are structurally independent from the vessel's deck or cross structure.

* * * * *

Total test weight means the weight used to simulate heeling and trimming moments when a simplified stability test is performed in accordance with § 178.330 or § 178.340 of this subchapter.

* * * * *

Variable load means the weight of all items brought on board a vessel for which explicit account is not made in approved stability calculations, including but not limited to, personal effects, carry-on items, luggage, and equipment of any kind.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

■ 70. The authority citation for part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 71. In § 176.110, revise paragraphs (d)(2) and (d)(3), and add paragraph (d)(4) to read as follows:

§ 176.110 Routes permitted.

* * * * *

(d) * * *

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, and other characteristics;

(3) The suitability of the vessel for nighttime operations; and

(4) The suitability of the vessel for all environmental conditions.

■ 72. Revise § 176.112 to read as follows:

§ 176.112 Total persons permitted.

The cognizant Officer in Charge, Marine Inspection (OCMI) determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons, the OCMI may consider the total weight of passengers, crew, and variable loads; stability restrictions and subdivision requirements of the vessel; the vessel's route, general arrangement, means of escape, and lifesaving equipment; minimum manning requirements; and the maximum number of passengers permitted in accordance with § 176.113 of this part.

§ 176.610 [Amended]

■ 73. In § 176.610, add a sentence to the end of paragraph (a) to read as follows:

§ 176.610 Scope of drydock and internal structural examinations.

(a) * * * The accuracy of draft or loading marks, if required by § 185.602 of this chapter, must be verified if not verified at a previous drydock examination.

* * * * *

§ 176.900 [Amended]

■ 74. In § 176.900(a)—

■ a. Add the words "is certificated for or" after the word "which";

■ b. Remove the word "an"; and

■ c. Remove the word "voyage" and add, in its place, the word "voyages".

§ 176.910 [Amended]

■ 75. In § 176.910(a)—

■ a. Remove the word "issues" in the second sentence and add, in its place, the words "authorizes the cognizant OCMI to issue"; and

■ b. In the last sentence, after the word "will", add the words "authorize the cognizant OCMI to".

§ 176.920 [Amended]

■ 76. In § 176.920(d), after the word "will" in the first and second sentences, add the words "authorize the cognizant OCMI to".

§ 176.930 [Amended]

■ 77. In § 176.930, in the last sentence, remove the words "Commandant will indicate the" and after the word "equivalent", add the words "must be indicated".

PART 178—INTACT STABILITY AND SEAWORTHINESS

■ 78. The authority citation for part 178 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 178.115 [Amended]

■ 79. In § 178.115, remove the word "An" and add in its place "an", and at the beginning of the paragraph, add the words "Except where specifically stated otherwise,".

■ 80. In § 178.210, revise the first sentence of paragraphs (a) and (b), revise paragraph (c), and add paragraph (d) to read as follows:

§ 178.210 Stability information.

(a) Stability information (stability details indicated on the Certificate of Inspection, a stability letter, or a stability booklet), is required on certain vessels by paragraphs (b), (c), or (d) of this section. * * *

(b) A vessel which, under § 178.310 of this part, complies with requirements in subchapter S of this chapter, must have stability details on the vessel's Certificate of Inspection, a stability letter issued by the cognizant Officer in Charge, Marine Inspection (OCMI) or the Commanding Officer, Marine Safety Center, or an approved stability booklet. * * *

(c) When necessary for safe operation, the cognizant OCMI may place specific stability restrictions in a stability letter or on the Certificate of Inspection of a vessel not more than 65 feet (19.8 meters) in length, which, under § 178.310 of this part, complies with the requirements of § 178.320 of this part.

(d) Each pontoon vessel must have a stability letter and each stability letter issued after March 14, 2011 must be issued by the Commanding Officer, Marine Safety Center.

■ 81. Add new § 178.215 to read as follows:

§ 178.215 Weight of passengers and crew.

(a) This section applies to each vessel, regardless of when constructed, for which stability information is based on the results of a simplified stability proof test.

(b) Except as provided in paragraph (c) of this section, and if not provided in the stability information required, the owner of each vessel must provide the master with the total test weight used in the simplified stability proof test and the number of passengers and crew included in the total test weight. Owners and masters must use a total weight of passengers and crew carried that is based upon an assumed weight per person, which is determined in accordance with § 170.090 of this chapter.

(c) The information specified in paragraph (b) of this section need not be provided if the owner attests that the vessel complies with applicable intact stability requirements when carrying the number of passengers and crew permitted by the Certificate of Inspection with an assumed weight per person determined in accordance with § 170.090 of this chapter.

■ 82. In § 178.230, revise paragraphs (b) introductory text and (b)(1), and add paragraph (c) to read as follows:

§ 178.230 Stability letter or Certificate of Inspection stability details.

* * * * *

(b) If § 178.210(b) of this part applies, the applicable information described in subpart C of part 170 of this title, and the calculations used to determine that information, must be submitted in addition to the applicable information listed in paragraph (b) of this section.

(1) Allowable weight and number of passengers and crew on each deck;

* * * * *

(c) If § 178.210(c) of this part applies, the allowable weight and number of passengers and crew on each deck, and the necessary calculations used to determine that information, must be submitted in accordance with paragraph (a) of this section.

■ 83. Revise § 178.310 to read as follows:

§ 178.310 Intact stability requirements—general.

(a) Except as provided in paragraph (c) of this section, each vessel must, in each condition of loading and operation, comply with the applicable requirements of—

(1) Part 170 of this chapter, except subparts G and H; and

(2) Part 171 of this chapter, subparts A and B.

(b) Sailing vessels must meet the appropriate requirements of § 171.055 or § 171.057 in subchapter S in this chapter while under sail, as well as the requirements of § 170.170 in subchapter S in this chapter while under bare poles (if an auxiliary sailing vessel as defined in § 170.055(a) of this chapter) and with storm sails set and trimmed flat (if a sailing vessel as defined in § 170.055(n) of this chapter).

(c) As an alternative to meeting the requirements of paragraphs (a) and (b) of this section, a vessel may demonstrate compliance with an appropriate standard set forth in either § 178.320 of this part for non-sailing vessels or § 178.325 of this part for monohull sailing vessels if all of the following criteria are satisfied:

(1) The length is not more than 19.8 meters (65 feet) in length;

(2) The vessel does not carry more than 12 passengers on an international voyage;

(3) The vessel either does not have more than one deck above the bulkhead deck or, if without a bulkhead deck, does not have more than one deck above the deck from which freeboard is measured excluding a pilot house; and

(4) The vessel's stability has not been questioned by the cognizant Officer in Charge, Marine Inspection (OCMI).

(d) In lieu of the requirements in paragraphs (a) through (c) of this section, a vessel may meet another stability standard approved by the Commanding Officer, Marine Safety Center.

■ 84. Revise § 178.320 to read as follows:

§ 178.320 Intact stability requirements—non-sailing vessels.

(a) As permitted by § 178.310(c) of this part, the following vessels may undergo the simplified stability proof test detailed in § 178.330 of this part, in the presence of a Coast Guard marine inspector, if they do not have tumblehome at the deck, measured amidships, that exceeds 2 percent of the beam:

(1) Monohull vessels; and

(2) Flush deck catamaran vessels which are not pontoon vessels and carry not more than 49 passengers.

(b) As permitted by § 178.310(c) of this part, a self-propelled pontoon vessel may undergo the pontoon simplified stability proof test detailed in § 178.340 of this part, in the presence of a Coast Guard marine inspector, if it satisfies all of the following requirements:

(1) The vessel carries not more than 49 passengers and does not make international voyages;

(2) The vessel operates on Protected Waters only;

(3) The vessel is constructed with only one deck;

(4) The buoyant hull volume consists of two symmetric, fully enclosed hulls;

(5) The cross section of each hull is circular or of wall-sided construction without tumblehome, and constant for at least 90 percent of the length of the hull;

(6) The hulls contain no machinery or tanks;

(7) The portion of the deck accessible to passengers does not extend beyond—

(i) The outboard edge of the hulls, and

(ii) The forward or the aft end of the hulls;

(8) There is no deck more than 0.15 meters (6 inches) above any point on any of the buoyant hulls;

(9) The distance between the centerlines of the hulls is not less than 1.83 meters (6 feet); and

(10) Each hull has a beam or diameter, as applicable, of not less than 0.61 meters (2 feet).

(c) For a vessel that carries not more than 49 passengers, carries no deck cargo, and is otherwise eligible to undergo the simplified stability proof test detailed in §§ 178.330 or 178.340 of this part, the authority issuing the stability letter may—

(1) Dispense with the requirements of the simplified stability proof test in §§ 178.330 or § 178.340 of this part when the vessel's stability can be adequately assessed by alternate means giving due consideration to each item that impacts a vessel's stability characteristics which include, but are not limited to, the form, arrangement, construction, number of decks, route, and operating restrictions of the vessel; or

(2) Authorize a change in the requirements of the simplified stability proof test in either §§ 178.330 or 178.340 of this part, when necessary to adequately assess the vessel's stability.

■ 85. Revise § 178.325 to read as follows:

§ 178.325 Intact stability requirements—monohull sailing vessels.

(a) As permitted by § 178.310(c) of this part, a monohull sailing vessel may demonstrate compliance with paragraphs (b) or (c) of this section if it satisfies all of the following requirements:

(1) It does not operate on exposed waters;

(2) It only operates during the daylight hours;

(3) It is of the usual type, rig, and hull form, excluding vessels without a weathertight deck, such as open boats;

(4) It carries not more than 49 passengers;

(5) It is not a sailing school vessel that carries a combined total of six or more sailing school students and instructors;

(6) Its minimum downflooding angle is greater than 60 degrees;

(7) It does not have a cockpit greater than 20 percent of the Length Over Deck; and

(8) If equipped with a cockpit and operating on Partially Protected Waters, the cockpit must be self-bailing.

(b) The vessel may undergo the simplified stability proof test detailed in § 178.330 of this part, in the presence of a Coast Guard marine inspector, if it does not have tumblehome at the deck, measured amidships, that exceeds 2 percent of the beam.

(c) The cognizant Officer in Charge, Marine Inspection (OCMI) may perform operational tests to determine whether the vessel has adequate stability and satisfactory handling characteristics under sail for protected waters or partially protected waters.

(d) The Commanding Officer, Marine Safety Center, may prescribe additional or different stability requirements for a broad, shallow draft vessel with little or no ballast outside the hull.

■ 86. In § 178.330, revise the section heading, paragraphs (a), (b), and (d)(6), and add paragraph (d)(7) to read as follows:

§ 178.330 Simplified stability proof test (SST).

(a) A vessel must be in the condition specified in this paragraph when a simplified stability proof test is performed.

(1) The construction of the vessel is complete in all respects.

(2) Ballast, if necessary, is in compliance with § 178.510 of this part and is on board and in place.

(3) Each fuel and water tank is approximately three-quarters full. Any sewage tank should be either empty or full.

(4) A weight equal to the total weight of all passengers, crew, and variable loads permitted on the vessel is on board and distributed so as to provide normal operating trim and to simulate the vertical center of gravity, causing the least stable condition that is likely to occur in service. The assumed weight per person of passengers and crew must be representative of the passengers and crew on board the vessel while engaged in the service intended. Unless the cognizant Officer in Charge, Marine Inspection (OCMI) permits or requires the use of other values in writing, weight and vertical center of gravity are to be assumed as follows:

(i) The weight of primary lifesaving equipment should be simulated at its normal location, if not on board at the time of the test.

(ii) The assumed weight per person is determined as provided by § 170.090 of this chapter.

(iii) The weight and associated vertical center of gravity of variable loads must be included as appropriate for the service intended and documented in the stability information required by subpart B of this part.

(iv) The vertical center for the total test weight must be at least 30 inches (760 millimeters) above the deck for seated passengers, and at least 39 inches (1.0 meter) above the deck for standing passengers.

(v) If the vessel carries passengers on diving excursions, the total weight of diving gear must be included in the loaded condition and placed in its stowed position. Not less than 80 pounds (36.3 kilograms) should be assumed for each person for whom diving gear is provided.

(vi) On vessels having one upper deck available to passengers above the main deck, the weight distribution must not be less severe than the following:

Total Test Weight (W) = _____

Passenger Capacity of Upper Deck:

_____

Weight on Upper Deck = (Number of Passengers on Upper Deck) * (Wt per Passenger) * 1.33

Weight on Main Deck = Total Test Weight − Weight on Upper Deck.

(5) All non-return closures on cockpit scuppers or on weather deck drains must be kept open during the test.

(b) A vessel must not exceed the limitations in paragraph (d) of this section, when subjected to the greater of the following heeling moments:

$M_p = (W)(B_p)/6$; or

$M_w = (P)(A)(H)$

Where:

M_p = passenger heeling moment in foot-pounds (kilogram-meters);

M_w = Wind heeling moment in foot-pounds (kilogram-meters)

W = the total weight of persons other than required crew, plus the personal effects of those persons expected to be carried while aboard the vessel (total test weight) in pounds (meters);

B_p = the maximum transverse distance in feet (meters) of a deck that is accessible to passengers;

A = Area, in square feet (square meters), of the projected lateral surface of the vessel above the waterline (including each projected area of the hull, superstructure, cargo, masts, area bounded by railings and canopies, but not protruding fixed objects such as antennas or running rigging).

* * * * *

(d) * * *

(6) On a non-sailing flush deck catamaran that is propelled by mechanical means, not more than one-third of the freeboard or one-third of the draft, whichever is less, may be immersed.

(7) In no case may the angle of heel exceed 14 degrees.

* * * * *

■ 87. Revise § 178.340 to read as follows:

§ 178.340 Stability standards for pontoon vessels on protected waters.

(a) A pontoon vessel meeting the applicability requirements of § 178.320 of this part must be in the condition described in § 178.330(a) of this part when the PSST is performed, except that fuel, water and sewage tanks should either be empty or filled to 100 percent capacity, whichever is more conservative.

(b) A pontoon vessel must not exceed the limitations in paragraph (c) of this section when subjected to the greater of the following heeling moments:

$M_{pc} = [(W)(B_p - K)]/2$; or

$M_w = (P)(A)(H)$

Where:

M_{pc} = passenger and crew heeling moment in foot-pounds (kilogram-meters);

W = the total weight of passengers and crew aboard (total test weight) in pounds (kilograms);

B_p = the maximum transverse distance of the deck accessible to passengers in feet (meters);

K = 2.0 feet (0.61 meters);

M_w = Wind heeling moment in foot-pounds (kilogram-meters)

P = Wind pressure of 7.5 pounds/square foot (36.6 kilograms/square meter);

A = Area, in square feet (square meters), of the projected lateral surface of the vessel above the waterline (including each projected area of the pontoons, superstructure and area bounded by railings and structural canopies); and

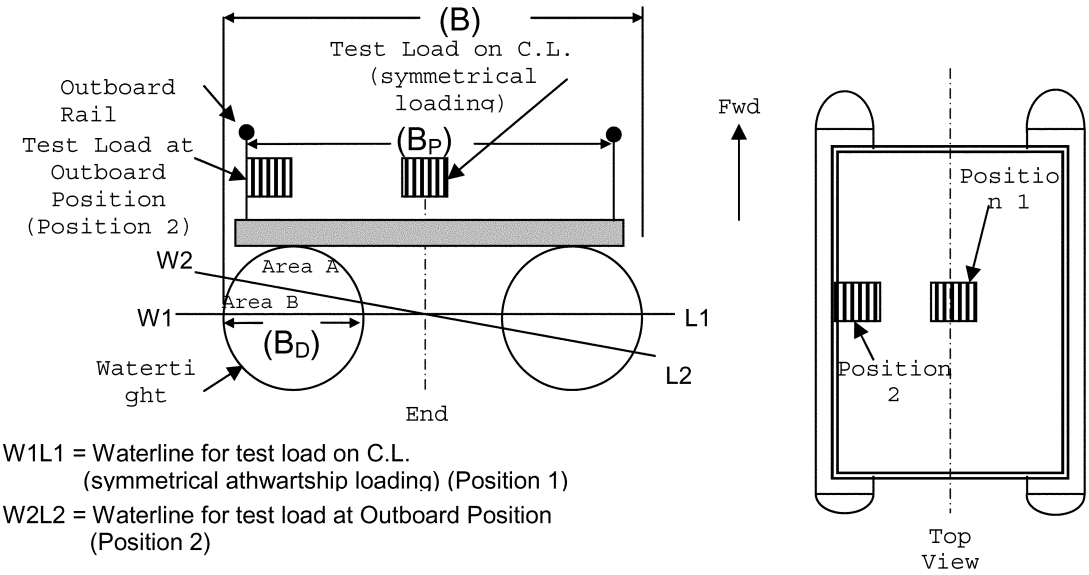
H = Height, in feet (meters), of the center of area (A) above the waterline, measured up from the waterline.

(c) With the appropriate heeling moment applied to the most adversely affected side of the vessel, the remaining exposed cross-sectional area of the pontoon must be equal to or greater than both—

(1) The cross-sectional area submerged due to the load shift (for an example, see Figure 178.340(c)(1) of this section); and

Figure 178.340(c)(1)

PSST TRANSVERSE STABILITY



W1L1 = Waterline for test load on C.L. (symmetrical athwartship loading) (Position 1)

W2L2 = Waterline for test load at Outboard Position (Position 2)

Area A = pontoon cross-sectional area above W2L2

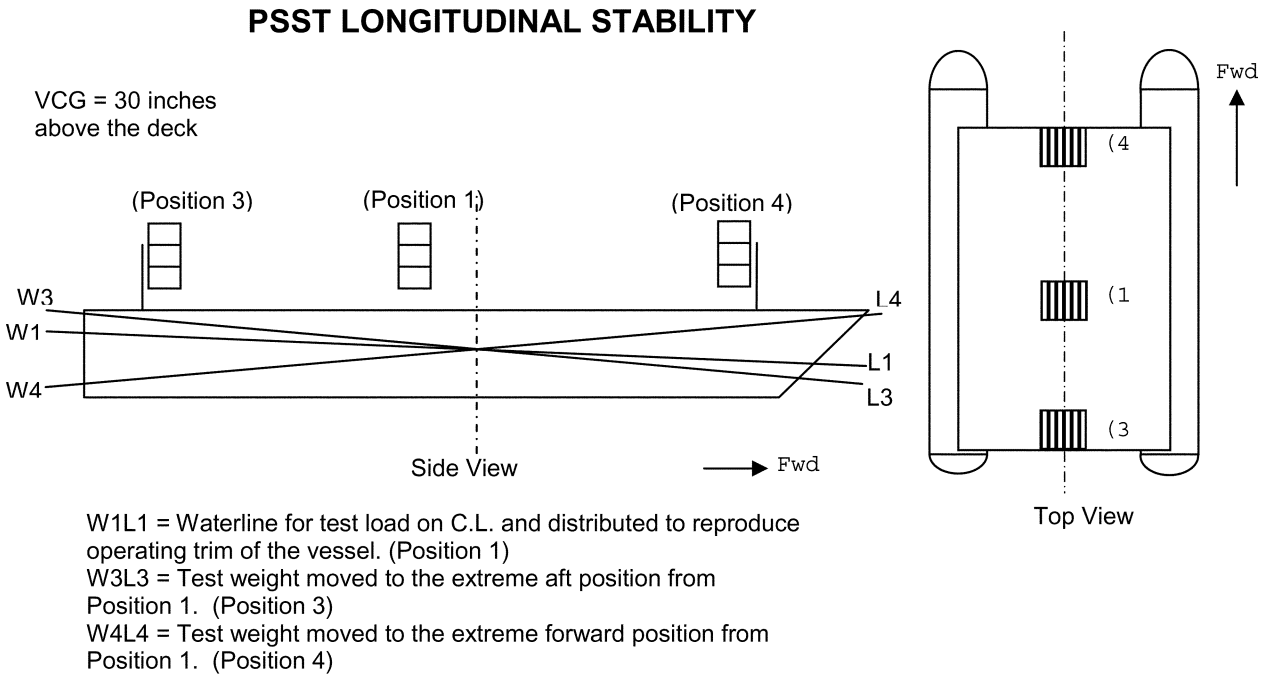
Area B = pontoon cross-sectional area between W1L1 and W2L2

With load in outboard position (Position 2), Area A must be equal or greater than both Area B and ¼ of the cross-sectional area of one pontoon.

(2) One-quarter of the cross-sectional area on one pontoon.

(d) A pontoon vessel must also be tested to determine whether trimming moments will submerge the bow or stern of the buoyant hull. The top of any pontoon must not be submerged at any location, as indicated in Figure 178.340(d) of this section, with the total test weight (W) located on the centerline and positioned as far forward or aft on the deck as practicable, whichever position results in the least freeboard.

Figure 178.340(d)



With the test load at the extreme aft position (Position 3) and at the extreme forward position (Position 4), the top of the pontoon must not be submerged.

PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

■ 88. The authority citation for part 179 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 89. Add new § 179.15 to subpart A to read as follows:

§ 179.15 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* It is also available for inspection at the Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), 2100 2nd St., SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed in paragraph (b) of this section.

(b) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org/.*

(1) Resolution MSC.216(82), Adoption of Amendments to the International Convention for the Safety of Life At Sea, 1974, As Amended (IMO Res. MSC.216(82)), Adopted on 8 December 2006, IBR approved for § 179.212.

(2) [Reserved]

■ 90. Revise § 179.212 to read as follows:

§ 179.212 Watertight bulkheads for subdivision and damage stability.

(a) Except as provided in paragraph (c) of this section, each vessel must comply with the Type II subdivision and damage stability requirements of §§ 171.070 through 171.073 and 171.080 of this chapter if it meets one or more of the following criteria:

(1) Is more than 19.8 meters (65 feet) in length;

(2) Carries more than 49 passengers;

(3) Is constructed of wood on or after March 11, 2001, and operates in cold water; or

(4) Is constructed before January 1, 2009 and carries more than 12 passengers on an international voyage.

(b) Vessels constructed on or after January 1, 2009 and carrying more than 12 passengers on an international voyage must comply with the applicable requirements of IMO Res. MSC.216(82) (incorporated by reference, see § 179.15) unless permitted otherwise.

(c) As an alternative to complying with the Type II subdivision and damage stability requirements of §§ 171.070 through 171.073 and 171.080 of this chapter, a monohull vessel which undergoes a simplified stability proof test in accordance with § 178.330 of this chapter may comply with § 179.220 of this part.

(d) For the purpose of demonstrating compliance with the Type II subdivision and damage stability requirements of §§ 171.070 through 171.073 and 171.080 of this chapter, the requirements of IMO Res. MSC.216(82) may be considered equivalent.

■ 91. In § 179.220—
■ a. In Table 179.220(a) remove the term "d/L" and in its place, add the term "x/L"
■ b. In note 1 to Table 179.220(a), remove the term "d = distance", and in its place, add the term "x = distance"; and
■ c. Add paragraph (c) to read as follows:

§ 179.220 Location of watertight bulkheads for subdivision.

* * * * *

(c) Calculations needed to demonstrate compliance with paragraphs (a) and (b) of this section must be submitted to, and approved by, the Commanding Officer, Marine Safety Center.

§ 179.230 [Removed and reserved]

■ 92. Remove and reserve § 179.230.

PART 185—OPERATIONS

■ 93. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 94. In § 185.304, revise paragraph (a)(3) and add paragraph (b) to read as follows:

§ 185.304 Navigation underway.

(a) * * *

(3) Prevailing and forecasted visibility and environmental conditions, including wind and waves;

* * * * *

(b) Masters of vessels not greater than 65 ft (19.8 m) in length must have means available, satisfactory to the Officer in Charge, Marine Inspection (OCMI), to obtain or monitor the latest marine broadcast in order to comply with the requirements of paragraph (a) of this section.

■ 95. In § 185.315, designate the existing paragraph as paragraph (a) and add paragraph (b) to read as follows:

§ 185.315 Verification of vessel compliance with applicable stability requirements.

* * * * *

(b) In order to fulfill the requirements of paragraph (a) of this section and avoid overloading the vessel, the master must take into account the total weight of passengers, crew, and variable loads.

§ 185.602 [Amended]

■ 96. In § 185.602—
■ a. In paragraph (b) introductory text, remove the words "that fits into any one of the following categories:" and add, in their place, the words "that does not demonstrate compliance in accordance with § 178.310(c) of this chapter.";
■ b. Remove paragraphs (b)(1) through (b)(3); and
■ c. In paragraph (c), remove the words "that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or in accordance with § 178.310 of this chapter,".

Dated: November 17, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–30391 Filed 12–13–10; 8:45 am]

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Federal Register

Tuesday,
December 14, 2010

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Population of the Desert Tortoise as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0032; MO 92210–0–008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Population of the Desert Tortoise 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 Sonoran population of the desert tortoise (*Gopherus agassizii*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the Sonoran population of the desert tortoise is warranted. Currently, however, listing the Sonoran population of the desert tortoise is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the Sonoran population of the desert tortoise to our candidate species list. We will develop a proposed rule to list the Sonoran population of the desert tortoise as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on December 14, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2009–0032. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Steven L. Spangle, Field Supervisor Arizona Ecological Services Office (see **ADDRESSES**); by telephone at (602) 242–0210; or by facsimile at (602) 242–2513. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the 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 determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians and Western Watersheds Project (petitioners) requesting that the Sonoran population of the desert tortoise be listed under the Act as a distinct population segment (DPS), as threatened or endangered rangewide (in the United States and Mexico), and critical habitat be designated. The petition contained detailed information on the natural history, biology, current status, and distribution of the Sonoran population of the desert tortoise. It also contained information on what the petitioners reported as potential threats to the Sonoran population of the desert tortoise, such as livestock grazing, urbanization and development, mining, international border patrol activities, illegal collection, inadequacy of existing regulations, altered fire regimes, off-highway vehicle use, drought, and climate change. We acknowledged the receipt of the petition in a letter to the WildEarth Guardians and Western Watersheds Project, dated November 26, 2008. In that letter we also stated that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act was not warranted. We also stated that we intended to make our finding on whether the petition presented substantial information that the requested action may be warranted, to the maximum extent practicable within 90 days of receipt of the petition, according to the provisions of section 4(b)(3) of the Act.

On August 28, 2009, we made our 90-day finding that the petition presented substantial scientific information indicating that listing the Sonoran population of the desert tortoise (*Gopherus agassizii*) may be warranted. The finding and notice of our initiation of a status review was published in the **Federal Register** on August 28, 2009 (74 FR 44335).

On April 10, 2010, a stipulated settlement agreement (*WildEarth Guardians and Western Watersheds Project* v. *Salazar,* 10–cv–86–ACT–RHS (D. NM)) was filed. In this agreement, we agreed to submit a 12-month finding to the **Federal Register** on or before December 5, 2010. The stipulated settlement agreement was signed and adopted by the District Court of New Mexico on April 15, 2010.

This notice constitutes our 12-month finding for the petition to list the Sonoran population of the desert tortoise as threatened or endangered.

Other Federal Actions

Throughout this finding, we use "Mojave" to describe desert tortoise populations north and west of the Colorado River, as well as any reference to the biotic community known as the "Mojave Desert" or "Mojave desertscrub." These uses are consistent with the previous and current spelling of the common name in Federal actions that have addressed this population. We use "Mohave" in the geographic context to remain consistent with its reference by the U.S. Board of Geographic Names (*e.g.,* Mohave County). In addition, while the Sonoran population of the desert tortoise is not currently formally recognized as a unique taxonomic entity, for ease of reference, we refer to the Sonoran population of the desert tortoise as the "Sonoran desert tortoise" in this finding.

On December 30, 1982, we published a notice of review which determined the desert tortoise throughout its range in the United States and Mexico to be a Category 2 Candidate species (47 FR

58454); this was reaffirmed on September 18, 1985 (50 FR 37958). Category-2 status was granted to species for which information in our possession indicated that a proposed listing as threatened or endangered was possibly appropriate, but for which sufficient data were not available to make a determination of listing status under the Act.

On April 2, 1990, we issued a final rule designating the Mojave population of the desert tortoise (occurring north and west of the Colorado River) as a threatened species under the Act (55 FR 12178; see final rule for a summary of previous actions regarding the Mojave population of the desert tortoise). Currently, the Mojave population of the desert tortoise is recognized as a distinct population segment under the Act. As part of that rulemaking, we designated any desert tortoise from the Sonoran population as threatened when observed outside of its known range, due to similarity of appearance under section 4(a) of the Act.

On December 5, 1996, we published a rule that discontinued the practice of keeping a list of Category 2 Candidate species (61 FR 64481). Since that time, the Sonoran desert tortoise observed inside its known range has had no Federal Endangered Species Act status.

For a detailed account of previous Federal actions that pertained to the desert tortoise in the United States, please review the following **Federal Register** documents: "Proposed Endangered Status and Critical Habitat for the Beaver Dam Slope Population of the Desert Tortoise" (43 FR 37662, August 23, 1978); "Requirement to withdraw or supplement proposals to determine various U.S. taxa of plants and wildlife as Endangered or Threatened or to determine Critical Habitat for such species" (44 FR 12382, March 6, 1979); "Reproposal of Critical Habitat for the Illinois mud turtle and Beaver Dam Slope population of the desert tortoise" (44 FR 70680, December 7, 1979); "Listing as Threatened With Critical Habitat for the Beaver Dam Slope Population of the Desert Tortoise in Utah" (45 FR 55654, August 20, 1980); "Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species" (47 FR 58454, December 30, 1982); "Notice of Findings on Four Petitions, and Review of One Species" (50 FR 13054, April 2, 1985); "Review of Vertebrate Wildlife" (50 FR 37958, September 15, 1985); "Finding on Desert Tortoise Petition" (50 FR 49868, December 5, 1985); "Findings on Pending Petitions and Description of Progress of Listing Actions" (53 FR 25511, July 7, 1988); "Findings on Pending Petitions and Description of Progress of Listing Actions" (53 FR 52746, December 29, 1988); "Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise" (54 FR 32326, August 4, 1989); "Desert Tortoise" (54 FR 42270, October 13, 1989); "Determination of Threatened Status for the Mojave Population of the Desert Tortoise" (55 FR 12178, April 2, 1990); "Finding on a Petition to List the Sonoran Desert Tortoise as Threatened or Endangered" (56 FR 29453, June 27, 1991); "Proposed Determination of Critical Habitat for the Mojave Population of the Desert Tortoise" (58 FR 45748, August 30, 1993); "Determination of Critical Habitat for the Mojave Population of the Desert Tortoise" (59 FR 5820, February 8, 1994); "Determination of Critical Habitat for the Mojave Population of the Desert Tortoise" (59 FR 9032, February 24, 1994); "Notice of Final Decision on Identification of Candidates for Listing as Endangered or Threatened" (61 FR 64481, December 5, 1996); and "90–Day Finding on a Petition To List the Sonoran Population of the Desert Tortoise (*Gopherus agassizii*) as a Distinct Population Segment (DPS) with Critical Habitat" (74 FR 44335, August 28, 2009).

Species Information

Taxonomy

The desert tortoise is in the genus *Gopherus* (Rafinesque 1832), or gopher tortoises, and is a member of the Testudinidae family, or terrestrial tortoises. The North American tortoises formerly comprised two genera, *Gopherus* and *Xerobates,* with the latter including *X. agassizii,* the desert tortoise (Crumly 1994, pp. 7–8). Scientific nomenclature assigned to the desert tortoise has undergone a series of changes since its initial description by Cooper (1863) as *X. agassizii* (Barrett and Johnson 1990, p. 5); the currently recognized scientific name for the desert tortoise is *Gopherus agassizii.* Further information is available in Barrett and Johnson (1990, p. 5) or in the detailed account of desert tortoise phylogeny (evolutionary development) and systematics (taxonomic classification) by Crumly (1994, pp. 7–32). The desert tortoise is known in Mexico with the common names of "tortuga del monte," "Galápago de desierto," or the "xtamóosni" (Rorabaugh 2008, p. 35).

Physical Description of Sonoran Desert Tortoises

Adult Sonoran desert tortoises range in total carapace (straight-line top shell) length from 8 to 15 inches (in) (20 to 38 centimeters (cm)), with a relatively high domed shell (AGFD 2001, p. 1; Brennan and Holycross 2006, p. 54). The record length for a Sonoran desert tortoise is 19.4 in (49 cm) total carapace length (Jackson and Wilkinson-Trotter 1980, p. 430). The carapace is usually brownish with a definite pattern and prominent growth lines (AGFD 2001, p. 1). The plastron (bottom shell) is yellowish and is not hinged (AGFD 2001, p. 1; Brennan and Holycross 2006, p. 54). The hind limbs are very stocky and elephantine; forelimbs are flattened for digging and covered with large conical scales (AGFD 2001, p. 1; Brennan and Holycross 2006, p. 54). Male Sonoran desert tortoises are differentiated from females by having elongated gular (throat) shields, chin glands visible on each side of the lower jaw (most evident during the breeding season), a concave plastron, and larger overall size (AGFD 2001, p. 1).

Distribution

The desert tortoise includes portions of southern California, southern Nevada, southwestern Utah, and the western, northwestern, and southern portions of Arizona in the United States, and also includes the Mexican State of Sonora into the northern portion of Sinaloa. One-third of the geographic range of the desert tortoise occurs in northwestern Mexico (Bury *et al.* 2002, p. 86). The specific distribution of desert tortoise is influenced by habitat and climatic characteristics (vegetation community for food), soil and substrate characteristics (for shelter), and precipitation pattern (for water availability) within the appropriate elevation range.

The distribution of the Sonoran desert tortoise in the United States is considered to be entirely within Arizona and comprises approximately 26.8 million acres (ac) (10.8 million hectares (ha)); east and south of the Colorado River (Barrett and Johnson 1990, pp. 4–5; Lamb *et al.* 1989, p. 84). Sonoran desert tortoise distribution in Arizona is limited to the northeast by the limits of the Sonoran Desert. The Arizona portion of their range constitutes approximately 52 percent of their total distribution. In Arizona, the Sonoran desert tortoise occurs primarily on Federal land but also occurs on a variety of non-federal lands as well as on ten Native American reservations: (1) Fort Mojave Indian Tribe; (2) Colorado River Indian Tribe; (3) Hualapai Tribe; (4) Fort McDowell Yavapai Nation; (5) Salt River Pima-Maricopa Indian Community; (6) Gila River Indian Community; (7) Ak Chin; (8) Tohono O'odham Nation; (9) Pasqua Yaqui Tribe; and, (10) San Carlos Apache Tribe (AIDTT 2000, p. 40).

In Mexico, where 48 percent of their range occurs, the distribution of the Sonoran desert tortoise extends from the international border of Sonora and Arizona, south to the vicinity of Guaymas, and north of the Río Yaqui (the southern and southeastern-most border of their distribution), in southern Sonora (Germano *et al.* 1994, p. 77; Fritts and Jennings 1994, p. 51; Bury *et al.* 2002, p. 88; Van Devender 2002a, p. 5; Edwards *et al.* 2009, pp. 7–8). This includes approximately the western half of the State of Sonora from the Gulf of California coast east roughly to the transition to unsuitable woodland and conifer forest areas in the higher elevations of the Sierra Madre Occidental. In 30 timed searches conducted August to September 1983, and beyond the known distribution of Sonoran desert tortoises in Sonora, Mexico, Fritts and Jennings (1994, p. 52) found several patterns in Sonoran desert tortoise distribution. First, most Sonoran desert tortoises in the eastern and northern extent of their distribution in Mexico occur below the 2,600 foot (ft) (790 meters (m)) elevation contour (Fritts and Jennings 1994, p. 52). Second, populations may be the densest and the least patchy between elevations of 900 and 1,600 ft (270 and 490 m) (Fritts and Jennings 1994, p. 52). They were also not found in habitat in Mexico that received an average of 3.9 in (10 cm) or less of rain annually (Fritts and Jennings 1994, p. 53).

One question about the distribution of the Sonoran desert tortoise concerns the origin of a small number of tortoises that have been found in far southeastern Cochise County, Arizona, an area generally considered well east of the known distribution. There is some evidence that these tortoises may represent a naturally occurring population based on the presence of suitable habitat (Rorabaugh 2009, pers. comm.), similar animal communities (Rosen 2009, pers. comm.), and historic and current observations of tortoises in the area (Hulse and Middendorf 1979, p. 546; Radke 2009, pers. comm.; Van Devender *et al.* 1976, pp. 300–303). However, these observations have traditionally been discounted as released pets rather than a natural population (AIDTT 2000, p. 3; Germano *et al.* 1994, p. 81). Also, recent genetic analysis of a Sonoran desert tortoise collected from this area in 2009 indicated it was most closely related to tortoises in the Phoenix, Arizona, area and is likely, therefore, a "released or escaped captive" tortoise (Edwards 2010, pers. comm.). We recognize there is a fair amount of uncertainty regarding the origin of this population. However, because Sonoran desert tortoises are infrequently documented from this area and recent genetic testing indicated that observations represent released captives, we conclude that desert tortoises from this area do not represent a naturally-occurring, disjunct population. Consequently, we will not evaluate potential threats to the tortoises in this area of Cochise County in this finding.

Habitat

Sonoran desert tortoises are most closely associated with the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub and Mojave desertscrub vegetation types. They occur most commonly on rocky (predominantly granitic rock), steep slopes and bajadas (lower mountain slopes often formed by the coalescing of several alluvial fans (fan-shaped deposits at the ends of canyons formed when fast flowing streams slow and widen)) and in paloverde-mixed cacti associations (Ortenburger and Ortenburger 1927, p. 120; Burge 1979, p. 49; 1980, p. 48). Sonoran desert tortoise density has been observed to be higher in the Arizona Upland subdivision of the Sonoran desertscrub than in the Lower Colorado subdivision of the Sonoran desertscrub or in Mojave desertscrub (Berry 1984, p. 434; AIDTT 2000, p. 4; Boarman and Kristan 2008, p. 19). In addition to the use of vegetation to meet energy and nutritional needs, the Sonoran desert tortoise uses vegetation for predator avoidance, thermal protection, and in social behaviors (Avery and Neibergs 1997, p. 13; Grandmaison *et al.* in press, p. 3). An important attribute of Sonoran desert tortoise habitat is the presence of cryptogamic crusts (soil crusts with unique, microscopic association of flora and fauna) (Bowker *et al.* 2008, p. 2309). These occur on the surface of Sonoran Desert soils and assist with nitrogen-fixing to enhance soil fertility, improve water infiltration into soils, and prevent or lessen effects from wind and water erosion, all of which help to sustain vegetation vital to the Sonoran desert tortoise (DeFalco 1995, p. 22; DeFalco *et al.* 2001, pp. 1, 9).

Sonoran desert tortoises rarely occur in oak woodland habitat. However, one such population occurs at approximately 5,000-ft (1,500-m) elevation in Chiminea Canyon in the Rincon Mountains of Pima County, Arizona (Van Devender 2002a, p. 23), and they are also known from similar elevation in the Atascosa and Pajarito Mountains in south-central Arizona. Zylstra and Steidl (2008, p. 747) found that habitat selection by Sonoran desert tortoises was most closely associated with topographic (degree of steepness of slope) and geomorphologic (rock type and structure) influences rather than by vegetation type. Specifically, Zylstra and Steidl (2008, p. 747) found that the likelihood of observing Sonoran desert tortoises increased with increasing slope, with a strong association to aspect (the direction to which a slope faces), with east-facing slopes preferred over north-facing slopes. However, the season of use may affect which slope-aspects (the direction a particular slope faces) Sonoran desert tortoises are likely to use based on their needs at that time (Zylstra and Steidl 2008, p. 752). Specifically, Sonoran desert tortoises have different thermoregulatory and physiological needs based upon their seasonal behaviors, such as hibernation or seeking temporary shelter during the tortoise's surface-active seasons.

In addition to steep, rocky slopes and bajadas, Sonoran desert tortoises also use inter-mountain valleys as part of their home ranges and for dispersal at all age classes (Averill-Murray and Averill-Murray 2002, p. 16). In the Ironwood National Forest, Averill-Murray and Averill-Murray (2005, p. 65) found tortoises or their signs (such as scat (droppings) and burrows) on 92 percent of transects in boulder habitat, on 71 percent of transects that included incised washes (dry stream beds that flow in response to precipitation), and on 25 percent of transects that had neither boulder habitat nor incised washes. Sonoran desert tortoises were found up to one mile (mi) (1.6 kilometers (km)) away from the nearest slope, indicating that they occur in low densities in inter-mountain valleys. Averill-Murray and Averill-Murray (2005, p. 65) stated that maintaining these areas "may be important for long-term population viability." Washes might also be selectively chosen by reproductive female Sonoran desert tortoises as all eggs and hatchling desert tortoises observed by Barrett (1990, p. 205) occurred there. Sonoran desert tortoises on the 40-square-mile (sq mi) (64-square-kilometer (sq km)) Florence Military Reservation in Pinal County, Arizona, primarily use xeroriparian habitat (a habitat association with plant species tolerant to hyper-arid conditions) along washes, with caliche caves (caves formed along steep banks of washes within cemented, sedimentary rock formations of calcium carbonate) within washes being an important component to occupied habitat (Lutz *et al.* 2005, p. 22; Riedle *et al.* 2008, p. 418). Another frequently

used habitat type on the Florence Military Reservation included gently rolling alluvial fans dominated by creosote bush (*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) during all periods of the year; somewhat atypical for Sonoran desert tortoises in other portions of its range (Lutz *et al.* 2005; p. 22; Grandmaison *et al.* in press, p. 4). In this habitat, Sonoran desert tortoises often used packrat middens (organic debris piles constructed for nesting purposes which often are comprised of wood material, cactus pads, etc.) as shelter sites, especially those with suitable canopy cover, an absence of cattle activity, and proximity to roads and washes (Lutz *et al.* 2005, p. 22; Grandmaison *et al.* in press, p. 2).

Sonoran desert tortoises in Arizona generally occur within elevations from 510 to 5,300 ft (155 to 1,615 m) (Barrett and Johnson 1990, p. 7; AGFD 2001, p. 4). According to the AGFD's Heritage Data Management system, 95 percent of Sonoran desert tortoise observations in Arizona have occurred at an elevation of 904 to 4,198 ft (275 to 1279 m) (Zylstra and Steidl 2009, p. 8). However, one example of an extreme exception was a Sonoran desert tortoise observed at 7,808 ft (2,379 m) in a ponderosa pine-dominated coniferous community in the Rincon Mountain District of Saguaro National Park in Pima County, Arizona (Aslan *et al.* 2003, p. 57). The nearest road was 8.6 mi (13.9 km) away by trail and nearly 2,000 ft (610 m) lower in elevation from the observed location of the tortoise, which strongly dismisses any notion that human activity was responsible for its location at such a high elevation (Aslan *et al.* 2003, p. 57).

Sonoran desert tortoises in Mexico are generally found at lower elevations, ranging from approximately 1,000 to 1,640 ft (305 to 500 m) in elevation in rocky outcrops in desertscrub and foothills thornscrub habitat (Bury *et al.* 2002, p. 89). As in Sonoran desertscrub habitat in Arizona, Sonoran desert tortoises in Mexico often use shrubs as temporary shelter sites, and species such as mesquite (*Prosopis* spp.) and ironwood (*Olneya tesota*) may play important roles in the natural history of Sonoran desert tortoises in Mexico (Bury *et al.* 2002, p. 100). Sonoran desert tortoises in Mexico have not been documented in flatter areas between mountain ranges (Bury *et al.* 2002, p. 89), although we presume they use these areas to some extent for dispersal much like they do in similar inter-mountain basins of Arizona. With the exception of the El Pinacate Desert Bioreserve in northwestern Sonora, Sonoran desert tortoises have not been documented using the extremely arid Lower Colorado subdivision of the Sonoran Desert in Mexico (Bury *et al.* 2002, p. 89). However, based on their presence in El Pinacate and the general lack of surveys in Mexico, the Sonoran desert tortoise may potentially be found in this habitat in northwestern Sonora in low densities. The extent of Sonoran desert tortoise distribution in northeastern Sonora, an area characterized as a transitional zone of foothills thornscrub, tropical deciduous forest, and Madrean oak woodland, is poorly understood (Bury *et al.* 2002, p. 89).

Burrow Use

Adequate shelter, often in the form of constructed burrows, is one of the most important habitat features for the Sonoran desert tortoise. Burrows are constructed under rocks and boulders, beneath vegetation, on semi-open slopes, within the sidewalls of washes, or by using rocky crevices which may or may not be altered by the tortoise (Burge 1979, p. 44; 1980, pp. 44–45; Barrett 1990, p. 205; Averill-Murray *et al.* 2002a, pp. 136–137, Grandmaison *et al.* in press, p. 14). Sonoran desert tortoises construct burrows in a variety of soil types including silt, silt with loose gravel, diatomite (a light-colored porous rock composed of the shells of diatoms) and diatomaceous marl (a crumbly mixture of clays, calcium and magnesium carbonates, with remnants of shells), and well-lithified (process whereby loose particles are converted into rock) volcanic ash, as observed in the lower San Pedro River Valley of Arizona (Bailey *et al.* 1995, pp. 363–364). Burrows are used for thermoregulation, nesting, and protection from predators, and the lack of suitable conditions for constructing burrows may be a limiting factor in Sonoran desert tortoise populations (Barrett and Humphrey 1986, p. 262; Bailey *et al.* 1995, p. 366; Zylstra and Steidl 2008, p. 752). In fact, Sonoran desert tortoise population densities appear to be highly correlated with available burrows, or potential burrow sites (Averill-Murray and Klug 2000, p. 69; Averill-Murray *et al.* 2002b, p. 126). Sonoran desert tortoises often use a group of relatively closely-located burrows as focal areas of activity in their home range. In doing so, they establish circular or slightly linear movement patterns, and may temporarily move on to another such cluster of burrows within the same active season (Bulova 1994, p. 140; Averill-Murray and Klug 2000, p. 62; Lutz *et al.* 2005, p. 21).

Burrows influence a variety of Sonoran desert tortoise behaviors and physiological characteristics. During the winter dormancy period (colder, winter months of inactivity), female Sonoran desert tortoises typically use more shallow burrows that are more susceptible to variation in ambient temperatures and consequently females emerge earlier in the spring (as early as late February) than do males, who often remain dormant until the commencement of the summer monsoon (AIDTT 2000, p. 7; Ernst and Lovich 2009, p. 547). Averill-Murray and Klug (2000, p. 66) and Bailey *et al.* (1995, p. 367) suggest that shallow burrows may account for responsiveness of females to warming periods in early spring for additional foraging opportunities to increase energy reserves for egg development, as shallower burrows are more reflective of ground-surface temperatures. Alternatively, cool, less variable temperatures in deeper burrows selected by male Sonoran desert tortoises may enhance sperm development and viability, as cooler temperatures allow more sperm production (Bailey *et al.* 1995, p. 367).

The season may influence the locations and dimensions of burrows used by Sonoran desert tortoises in order to meet their behavioral and physiological needs (Barrett 1990, p. 205; Bailey *et al.* 1995, pp. 363, 366). Finally, particularly in hatchling and juvenile size classes, the burrow microclimate can affect the rate of water loss in desert tortoises, which results in behaviors (drinking pooled rain, withdrawing into their shell, seeking long, deep burrows) to avoid lethal dehydration in relatively hot, dry seasons (Wilson *et al.* 2001, p. 158; Bulova 2002, pp. 184–186).

Other forms of shelter used by Sonoran desert tortoise include packrat middens, which are often shared with other native reptiles, including other tortoises (Averill-Murray *et al.* 2002a, pp. 136–137; Lutz *et al.* 2005, p. 22; Grandmaison *et al.* in press, p. 2). These shelter types provide less insulation than earthen burrows and are therefore used for shorter duration, especially during the months with extremely hot or cold temperatures. This was the most commonly used shelter site at Florence Military Reservation.

Seasonal Behavior and Long-Distance Movements

The Sonoran desert tortoise is diurnal (active during daylight hours) but sometimes emerge at night in response to rainfall (Ernst and Lovich 2009, p. 544). Sonoran desert tortoises may be surface-active every month of the year, but in the winter, surface activity is likely a response to thermoregulatory needs or movements between burrows (Averill-Murray and Klug 2000, p. 66).

Temperature and precipitation are important predictors of Sonoran desert tortoise activity (Meyer *et al.* 2010, p. 11). Precipitation amounts and timing vary among the populations of desert tortoise. The lowest amount of rainfall (usually during the winter) occurs in the northwestern-most portion of the species' range, and gradually increases and becomes seasonally bimodal pattern (rains in winter and summer) to the south into the southern-most extent of the species range in northern Sinaloa, Mexico (Germano *et al.* 1994, p. 76). Sonoran desert tortoise surface activity largely mimics the warm-season precipitation pattern (Averill-Murray *et al.* 2002a, p. 139; Van Devender 2002a, p. 7). Like the Arizona populations, Sonoran desert tortoises in Mexico seem to be most active in late summer (Ernst and Lovich 2009, p. 544). Sonoran desert tortoises are approximately half as active during the spring as they are in the summer, with females typically becoming surface active to forage in late March, while males typically emerge (but are not necessarily active) in late April (Averill-Murray *et al.* 2002a, p. 138).

The summer monsoon (occurring typically from late June through September), characterized by both excessive heat and frequent thunderstorms, is the peak activity season for the Sonoran desert tortoise (Averill-Murray *et al.* 2002a, pp. 139–140). During this period, new growth of perennial plants is initiated and annual plants germinate, providing forage for tortoises (Averill-Murray *et al.* 2002a, p. 140). The onset of the summer monsoon triggers Sonoran desert tortoises to drink, flush their bladders, and rehydrate, establishing a positive water and energy balance, and spurring reproductive behaviors (AIDTT 2000, p. 7). Sonoran desert tortoises have been observed to seek out rocks with surface depressions during summer months to drink puddled water from monsoon storm events (Oftedal 2007, p. 23). Surface activity in Sonoran desert tortoises begins to wane as early as late September and ends by mid-December as they prepare for hibernation. Temperature and photoperiod (the duration of daylight) are likely the cues used by Sonoran desert tortoises to commence hibernation (Bailey *et al.* 1995, p. 367; Averill-Murray *et al.* 2002a, p. 147). Periods of hibernation (typically from mid-November through mid-February) in Sonoran desert tortoises appear to vary greatly among populations and among years but appear to correlate with seasonal temperatures (Bailey *et al.* 1995, p. 367; Averill-Murray and Klug 2000, p. 66).

The behavior and ecology of hatchling Sonoran desert tortoises is poorly understood because their small size makes them very difficult to observe in the wild. Their scat is small, inconspicuous, and ephemeral, and burrows used by individuals in this size class resemble those of other terrestrial vertebrates in Sonoran desert tortoise habitat (Germano *et al.* 2002, pp. 271–272). This size class is thought to be the most vulnerable, experiencing the highest mortality rates (Morafka 1994, p. 161).

Home range sizes of Sonoran desert tortoises vary with precipitation levels, contracting during wet years and expanding during dry years in response to the availability of forage plants (Averill-Murray and Klug 2000, p. 67). The home range of Sonoran desert tortoises may be as small as 6.4 ac (2.6 ha) but can vary widely, with males having larger home ranges than females (Barrett 1990, p. 203; Averill-Murray and Klug 2000, pp. 55–61; Averill-Murray *et al.* 2002a, pp. 150–151). In the lower San Pedro River Valley, Meyer (1993, p. 99) found Sonoran desert tortoise home ranges varied between 45 and 640 ac (18 and 258 ha) in size. Sonoran desert tortoises are known to exhibit high fidelity to their home ranges, with exception to dispersal movements when they move to new areas (Zylstra and Swann 2009, p. vi). They likely habituate to specific attributes of their home range, including the location of mates, water catchments, mineral licks, and burrow sites (Berry 1986a, p. 113).

Sonoran desert tortoises are known to make long-distance movements between populations in adjacent mountain ranges. In an extreme example, Edwards *et al.* (2004, p. 494) tracked an adult female Sonoran desert tortoise moving 20 mi (32 km) between the Rincon and Santa Rita mountains of southern Arizona (also see Zylstra and Swann 2009, p. 10). During this long-distance movement, this tortoise encountered several barriers to movement that required human intervention to overcome such as fence lines, railroad tracks, an interstate highway, and several captures (including a temporary adoption) by humans (Edwards *et al.* 2004, p. 494). In another example, in the San Pedro Valley of southern Arizona, a sub-adult Sonoran desert tortoise was captured and marked in 1992. It was recaptured in 2005 approximately 14 mi (23 km) from its original point of capture (Meyer *et al.* 2010, p. 18). Dispersal distances of hatchling Sonoran desert tortoises are not well understood, but are likely shorter than those of adults because of the complex habitat of boulders and vegetation (where they occur) may inhibit long-distance movements (Van Devender 2002a, p. 14).

Gibbons (1986, p. 104) suspected that long-distance movements by turtles can be explained by: (1) Nest site selection; (2) seasonal migration; (3) departure from unfavorable habitat conditions; or (4) movement by males in search of females. Averill-Murray and Klug (2000, p. 68) suggested that long-distance movements may be interpreted as random wanderings, infrequent travels to known sources of biological needs, explorations, adaptations for genetic exchange, or for dispersal to other suitable areas. Precipitation may influence the likelihood of long-distance movements, especially in individuals approaching reproductive age in populations that experience above-average precipitation for a 2- to 3-year period (AIDTT 2000, p. 8). Averill-Murray and Klug (2000, p. ii) stated, "A large cohort of young tortoises that experiences a relatively wet and productive environment, with high survival, may provide the stock for dispersal between populations as they approach sexual maturity, in addition to replacing aging adults within the local population." Long-distance movements by Sonoran desert tortoises observed by Averill-Murray and Klug (2000, p. 69) suggest the potential for metapopulation (interrelated population dynamics between regionally proximal populations) relationships between local populations inhabiting regional hillsides. Habitat features may also influence the Sonoran desert tortoises' ability to make long-distance movements. Dispersal of Sonoran desert tortoises between populations might be less likely through sparse desertscrub in very hot, dry river valleys in the Lower Colorado River subdivision of Sonoran desertscrub. Van Devender (2002a, p. 16) suggested that populations occurring in the Eagletail, Maricopa, Sand Tank, and similarly situated mountain ranges might have existed in isolation for decades, if not centuries.

There are no data to evaluate long-distance movements in populations that occur in Mexico. Although Sonoran desert tortoises in Mexico are known to occupy slopes, arroyos, and bajadas, they are infrequently observed using valley bottoms (Fritts and Jennings 1994, p. 52). Sonoran desert tortoise populations in Mexico have been poorly studied, but we presume individuals make similar long-distance movements between populations.

Longevity

Estimates of longevity in wild Sonoran desert tortoises vary considerably from 30 years to over 100 years (Germano 1992, pp. 369–370; 1994, p. 176; Zylstra and Swann 2009, p. vii). Using a growth equation to extrapolate longevity in Sonoran desert tortoises, Germano *et al.* (2002, p. 271) estimated that the average oldest ages attained for Sonoran desert tortoises is 62.2 years in females and 64.4 years in males; however, they admitted that correlating age with size is problematic in turtles. Zylstra and Swann (2009, p. vii) suspected that Sonoran desert tortoises may reach 80 to 100 years of age in the wild. Sonoran desert tortoises have been shown to live longer in the wild than those from the Mojave population.

Bladder Physiology

The bladder in the Sonoran desert tortoise is unique and serves an important function in its survival. Sonoran desert tortoises are capable of drinking large amounts of water when it is available, and may even construct water catchments by digging earthen depressions, likely as an adaptation to the infrequent and unpredictable nature of rainfall events throughout their range (Ernst and Lovich 2009, p. 546). The bladder of Sonoran desert tortoises is a large and bilobed (divided into two lobes) organ critical for withstanding the effects of seasonal and short-term drought because of its ability to store water, dilute excess dietary salts and metabolic wastes, and reabsorb water into the bloodstream (Averill-Murray *et al.* 2002a, p. 146; Ernst and Lovich 2009, p. 545). In seasonal or short-term drought conditions, the concentration of urine in Sonoran desert tortoises allows them to forage on dried vegetation by reducing the dehydration effects of such forage types (Averill-Murray *et al.* 2002a, p. 146; Ernst and Lovich 2009, p. 545). Water serves an important role in flushing salts from the body of Sonoran desert tortoises and resetting the electrolytic balance, preparing the Sonoran desert tortoise for the next dry period (Averill-Murray *et al.* 2002a, pp. 140, 146).

Diet, Foraging Behavior, and Potassium Excretion Potential

The Sonoran desert tortoise is an herbivore, and has been documented to eat 199 different species of plants, including herbs (55.3 percent), grasses (17.6 percent), woody plants (22.1 percent), and succulents (5 percent) (Ogden 1993, pp. 1–8; Van Devender *et al.* 2002; pp. 175–176; Brennan and Holycross 2006, p. 54; Oftedal 2007, p. 21; Ernst and Lovich 2009, p. 562; Meyer *et al.* 2010, pp. 28–29, 44–48). Of the numerous nonnative plant species that have become established throughout the range of the Sonoran desert tortoise, only red brome (*Bromus rubens*) and redstem filaree (*Erodium cicutarium*) are frequently eaten and considered relatively important nonnative species in the diets of Sonoran desert tortoises (Van Devender *et al.* 2002, p. 183). However, physical injury to Mojave desert tortoises resulting from consuming nonnative grass species (i.e., red brome and cheatgrass (*Bromus tectorum*)) has been documented, and sharp seeds have been found lodged between the tortoises' upper and lower jaw. This injury may adversely affect their foraging ability or become a source for infection (Medica and Eckert 2007, p. 447). Though this study focused on Mojave desert tortoises, this may affect all desert tortoises wherever these plant species occur (i.e., within the Sonoran Desert in Arizona).

Significant differences in the nutritional quality of native versus nonnative forage for desert tortoises were not found by Hazard *et al.* (2010, pp. 139–145). Nagy *et al.* (1998, pp. 260, 263) compared the nutritional values of native and nonnative grasses (native: Indian ricegrass (*Achnatherum* (*Oryzopsis*) *hymenoides*); nonnative: Mediterrean grass (*Schismus barbatus*)) and forbs (native: desert dandilion (*Malacothrix glabrata*); nonnative: redstem filaree), finding that the two grasses possessed similar nutritional value. The dry matter and energy digestibility of the two grasses were much lower than those of the forbs, providing little nitrogen, and tortoises lost more water than they gained while processing grasses. The native forb was more readily digestible than the nonnative forb as dried mass, but the inverse was true as fresh mass (Nagy *et al.* 1998, p. 263). However, the native forbs provide significantly more nitrogen and water than the nonnative forbs, which is important in maintaining a positive water balance. Results of these feeding trials suggest that the proliferation of nonnative grasses leading to the exclusion of forbs places desert tortoises at a nutritional disadvantage. If, instead of eating to obtain a given volume of food, tortoises consume just enough food to satisfy their energy needs (as commonly noted in other vertebrate groups), then the native forbs provide the best nutrition. Nagy *et al.* (1998, p. 260) concluded that the life stage of the plant and the plant type (forb or grass) were important predictors of nutritional quality versus a plant being native or nonnative to a particular region. In summary, research has shown that forbs are more valuable to Sonoran desert tortoise nutrition than grasses, and that native forbs are more valuable than nonnative forbs in a dried state, which may be important in periods of drought.

Diets of Sonoran desert tortoises vary among populations in response to seasonal availability of plant species and in response to precipitation amounts (Martin and Van Devender 2002, p. 31). In years of low winter rainfall, Sonoran desert tortoises are less selective in plant species consumed because there are fewer options, but in years of high winter rainfall, Sonoran desert tortoises have exhibited highly selective foraging habits (Oftedal 2002, pp. 205–206). During years when monsoon rains are light or irregular, Sonoran desert tortoises consume dried plant material (Averill-Murray *et al.* 2002a, p. 140). Within Saguaro National Park in southern Arizona, Sonoran desert tortoises frequently ate annual legumes in the spring (high in water content, low in potassium), and annual and perennial grasses (supplemented by prickly pear fruit (*Opuntia engelmannii*)) during the monsoon when ponding water can replenish water reserves (Oftedal 2007, p. 17). In most years, Sonoran desert tortoises consume enough calories during the summer monsoon to fuel growth and store fat for the next year (Van Devender 2002a, p. 10).

Desert tortoises are uniquely vulnerable to changes in their potassium levels (Oftedal 2002, p. 208). Because potassium cannot be easily stored in the body, excess potassium must be excreted to avoid toxicological effects (Oftedal 2002, p. 208). Therefore, Sonoran desert tortoises that must forage on plants with high potassium content must also flush their bladders more frequently and therefore risk a net loss in metabolic water levels and subsequent dehydration (Oftedal 2002, p. 209).

The potassium excretion potential (PEP) is an index of water, nitrogen, and potassium levels in a plant that relates to a desert tortoise's ability to efficiently excrete potassium. PEP is a critical consideration for determining the value or risk of particular forage species during times of drought or major perturbations to habitat, and for comparing potential effects of forage competition between tortoises and livestock. A positive PEP value for a plant species (preferred by tortoises) means there is more water and nitrogen

in the food than is needed to excrete potassium, and vice-versa for a negative PEP value (Oftedal 2002, p. 215; Ernst and Lovich 2009, p. 545). Sonoran desert tortoises have been documented to selectively forage on high PEP plant species to minimize water loss associated with metabolizing potassium (Oftedal 2002, p. 214; Ernst and Lovich 2009, p. 545). High PEP values can be found in certain species of primroses, filaree, legumes, mustards, and spurges (Ernst and Lovich 2009, p. 545). Sonoran desert tortoises have been found to be seasonally selective for high PEP forage species, based on the abundance and diversity of plants and precipitation (Oftedal 2002, p. 223; 2007, pp. 3, 22).

In addition to herbivory, Sonoran desert tortoises are also geophagous; in other words, they consume bones, stones, and soil for additional nutrient and mineral supplements, for mechanical assistance in grinding plant matter in the stomach, or to expel parasites in the intestinal tract (Sokol 1971, p. 70; Marlow and Tollestrup 1982, p. 475; Esque and Peters 1994, pp. 108–109; Stitt and Davis 2003, p. 57; Walde *et al.* 2007b, p. 148). Sonoran desert tortoises are highly attracted to sites with exposed calcium carbonate and have been observed congregating at these sites year after year eating these soils (Meyer *et al.* 2010, p. 11). Soil condition and quality are important to the Sonoran desert tortoise, not only for nutrients derived from eating soil, but also production and maintenance of vegetation that is consumed by tortoises (Avery and Neibergs 1997, p. 13).

Desert tortoises have been observed eating scat from black-tailed jack rabbits, wood rats, collared peccaries, and even desert tortoises. This behavior could possibly aid in the transfer of gut microflora such as bacteria or fungi or it could be used as a source of additional nutrients (Walde *et al.* 2005, p. 77–78). Bostick (1990, p. 149) asserted that desert tortoises feed "primarily on dung" although this claim was refuted in the literature (Boarman 2002, pp. 27, 35, 38). Infrequent observations of sand, bird feathers, arthropod parts, and snake and lizard skins have also been made during fecal analyses of desert tortoises (Ernst and Lovich 2009, p. 560).

Reproduction

The Sonoran desert tortoise breeding season begins with the summer monsoon when male-male combat over receptive females can be observed, such as at sites with exposed calcium carbonate soils, where tortoise densities may be higher (discussed above) (Meyer *et al.* 2010, p. 11). Sexual maturity and first reproduction in female Sonoran desert tortoises occurs from 12 to 22 years of age, or at 8.7 in (22 cm) in midline carapace length, and reproductive activity is highly influenced by winter and spring precipitation (Averill-Murray and Klug 2000, p. 69; Averill-Murray *et al.* 2002b, p. 119; Bury *et al.* 2002, p. 100; Germano *et al.* 2002, p. 265). Females may store sperm for up to two years, meaning that one season's mating produces the following season's clutch of eggs (Palmer *et al.* 1998, pp. 704–705; Averill-Murray *et al.* 2002a, p. 141). Female Sonoran desert tortoises may lay one clutch of 1–12 eggs per year, usually around the onset of the summer rainy season, although they may not produce a clutch every year (Averill-Murray 2002b, p. 295). Eggs hatch in September and October (Van Devender 2002a, pp. 10–11; Averill-Murray 2002b, p. 295). The average clutch size is 3.8 to 5.7 eggs, and in contrast to Mojave Desert tortoises, clutch size is not positively correlated with female body size (Mueller *et al.* 1998, p. 313; Averill-Murray 2002b, p. 299; Averill-Murray *et al.* 2002b, p. 119). Late oviposition (deposition of eggs) dates recorded on the Sugarloaf study site in central Arizona in 1998 and 1999 suggest that eggs and hatchlings may occasionally overwinter in nests (Averill-Murray 2002b, p. 299). Female desert tortoises have been known to urinate on their nest sites before and after nesting; this may be to aid in digging the nest, and might make it more difficult to dig up the nest after the soil dries, or possibly to hydrate soils in contact with eggs as the rigid-shelled eggs of desert tortoises have been shown to uptake moisture from the soil faster than it evaporates from the shell exposed to air (Patterson 1971, p. 199; Spotila *et al.* 1994, p. 112). Female Sonoran desert tortoises that survive to reproductive age are believed to produce as many as 85 eggs over the course of their lives, with perhaps two or three of those hatchlings surviving to reproductive age (Van Devender 2002a, p. 11).

Desert tortoises exhibit environmental sex determination, which means that incubation temperatures during embryonic development determine the sex of the tortoises. Higher incubation temperatures produce more females and lower temperatures produce more males (Spotila *et al.* 1994, pp. 109–111; Rostal *et al.* 2002, p. 313). Incubation temperatures at or below 86.9 degrees Fahrenheit (° F) (30.5 degrees Celsius (° C)) result in the production of all male desert tortoises, whereas temperatures of 90.5 °F (32.5 °C) result in all females, and eggs incubated at the "pivotal" temperature of 88.3 °F (31.3 ° C) develop a 1:1 sex ratio (Rostal *et al.* 2002, p. 313).

Predation

As adults, Sonoran desert tortoises are relatively protected from natural predation because of their hard shells. Mountain lions (*Felis concolor*) appear to be the only natural predator in the Sonoran Desert with the jaw strength required to puncture or crack the shells of adult Sonoran desert tortoises. However, mountain lion predation is not known to contribute to elevated mortality rates within monitored Sonoran desert tortoise populations (AIDTT 2000, p. 8; Meyer *et al.* 2010, p. 18; Riedle *et al.* 2010, p. 165). Dickenson *et al.* (2001, p. 254) recorded 14 Sonoran desert tortoise mortalities in the Little Shipp Wash and Harcuvar monitoring plots from 1990–1994, five of which were attributed to mountain lion predation. Javelina (*Tayassu tajacu*) predation on Sonoran desert tortoises was suspected in the San Pedro Valley of southern Arizona (Meyer *et al.* 2010, p. 18). Other mammalian predators may include badgers (*Taxidea taxus*), ring-tailed cats (*Bassiriscus astutus*), bobcats (*Felis rufus*), skunks (*Spilogale gracilis, Mephitis mephitis, M. macroura, Conepatus mesoleucus*), kit foxes (*Vulpes macrotis*), gray foxes (*Urocyon cinereoargenteus*), coyotes (*Canis latrans*), and domestic dogs (*Canis familiaris*) (Boarman 2002, p. 17; Ernst and Lovich 2009, p. 563).

Both golden eagles (*Aquila chrysaetos*) and common ravens (*Corvus corvax*) have been documented to prey upon all size classes of Mojave desert tortoises in California (Berry 1985, pp. 1, 6–10). Such predation might also occur on Sonoran desert tortoises. The greater roadrunner (*Geococcyx californianus*) is also a suspected predator on juvenile Mojave desert tortoises, based upon one field observation of roadrunner tracks next to a freshly killed individual (Berry 1985, p. 11); such predation might also occur on Sonoran desert tortoises. However, because avian predators rely exclusively on their vision to detect prey, we expect lower rates of avian predation on Sonoran desert tortoises occupying Arizona upland Sonoran desertscrub because the dense, complex habitat structure likely limits birds' ability to detect tortoises. Habitat-associated protection from avian predation may be less pronounced where Sonoran desert tortoises occur in the sparser vegetation of the Lower Colorado River subdivision of Sonoran desertscrub.

Sonoran desert tortoises are most vulnerable to predation while in their eggs or as hatchlings and juveniles predominantly because of their size and undeveloped, softened shells (which do not adequately harden until approximately 7 years of age) which provide little protection and are easily compromised. Higher mortality rates in the hatchling and juvenile age classes may also be partially due to their higher metabolic rates, which necessitates longer periods of surface activity to obtain suitable amounts of forage. Longer surface activity may cause greater risk of detection by predators (Morafka 1994, p. 163). Nest predation levels may be high in some populations. Seventy-five percent of Sonoran desert tortoise nests suffered predation over a two-year period at the Sugarloaf study plot in Maricopa County, Arizona (Averill-Murray 2002b, p. 298). Gila monsters (*Heloderma suspectum*) are a primary predator on tortoise eggs, and female Sonoran desert tortoises in the process of oviposition will actively defend the burrow and aggressively pursue Gila monsters in attempting to drive them away (Barrett and Humphrey 1986, p. 262). Coachwhips (*Coluber flagellum*) and gophersnakes (*Pituophis catenifer*) have been reported consuming juvenile Sonoran desert tortoises (Amarello *et al.* 2004, p. 178; Ernst and Lovich 2009, p. 563). Presumably, other snake species such as common kingsnakes (*Lampropeltis getula*) with generalized prey preferences consume eggs or hatchling Sonoran desert tortoises, but we did not find other examples in the literature.

For more detailed information on all aspects of Sonoran desert tortoise biology, see Barrett and Johnson (1990, pp. 1–95) and Bury and Germano (1994, pp. 1–212).

Monitoring and Population Status

Monitoring and Statistical Analyses

We are unaware of any structured, long-term monitoring program for Sonoran desert tortoises in Mexico; therefore, we are unable to assess the current status or population trends in that part of the range. Therefore, we discuss only Arizona studies in this section.

Twenty-eight individual Sonoran desert tortoise populations in Arizona have been studied since the mid-1970s but few populations have been studied for more than a few years (Averill-Murray 2000, p. 1; Averill-Murray *et al.* 2002b, p. 109). Monitoring plots (also referred to as "plots") have varied from 0.2 to 1.5 sq mi (0.3 to 2.4 sq km) in size (Averill-Murray 2000, p. 4). Beginning in 1987, AGFD and the U.S. Bureau of Land Management (BLM) have established and maintained 17 plots in Arizona as long-term monitoring plots and have surveyed them in a somewhat irregular, but repeated fashion. Each plot has been surveyed between two and nine times during this timeframe, with 11 to 86 person-days (cumulative days spent by researchers working on plots) spent during each survey (AGFD 2010, p. 1). These long-term monitoring plots are located in six counties within Arizona, and their locations were chosen to represent Sonoran desert tortoise distribution in the State.

General monitoring objectives for the 17 plots are to document abundance, density, and changes of Sonoran desert tortoise populations across the State using capture-recapture methods (Averill-Murray 2000, p. 3). Records of demographic characteristics of each population, including sex ratios and age/size structure as well as individual health and signs of disease within each population were also recorded during monitoring activities (Averill-Murray 2000, p. 3). Monitoring protocols used from 1987 to 2000 are summarized in Averill-Murray (2000, pp. 3–7).

The Sonoran desert tortoise is a difficult species to monitor in the wild because of its slow movement and camouflaged appearance, especially in the smaller hatchling and juvenile age classes. These factors can significantly hamper a surveyor's ability to detect them in the field (Zylstra *et al.* 2010, p. 1311). In addition, Arizona Upland subdivision of Sonoran desertscrub (where Sonoran desert tortoise population densities are the highest) is complex, often with many large boulders, somewhat dense vegetation, and challenging topographic relief. Drought and emigration also affect the reliability of data from Sonoran desert tortoise population monitoring because the tortoises may be inactive (in their burrows) or have left the population (dispersed). In these cases the absence of observations might be mistaken as mortality. Also, Sonoran desert tortoises can occur in low densities with little surface activity both seasonally and daily (Zylstra *et al.* 2010, p. 1311). Alone or in combination, these factors, in addition to a relatively short sampling period for such a long-lived species, make subtle population trends difficult to distinguish and overall population trend analysis problematic.

Low detectability may have been responsible for long periods between recaptures of marked desert tortoises in an 18-year desert tortoise study from 1980 to 1997 in the San Pedro Valley, Arizona. For example, a sub-adult Sonoran desert tortoise was captured and marked in 1992, and was not encountered again until 2005, when it was incidentally observed approximately 14 mi (22.5 km) from its original point of capture, 8 years after the conclusion of the study (Meyer *et al.* 2010, p. 18). Within the entire duration of this study, approximately 30 percent of 577 marked Sonoran desert tortoises were never recaptured, with only 15 total carcasses found, indicating potential emigration, long-term burrow use, or difficulties in detecting individuals in complex landscapes (Meyer *et al.* 2010, p. 20). The amount of time between recaptures of Sonoran desert tortoises can be significant; durations between recaptures of some individuals in the San Pedro Valley study were as high as 18 years (Meyer *et al.* 2010, p. 20).

Several authors have investigated how detectability may bias results of Mojave desert tortoise monitoring. For example, Anderson *et al.* (2001, p. 583) studied the degree to which field observers can meet the assumptions underlying line-transect sampling to monitor populations of desert tortoises in Mojave desertscrub. They found that when all Mojave desert tortoises are not detected along the centerline of the transect route (which routinely occurs), biases in sampling data result (Anderson *et al.* 2001, p. 583). Anderson *et al.* (2001, p. 593–596) noted that surveyor numbers and level of experience contribute to the reliability of line transect methods. Freilich and LaRue (1998, p. 594) experimentally tested the effect of personnel experience on Mojave desert tortoise survey outcomes in Mojave desertscrub. They found that observers consistently overestimated the number of desert tortoise burrows (falsely assigning other animal burrows as those made by desert tortoises), and found fewer desert tortoises and scat than were actually placed on test plots. Their results indicated that experience played a relatively small role in detecting Mojave desert tortoises (Freilich and LaRue 1998, pp. 593–594). In an effort to increase detections, some investigators have tested the use of tortoise detection dogs in Mojave desert tortoise monitoring projects (Cablk and Heaton 2006, p. 1926; Heaton *et al.* 2008, pp. 476–477; Nussear *et al.* 2008, pp. 109–111). Because Sonoran desertscrub is more dense and complex than Mojave desertscrub, detection is even more difficult in Sonoran desert tortoise monitoring. Zylstra and Steidl (2009, p. 16) found that line transect methods are

not an efficient means with which to monitor Sonoran desert tortoises.

The seasonal timing of surveys and fluctuating influence of precipitation on Sonoran desert tortoise surface activity also create problems with monitoring populations and interpreting results. Sonoran desert tortoises often become inactive, residing in their burrows, during periods of seasonal or short-term drought. For example, in a multi-year mark and recapture study of Mojave desert tortoises in Joshua Tree National Park, Freilich *et al.* (2000, pp. 1487–1488) found that in years of below-normal precipitation, desert tortoise home ranges decreased, individual captures decreased, and the effort required to find each tortoise nearly doubled; indicating the significant influence of precipitation on the possible discrepancy between the number of tortoises that can be observed versus the number of tortoises that actually occur within a monitoring plot.

In an attempt to improve monitoring protocols to account for such complicating factors described above, Averill-Murray (2000, pp. 7–13) critiqued the original protocols used for long-term monitoring plots of Sonoran desert tortoise populations in Arizona. This work became the basis for several changes in monitoring protocols, beginning in 2000. Although line transect methods have not been implemented on Arizona's Sonoran desert tortoise long-term monitoring plots, the capture-recapture methods currently used likely violate assumptions about equal detection probability (all animals having the same probability of being captured during every sampling occasion) (Zylstra and Steidl 2009, p. 9).

While monitoring of Sonoran desert tortoise populations in Arizona has been ongoing for several decades, attempts to quantify temporal trends in abundance have been hampered by the data limitations discussed above (Zylstra and Steidl 2009, p. 5; Zylstra *et al.* 2010, pp. 1311–1317). Effective monitoring is largely dictated by the objective of the monitoring, whether that objective is to detect changes in distribution, abundance, density, or survival. In addition, using existing plot data to establish rangewide trends in Sonoran desert tortoise populations is generally problematic because the current set of monitoring plots does not represent a random sample from the species' entire range in Arizona (Averill-Murray and Klug 2000, p. 25). Despite the history and effort dedicated to monitoring Sonoran desert tortoise populations in Arizona since 1987, there are limitations of these data with respect to interpreting rangewide trends of the Sonoran desert tortoise. Averill-Murray (2000, pp. 12–13) identified problems with extrapolating the results of the plot monitoring data to making range-wide assessments outside of the plots. We elaborate on these problems in our assessment of Boarman and Kristan (2008) below.

Boarman and Kristan (2008, pp. 3–12) analyzed mark and recapture data from the 17 Sonoran desert tortoise long-term monitoring plots throughout Arizona that were surveyed on the average of once every 4 years from 1987 to 2006. Boarman and Kristan (2008, p. ii) concluded that the Sonoran population of the desert tortoise in Arizona experienced statistically significant declines, at an annual rate of 3.52 percent over the 20-year period; equating to a cumulative 51 percent decline in overall numbers during this timeframe.

We received several comments from the public in response to our 90-day finding that addressed the Boarman and Kristan (2008) report (AGFD 2010, pp. 4–6; Carothers *et al.* 2010, pp. 5, 8–12; Ogden 2009, pp. 3–12, Smith 2010, pp. 4–5). Commenters criticized the method and manner with which Boarman and Kristan (2008) used statistical tests, as well as the conclusions they made. Significant concerns were noted with respect to the type of statistical tests used by Boarman and Kristan (2008) because data were extrapolated beyond the statistical tests' ability to avoid inherent biases (AGFD 2010, p. 4). Problems associated with the statistical confidence intervals for monitoring plot data used by Boarman and Kristan (2008) were also identified (Ogden 2009, pp. 2–3). Also, monitoring plot data used in Boarman and Kristan (2008, p. 20) were not designed to compare population trends among individual plots (Ogden 2009, p. 2). Carothers *et al.* (2010, pp. 8–12) identified numerous additional problems with the statistical analysis provided by Boarman and Kristan (2008). Collectively, based upon comments received from the public as well as our internal review, the number and magnitude of potential problems associated with Boarman and Kristan's (2008) statistical analysis call into question the validity of their conclusions. After careful review of the report and the questions raised by reviewers of the report, we decided that the conclusions pertaining to overall Sonoran desert tortoise population trends do not represent the best available information and, therefore, we did not use the report in this finding. However, other information in the Boarman and Kristan (2008) report was used in our analysis of the status of and threats to the Sonoran desert tortoise and is cited in this finding. For a more detailed analysis of the Boarman and Kristan (2008) report, see our "Review of Boarman and Kristan (2008)" provided at *http://www.regulations.gov* (Docket Number FWS–R2–ES–2009–0032).

Survivorship and Population Densities in Arizona

Viable populations in turtles usually require that both juvenile and adult size classes have high survivorship (Averill-Murray and Klug 2000, p. 70). Data on the recruitment of juveniles into Sonoran desert tortoise populations, and their survivorship, are generally lacking due to the difficulty detecting juveniles in the field (AGFD 2010, p. 3). Data on juvenile and adult survivorship in Sonoran desert tortoises require long-term, repeated population monitoring, which in turn, requires long-term, reliable funding sources. Consequently, these data are conspicuously rare or absent for most Sonoran desert tortoise monitoring plots making population viability estimates for Sonoran desert tortoise populations within Arizona problematic at best. As expected for a long-lived species, survivorship in Sonoran desert tortoises (using data generated from a few long-term monitoring plots in Arizona) is generally high for adults but potentially lower for juveniles and hatchlings (Zylstra and Steidl 2009, p. 7). Where enough data from long-term monitoring plots or independent studies exist, survivorship has been calculated for adults in the following plots or study areas: Sugarloaf Mountain (96–98 percent), Florence Military Reservation (88–97 percent), Little Shipp Wash (94–97 percent), Granite Hills (94–97 percent), and Eagletail Mountains (94–97 percent) (AGFD 2010, p. 2; Riedle *et al.* 2010, p. 165).

Densities of Sonoran desert tortoises among populations vary considerably. In 2000, the density of Sonoran desert tortoises, as determined by surveys on long-term monitoring plots and other monitoring plots during the 1990s, varied from 15 to 150 individuals per square mile (2.6 sq km) (AIDTT 2000, pp. 5–6; Averill-Murray and Klug 2000, p. i). In the San Pedro Valley of southern Arizona, the average density of the Sonoran desert tortoise population was 38 individuals per square mile (Meyer *et al.* 2010, p. 17). Stager *et al.* (2010, p. 37) suspect that Sonoran desert tortoise populations in Mohave County, Arizona may be naturally lower due to limited burrowing habitat available to them to survive cold winters and hot summers.

Periodic, Localized Declines in Arizona Populations

There are no records of actual extirpations of Sonoran desert tortoises from any of the monitored populations. However, periodic, localized, and sometimes substantial declines have been documented in at least five of 17 monitored populations (Hart *et al.* 1992, p. 60; Averill-Murray *et al.* 2002b, p. 124; AGFD 2010, p. 4). Because of their life history, Sonoran desert tortoise populations may be slow to rebound from declines (Howland and Rorabaugh 2002, p. 340). The AGFD (2010, p. 4) suggested that observed declines in certain plots demonstrate localized, stochastic events and are not indicative of population trends as a whole across the distribution of the Sonoran desert tortoise. Sonoran desert tortoise populations are particularly vulnerable to elevated mortality of adults. Sustaining the adult, reproductive age class within Sonoran desert tortoise populations is important because mortality rates of juveniles are high and because it takes a long time for a Sonoran desert tortoise to reach sexual maturity (Howland and Rorabaugh 2002, p. 339). The relatively higher visibility of adult Sonoran desert tortoises leaves them more vulnerable to human impacts like collecting or shooting, and their tendency to move longer distances make them more susceptible to road mortality (Howland and Rorabaugh 2002, p. 340).

The largest population decline noted at any Sonoran desert tortoise monitoring plot was observed on the Maricopa Mountains plot, where substantially more tortoise carcasses were found than live tortoises in successive years from 1987 through 1991 (Hart *et al.* 1992, p. 54; Averill-Murray *et al.* 2002b, p. 124). Regional drought from 1984–1992 was a suspected cause of the die-off of Sonoran desert tortoises in the Maricopa Mountains (Hart *et al.* 1992, p. 60; Averill-Murray *et al.* 2002b, p. 124). However, in 1987, the estimated density of Sonoran desert tortoises on the Maricopa Mountains plot was uncharacteristically high at 146 tortoises per square mile (2.6 sq km), suggesting that the population may have been in the process of naturally correcting to carrying capacity (the state at which a population level is commensurate with available resources) (AGFD 2010, p. 3). Since 1991, the Sonoran desert tortoise population on the Maricopa Mountains plot has experienced relatively high survivorship and shown evidence of reproduction. No additional carcasses have been documented, indicating the population may be stable, if not returning to the previous 1987 level (AGFD 2010, p. 3).

The AGFD (2010, p. 3) and Hart *et al.* (1992, p. 120) confirm Sonoran desert tortoise populations declined from initial population estimates (as demonstrated by density estimates and relative carcass numbers) on three additional plots (Hualapai Foothills, San Pedro Valley, and East Bajada), suspecting that drought conditions may have played a role in the observed declines on these plots (Ogden 2009, pp. 12–13). An observed decline on the Tortilla Mountains plot in 2001 may have been an artifact of low surface activity in response to below-average precipitation, because an increase in carcasses was not detected (AGFD 2010, p. 3).

For detailed information on monitoring and survey results from the previous three decades for the Sonoran desert tortoise in Arizona, see the following reports: Schneider (1981), Shields and Woodman (1987), Wirt (1988), Woodman and Shields (1988), Holm (1989), Shields *et al.* (1990), SWCA (1990a; 1990b; 1990c), Hart *et al.* (1992), Murray and Schwalbe (1993; 1997), Woodman *et al.* (1993; 1994; 1995; 1996; 1998; 1999a; 1999b; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007; 2008; 2009), AIDTT (2000, pp. 5–6), Averill-Murray (2000, pp. 3–7), Averill-Murray and Klug (2000, pp. 3–25), Averill-Murray *et al.* (2002b, pp. 110–112), Walker and Wood (2002), Young *et al.* (2002), and Zylstra and Swann (2009).

It should be noted that an average generation time for a Sonoran desert tortoise is 12–15 years and that monitoring of Sonoran desert tortoise populations has only occurred for about 30 years, representing approximately two generations. Many threats described below have been potentially acting on Sonoran desert tortoise populations for many decades, longer than populations have been studied. Below, we discuss the effects of various threats to individual Sonoran desert tortoises. However, due to limitations in monitoring data, we are unable to discern how Sonoran desert tortoise populations may have responded to these threats over time, or identify any long-term, historical trends in tortoise populations. We have not observed any extirpations among monitored populations.

Distinct Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. "Species" is defined by the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722; February 7, 1996), to help us in determining what constitutes a DPS. The policy identifies three elements that are to be considered regarding the status of a possible DPS. These elements include: (1) The discreteness of the population segment in relation to the remainder of the taxon (group of similar biological organisms); (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 (*i.e.,* whether the population segment, when treated as if it were a species, is endangered or threatened) (61 FR 4722, February 7, 1996). The first two elements are used to determine if a population segment constitutes a valid DPS. If it does, then the third element is used to consider whether such DPS warrants listing. In this section, we will consider the first two criteria (discreteness and significance) to determine if the Sonoran desert tortoise is a valid DPS (*i.e.,* a valid listable entity). Our policy further recognizes it may be appropriate to assign different classifications (*i.e.,* threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4722).

Discreteness

Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity (separation based on genetic or morphological characters) may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which significant 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.

Based upon available information, the international boundary between Mexico and the United States is not considered for delineation of discreteness because

the edge of the DPS is not located at the International Border and, therefore, will not be addressed further.

The Colorado River and Río Yaqui are two perennial rivers that form biogeographical barriers (a natural barrier that prevents the migration of species) to movement of tortoises between the Mojave and Sonoran desert tortoise populations, and between the Sonoran and Sinaloan desert tortoise populations, respectively. The Colorado River, separating California and Arizona, comprises the northern and western boundaries of the Sonoran desert tortoise population as identified in the April 2, 1990, final rule designating the Mojave population of the desert tortoise (occurring north and west of the Colorado River) as a threatened species under the Act (55 FR 12178; see final rule for a summary of previous actions regarding the Mojave population of the desert tortoise). The eastern boundary is the extent of the range of the Sonoran desert tortoise where desert habitats end and grassland, chaparral, and mountain habitats begin, which are areas that do not contain desert tortoises. The southern boundary of the Sonoran desert tortoise DPS, as considered in this finding, is the Río Yaqui in southern Sonora, Mexico; south and east of there, desert tortoises are considered Sinaloan populations. Potential threats to the Sinoloan desert tortoise are not evaluated as part of this finding.

In view of this biogeographical isolation, significant ecological divergence has occurred between the Mojave and Sonoran populations of desert tortoise, largely due to significant differences in geology, vegetation types, and precipitation cycles where the populations are distributed. Desert tortoises in the Mojave population are most dense in the intermountain valleys that have soil types favorable to the construction of large, deep burrows (Bury *et al.* 1994, pp. 66–70). However, Sonoran desert tortoises reach maximum densities in the rocky bajadas and hillsides of higher slopes, with reduced densities in the intermountain valleys (Berry 1984, p. 434; AIDTT 2000; p. 4; Van Devender 2002a, p. 7; Brennan and Holycross 2006, p. 54; Zylstra and Steidl 2008, p. 747). At the southern end of the DPS, Edwards *et al.* (2009, pp. 7–8) suggested that Sinaloan population of desert tortoise uses Sinaloan thornscrub and tropical deciduous forest habitats. These different habitat types with differing soils and vegetation communities are created by higher precipitation levels. However, some level of gradation may occur in the vegetative transition zone between Plains of Sonora subdivision of Sonoran desertscrub and Sinaloan thornscrub habitats of central Sonora such as in the vicinity of the Río Yaqui (Edwards *et al.* 2009, p. 8).

In addition to habitat differences, morphological differences have also been documented among the three populations of desert tortoise. Several morphological differences in carapace size and shape have been documented between the Mojave, Sonoran, and Sinaloan populations of desert tortoise: The carapace of the Mojave desert tortoise is the widest and tallest of the three, the Sinaloan desert tortoise carapace is the most narrow and least domed, and the carapace of the Sonoran desert tortoise is intermediate between the two in those dimensions (Germano 1993, pp. 324–325; AGFD 2001, p. 1). Using eight independent shell measurements, Weinstein and Berry (1987, pp. 26–28) documented three distinct phenotypes (physical appearances) in desert tortoise populations within the United States based on morphometric (body measurement) analyses: The "California" phenotype (Mojave population), "Beaver Dam Slope" phenotype (Mojave form in Arizona), and the "Sonoran type" (Sonoran population). Desert tortoises from southern Sonora and northern Sinaloa in Mexico were not studied as part of this effort.

Differences in reproduction strategies between the Sonoran and Mojave populations of desert tortoises also occur. Mojave desert tortoises lay up to three clutches of eggs per year with larger clutch sizes (more eggs), earlier in the year (April to mid-July) (Wallis *et al.* 1999, p. 405) while those in the Sonoran population lay one clutch per year of smaller size, later in the year (June through August) (Averill-Murray *et al.* 2002a, p. 141). These differences led Averill-Murray (2002b, pp. 119–122) to the conclusion that Sonoran desert tortoises invest all reproductive effort into a single clutch which hatches at the peak of forage and water availability and abundance owing to late-summer rainfall. Whereas desert tortoises in the Mojave population (maturing at smaller body sizes) (Berry *et al.* 2002a, p. 259) have higher clutch numbers to offset higher mortality from greater variability in environmental conditions.

The Mojave, Sonoran, and Sinaloan populations of the desert tortoise have been found to have significantly differentiated genotypes (genetic characteristics) (Lamb and McLuckie 2002, p. 74; Van Devender 2002a, p. 24). Genetic distances, expressed as percent sequence divergence (an estimate of percent difference in the genetic code), are substantial among the three populations of desert tortoise. Divergence is 5.1–5.6 percent between the Sonoran and Mojave populations, 4.2 percent between the Sonoran and Sinaloan populations, and 5.1 percent between the Sinaloan and Mojave populations (Lamb and McLuckie 2002, pp. 74, 77). Considering geographic distribution, genealogical depth, and a suite of other characteristics, the Mojave, Sonoran, and Sinaloan populations of desert tortoise are considered to be ecologically significant units (populations or groups of populations historically isolated from one another, and thus representing deep phylogenetic (evolutionary development of species over time) subdivisions within species) (Lamb and McLuckie 2002, pp. 81–82). According to mitochondrial DNA markers, the Sonoran and Mojave populations appear to have diverged some 5 million years ago (Lamb *et al.* 1989, p. 83; Lamb and McLuckie 2002, p. 76).

McCord (2002, p. 62) presented three possible causes of the significant genetic differentiation between Sonoran and Mojave desert tortoises. First, genetic differentiation between Sonoran and Mojave desert tortoises may have been the result of differences in rainfall patterns between the winter-dominated rainfall pattern of the Mojave Desert and the summer-dominated rainfall pattern of the Sonoran desert. Second, genetic differentiation between Sonoran and Mojave desert tortoises may have occurred because the Sonoran desert tortoises may be represented as a relict population (remnant survivor from the past) of the tropical deciduous forest-evolved population of the Sinaloan population (based upon their general absence in valley bottoms due to heavy flooding during summer rains, a phenomenon generally absent in the Mojave Desert). Last, genetic differences between Sonoran and Mojave desert tortoises may have resulted from their mutual competition with the Bolson tortoise (*Gopherus flavomarginatus*), another desert tortoise species which was widely distributed throughout Arizona in the Pleistocene, but which never occurred in California. The competing Bolson tortoise population may have acted as a wedge between the Sonoran and Mojave populations, driving them even farther apart, in a process known as competitive displacement.

To explore the evolutionary track the three desert tortoise populations may have taken and the extent of their current genetic differentiation on the landscape, Edwards *et al.* (2009, p. 8) collected genetic samples from desert

tortoises within three regions of Sonora, Mexico: Twenty-two samples from near Alamos, Sonora (tropical deciduous forest in extreme southern Sonora), 19 samples from near Ciudad Obregón (foothill thornscrub in south-central Sonora, south of the Río Yaqui), and 14 samples from two sites north of Hermosillo (Sonoran desertscrub in central Sonora). When they compared genetic data with previously collected samples from Arizona, they found a "continuum of genetic similarity" in genetic samples taken from desert tortoises from the Hermosillo area of Sonora, Mexico, 528 mi (850 km) northwest to the Kingman, Arizona area when they compared genetic data with previously collected samples from Arizona (Edwards *et al.* 2009, p. 8). This confirms the similar genetic relationships of Sonoran desert tortoises throughout the DPS. Genetic samples from the Ciudad Obregón region, southward, showed clear genetic distinction and supported prior evidence for a third distinct population of desert tortoise, referred to as the Sinaloan population (Edwards *et al.* 2009, p. 8). The southern limits of desert tortoise distribution in northern Sinaloa are likely influenced by the growth of disease-causing bacteria and fungi present in the soil of burrows, exacerbated by the hot, humid, and wet conditions during tropical summer rainy seasons (Van Devender 2002b, p. 43).

Evaluation of Discreteness

Some biological similarities do exist among the three populations of desert tortoise (Mojave, Sonoran, and Sinaloan). For example, some overlap in habitat use occurs. It is well known that Sonoran desert tortoises generally occur on steep, rocky slopes and bajadas in contrast to the Mojave desert tortoise, which occurs primarily along the valley bottoms. But to a lesser extent, Sonoran desert tortoises also use valley bottoms and Mojave desert tortoises also use steep slopes and mountain bajadas (Gardner and Brodie 2000, p. 51; Averill-Murray and Averill-Murray 2002, p. 16; Lutz *et al.* 2005, p. 22; Grandmaison *et al.* in press, p. 4; Riedle *et al.* 2008, p. 418). However, there are many more numerous and convincing data in the scientific literature to support the discreteness of the three recognized populations of *Gopherus agassizii,* including differences in their ecology, behavior, morphology, physiology, and genetics (Weinstein and Berry 1987, pp. 26–28; Germano 1993, pp. 324–325; Germano *et al.* 1994, p. 82; AGFD 2001, p. 1; Averill-Murray 2002b, pp. 299–300; Berry *et al.* 2002a, p. 259; Lamb and McLuckie 2002, pp. 74, 77; McCord 2002, p. 62; Van Devender 2002a, pp. 24–25; Van Devender 2002b, p. 45; Zylstra and Steidl 2008, p. 747; Edwards *et al.* 2009, p. 8).

We have reviewed the best available commercial and scientific information and find that the Sonoran population of the desert tortoise as it occurs east and south of the Colorado River, south to the Río Yaqui, in Sonora, Mexico, is discrete, under the Service's DPS policy, from the Mojave and Sinaloan desert tortoise populations. We base this conclusion on ecological (habitat use), physiological (reproductive characteristics), morphological (shell dimensions), and behavioral (seasonal activity patterns) differences that are further supported by analysis of genetic differences that concluded significant divergence has occurred among the three populations.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

The current range of the Sonoran desert tortoise, as described in the discussion above pertaining to discreteness, represents several hundred miles of occupied habitat spanning across an international border. This population segment is confined by two large perennial rivers: The Colorado River in its northern periphery (separating the Mojave and Sonoran populations), and the Río Yaqui at its southern periphery (separating the Sonoran and Sinaloan populations). These two rivers represent significant biogeographical barriers to genetic exchange between adjacent population segments and, therefore, preclude recolonization of this expanse of habitat from adjacent populations, should the Sonoran population of the desert tortoise become extirpated. Thus, the loss of the Sonoran desert tortoise would constitute a significant gap of several hundred miles in the range between the Mojave and Sinaloan populations of desert tortoises, and may constitute as much as 40 percent of the total range occupied by desert tortoises as a whole, rangewide, which affirms its significance to the entire species.

In addition, our evaluation of discreetness above found extensive scientific support concluding that the Sonoran desert tortoise differs significantly in its behavior (reproduction, seasonal activity), ecology (habitat use and burrow construction), morphology (physical characteristics), and genetics from either the Sinaloan or the Mojave populations. Because of these distinctions, the loss of the Sonoran desert tortoise population would result in the permanent loss of a unique biological entity and would diminish the natural variation within the species as a whole.

Evaluation of Significance

We have reviewed the best available commercial and scientific data, and based on that review, we find that the Sonoran desert tortoise is significant to the continued existence of the taxon. We base this conclusion on: (1) The large geographic range of the Sonoran population, which is significant (approximately 40 percent) to the taxon as a whole; (2) a gap of several hundred miles that would result from the loss of the Sonoran population, which would effectively bisect the species' range; and

(3) the behavioral, ecological, physical, and genetic distinctions among the three desert tortoise populations.

Determination of Distinct Population Segment

Based on our review of the best commercial and scientific information available, the Sonoran population of desert tortoise is discrete from the Mojave and Sinaloan populations and significant to the species as a whole. As a result, we have determined that the Sonoran population of desert tortoise qualifies as a DPS and a listable entity under the Act.

In the August 23, 2009, 90-day finding (74 FR 44335), we discussed a local population of Mojave-genotype (genotype: genetic code) desert tortoises (that also share Mojave phenotype (the physically-expressed genetic code) and habitat-use characteristics with the Mojave desert tortoise population) occurring within the delineated Sonoran population in the Black Mountains area of western Mohave County, Arizona. This population is isolated from the threatened Mojave DPS that occurs north and west of the Colorado River. The exact geographic extent of this Mojave-genotype in Arizona is currently undefined and we expect there is interbreeding between desert tortoises with the Mojave and Sonoran genotype along the periphery of this population in the Black Mountains. Therefore, we include this population of desert tortoises as part of our status assessment for the Sonoran desert tortoise in this finding.

Distinct Population Segment Five-Factor Analysis

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the Sonoran desert tortoise in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

In our review of the best scientific and commercial data available, we found numerous threats are impacting Sonoran desert tortoises or their habitat throughout their range. Some of these threats occurred historically, some are current, and some will continue into the foreseeable future. As described in detail below, these threats include nonnative plant species and altered fire regimes, urban and agricultural development, barriers to dispersal and genetic exchange, off-highway vehicles, roads and highways, ironwood and mesquite tree harvest, improper livestock grazing, undocumented human immigration, illegal collection, effects from field research and manipulation, predation from feral dogs, human depredation and vandalism, drought, and climate change. The effect of habitat disturbances on Sonoran desert tortoises may differ among age classes, but may be most significant to hatchlings or juveniles (Tracy *et al.* 2006b, pp. 271–272).

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Nonnative Plant Species and Altered Fire Regimes

The most significant modification to Sonoran desert tortoise habitat is associated with the ongoing invasion of nonnative plants in Mojave and Sonoran desertscrub habitats, permanently altering these ecosystems and causing a change in the frequency, duration, intensity, and magnitude of wildfires in a region that largely evolved in the absence of invasive nonnative plants. These ecosystem-level changes cause both direct and indirect effects on the Sonoran desert tortoise and its habitat.

Much of the available research on the effects of nonnative plant species invasions and wildfire used in our analysis has focused on Mojave desertscrub habitats, largely due to the presence of the Mojave desert tortoise, which is already listed as endangered. However, Brooks and Matchett (2006, p. 158) suggest that research from the Mojave Desert is applicable to the Sonoran Desert when stating, "Both (Mojave and Sonoran deserts) occur at elevations above the hyperarid shrublands, are often positioned on the lower slopes of mountain ranges, and possess moderate woody plant cover." Therefore, we used the information available from research on Mojave Desert habitats in our assessment of the effects of nonnative plants in the Sonoran Desert.

Nonnative perennial plants like buffelgrass, fountain grass, and Lehmann lovegrass were historically introduced to the Sonoran Desert of Arizona as livestock forage and to prevent soil erosion. For example, buffelgrass was included in the nonnative plant species recommended for release by the Tucson Plant Materials Center of the Soil Conservation Service until at least 1987 (Bahr 1991, p. 156). These nonnative plant species subsequently became common and widespread in Sonoran desertscrub in Arizona (Brooks and Pyke 2001, p. 5). They have since colonized new areas, often taking advantage of disturbed soils, such as those resulting from construction associated with roadways, power lines, and railroad tracks (Bahre 1991, p. 155; D'Antonio and Vitousek 1992, p. 65). Construction and maintenance of roads and highways can also significantly enhance the likelihood of nonnative plant invasions by increasing nitrogen deposition in the soil, the dispersal potential of nonnative seeds, and adjacent soil moisture (Brooks 2007, pp. 153–154). Roadside ditches along highways are particularly important dispersal corridors for nonnative plant species such as red brome and buffelgrass (Esque *et al.* 2002, p. 313).

Mechanisms that allow the spread of nonnative species generally pertain to ground disturbance, but the plants may also be spread by other mechanisms. For example, Smith *et al.* (2000, pp. 79–80), and Brooks and Esque (2002, p. 337) both found that elevated atmospheric carbon dioxide levels, predicted as a result of climate change (discussed in

Factor E below), are likely to favor nonnative plant species, such as red brome, over native species in desertscrub habitats. Increases in atmospheric nitrogen deposition may also be advantageous to nonnative plant species. Brooks (2003, pp. 344–345) suspected that increasing human populations will lead to increased levels of atmospheric pollution and nitrogen deposition and stated, "Increased levels of soil nitrogen caused by atmospheric nitrogen deposition may increase the dominance of invasive alien plants and decrease the diversity of (native) plant communities in desert regions, as it has in other ecosystems." Sonoran desert tortoise habitat may be particularly vulnerable to even minor increases in soil nitrogen levels, because the ratio of increased nitrogen to plant biomass is higher compared with that of most other ecosystems (Brooks 2003, p. 344). This suggests that even small changes in nitrogen levels could result in substantial changes in the plant community that supports Sonoran desert tortoise habitat.

The prevalence of nonnative grasses in many areas of Sonoran desertscrub habitats has resulted in high amounts of flammable fuels in interspaces between native plants that would otherwise be free of vegetation. This situation serves to promote the ignition and carrying of wildfire (Brooks 1999, p. 13). In our review of the best scientific data available, red brome, splitgrass (or Mediterranean grass, *Schismus* spp.), and buffelgrass were considered the nonnative plant species that pose the greatest concern to the Sonoran desert tortoise and its habitat, because they are thoroughly integrated into some areas of the desertscrub communities, and serve to promote and carry wildfire (Bahre 1991, p. 155; D'Antonio and Vitousek 1992, pp. 65, 75; Brooks 1999, p. 13; Brooks and Pyke 2001, p. 5; Brooks and Esque 2002, p. 337; Esque *et al.* 2002, p. 313; Van Devender 2002a, p. 16; Brooks and Matchett 2006, p. 148; DeFalco 2007a, p. 1; Zouhar *et al.* 2008, p. 157; Abella 2010, p. 1249; AGFD 2010, p. 13). Red brome is known to carry wildfire in Sonoran desertscrub habitat north of Tucson, natal grass is known to carry wildfire in desert grassland habitat south of Tucson to Nogales, Arizona, and buffelgrass is known to carry wildfire in Sonoran desertscrub and foothills thornscrub south of the international border to central Sonora (Esque *et al.* 2002, p. 316). Other nonnative plant species identified in the literature as present in Sonoran and Mojave desertscrub communities include Saharan (or Asian) mustard (*Brassica tournefortii*), thistles (genera *Centaurea* and *Cirsium*), crimson fountaingrass (*Pennisetum setaceum*), natal grass (*Melinus repens*), and Lehmann lovegrass (*Eragrostis lehmanniana*) (Brooks 2001, p. 4; Brooks and Pyke 2001, pp. 3, 5).

We are not aware of any good estimates of the number of acres of desertscrub that have been invaded by nonnative plant species, but Thomas and Guertin (2007, Appendices I and II) calculated the number of records by county for many known invasive, nonnative plants in Arizona that are harmful to Sonoran desert tortoise habitat. These data illustrate general locations where certain nonnative species are most common and describe which nonnative species are the most reported in each area. Thomas and Guertin (2007, Appendices I and II) reported the following for Arizona as of 2007 (relative number of reports of densities being "extremely high," "high," "moderate," and "occurs," all within the distribution of the Sonoran desert tortoise):

(1) Buffelgrass is the most-reported nonnative plant species in Arizona, at 16.3 percent of total reports with 6,287 reports (p. 3); it reaches extremely high densities in Maricopa and Pima Counties, with high densities in Pinal and Yuma Counties and moderate densities in Santa Cruz and La Paz Counties, but it also occurs in Yavapai, Gila, and Cochise Counties (A–I, p. 60);

(2) *Schismus* spp. is one of the top 20 invasive plant species, at 2.4 percent of total reports, with 919 reports (p. 3); it reaches high densities in Maricopa, Pinal, and Pima Counties, with moderate densities in Mohave, Yavapai, Gila, La Paz, and Yuma Counties, but it also occurs in Santa Cruz County (A–I, p. 69);

(3) Red brome is one of the top 20 invasive plant species, at 3 percent of total reports, with 1,152 reports (p. 3); it reaches high densities in Yavapai, Gila, Pinal, and Pima Counties, with moderate densities in Mohave and Maricopa Counties, but it also occurs in La Paz and Yuma Counties (A–I, p. 24);

(4) Saharan mustard is one of the top 20 invasive plant species, at 3.3 percent of total reports, with 1,261 reports (p. 3); it reaches high densities in Maricopa, Pinal, Pima, La Paz, and Yuma Counties, with moderate densities in Mohave, Yavapai, and Gila Counties, but it also occurs in Cochise County (A–I, p. 21);

(5) *Centaurea* spp. had a total of 3–318 reports (depending on species) (p. 9) and reaches high densities in Pima County, with moderate densities in Mohave, Yavapai, Gila, Pinal, and Cochise Counties (A–I, pp. 15, 28–30);

(6) Bull thistle (*Cirsium vulgare*) is one of the top 20 invasive plant species, at 3.1 percent of total reports, with 1,195 reports (p. 3); it reaches moderate densities in Yavapai and Gila Counties (A–I, p. 35);

(7) Crimson fountaingrass is one of the top 20 invasive plant species, at 2.6 percent of total reports, with 999 reports (p. 3); it reaches high densities in Pima County, with moderate densities in Yavapai, Gila, La Paz, Santa Cruz, and Maricopa Counties (A–I, p. 61); and

(8) Lehman lovegrass is one of the top 20 invasive plant species, at 2.5 percent of total reports, with 980 reports (p. 3); it reaches high densities in Pima and Cochise Counties, with moderate densities in Yavapai, Gila, Santa Cruz, Maricopa, and Pinal Counties, but also occurs in La Paz County (A–I, p. 45).

No spatial data were provided for natal grass, but there were 191 observations (Thomas and Guertin 2007, p. 10).

Buffelgrass has widely invaded Arizona and northern Mexico since its introduction in 1939 (Stevens and Fehmi 2009, p. 379). While buffelgrass invasions are occurring and are poised to seriously impact the southwestern United States, the species has already exacted significant tolls on Sonoran desertscrub communities in Sonora, Mexico, because its expansion continues to be facilitated through intentional plantings and cultivation. Consequently, the clearing of Sonoran desertscrub and Sinaloan thornscrub in Sonora to plant pastures of buffelgrass for livestock grazing creates a near monoculture (area covered by a single plant species) that is highly prone to wildfires, and therefore represents a substantial threat to the Sonoran desert tortoise in Mexico (Bury *et al.* 2002, p. 104; Walker and Pavlakovich-Kochi 2003, p. 14; Van Devender and Reina 2005, pp. 160–161; University of Arizona 2010, p. 2). Buffelgrass has been planted in Sonora's desertscrub lands since the 1950s and at least 5.5 million ac (2.2 million ha) of potential Sonoran desert tortoise habitat has already been converted into a near monoculture of buffelgrass (Stoleson *et al.* 2005, p. 62). Buffelgrass has become established in both the lower valley habitats and into the granite boulder-strewn areas of adjacent foothills, and has altered historical fire regimes, regionally converting large areas of Sonoran desertscrub into habitat resembling the African savannah (Bury *et al.* 2002, p. 104).

In Arizona, the Southern Arizona Buffelgrass Coordination Center

(SABCC, a coalition of non-profit organizations, Federal, State, and local governments, conservation organizations, private businesses, and individual citizens) reports dense stands of buffelgrass on public reserves, State and local lands, and private property, including Saguaro National Park, Coronado National Forest, Bureau of Land Management's (BLM) Ironwood Forest National Monument, neighborhoods of Tucson, Sahuarita, Marana and Oro Valley, and along roadsides throughout this region of Arizona (SABCC 2010, p. 1) These areas are all within the distribution of the Sonoran desert tortoise in Arizona.

Brooks and Minnich (2006, p. 9) stated that southwestern desert ecosystems likely evolved in a fire regime best described by "low intensity, patchy burns and long fire return intervals." Wildfire capable of carrying itself in Sonoran desertscrub is a recent phenomenon in evolutionary and geological contexts and only became apparent recently in the Sonoran Desert (Brooks and Pyke 2001, p. 5; Esque *et al.* 2002, p. 312; Zouhar *et al.* 2008, pp. 155, 160). From 1937 to 1986, only 1 percent of all lightning-caused fires in the Rincon Mountains area of southern Arizona occurred in desertscrub habitat; 5.6 percent occurred in desert grassland habitat (Bahre 1991, p. 126). While historical wildfires in desertscrub habitat were exceptionally rare, after successive years of above-average levels of precipitation, enough native fuels can develop to carry wildfire in desertscrub communities, such as happened south of Florence, Arizona in 1979 (Bahre 1991, p. 141; Brooks and Esque 2002, p. 336; Brooks and Minnich 2006, p. 9). While increased precipitation enhances plant growth and subsequently increases the likelihood for wildfire starts in desertscrub habitat, drought can have an inverse effect with respect to certain nonnative plant species. Red brome, for example, is sensitive to drought conditions and, therefore, might contribute to reduced fuel loads and decreased fire frequency during long-term drought (Brooks and Esque 2002, p. 337), which might help to minimize the likelihood of wildfires in areas where red brome has formed a monoculture. Smith *et al.* (2000, p. 79) noted, "This shift in species composition in favor of exotic annual grasses, driven by global [climate] change, has the potential to accelerate the fire cycle, reduce biodiversity and alter ecosystem function in the deserts of western North America."

Wildfire ignitions in the Sonoran Desert region historically resulted from lightning but ignitions are now more common from human sources such as burning trash, parking vehicles over dry vegetation, fireworks, discarded cigarettes, and accidental starts from backcountry recreationists (Esque *et al.* 2002, p. 313). Human-caused wildfires in desertscrub habitat are most common near urban developments, major roadways, and in areas where off-highway vehicle use is unregulated, while lightning-caused wildfire in desertscrub is typically located in more remote wilderness areas (Brooks 1999, p. 13). In central Sonora, ranchers intentionally set fires to maintain the vigor of buffelgrass for livestock forage (Esque *et al.* 2002, p. 313).

Numerous wildfires, varying in size, have occurred in recent times in many areas throughout the Sonoran Desert including the: (1) Pusch Ridge Fire of 1987 on the southern slopes of the Santa Catalina Mountains; (2) Skyline (1992) and Rock Peak (1993) fires in the San Tan Mountains; (3) Mother's Day Fire of 1994 on the eastern slope of the Rincon Mountains (Esque *et al.* 2002, p. 323; 2003, p. 104); and (4) Cave Creek Complex fire of 2005 northeast of Cave Creek, Arizona, which burned 248,310 ac (100,487 ha) of Sonoran desert tortoise habitat; the largest wildfire ever recorded in Sonoran desertscrub in the United States.

The BLM has kept records of wildfire in Sonoran desert tortoise habitat. From 1990 to 2008, there have been 61 wildfires, affecting 21,977 ac (8,894 ha) in Category I Sonoran desert tortoise habitat; 285 wildfires, affecting 33,364 ac (13,502 ha) in Category II Sonoran desert tortoise habitat; and 508 wildfires, affecting 109,460 ac (44, 297 ha) in Category III Sonoran desert tortoise habitat (USBLM 2010, p. 9). In total, during the 1990–2008 period, 164,801 ac (66,693 ha) of categorized and uncategorized Sonoran desert tortoise habitat has burned on BLM lands (USBLM 2010, p. 9). Combining the known area of habitat affected by fire on both BLM and other lands, an estimated 1.5 percent of habitat in Arizona has been adversely affected due to wildfire in recent years; rangewide this is estimated to be 0.8 percent, although total acreage data on wildfires in Mexico are unknown and the total percentage of affected habitat is likely higher because of the higher incidence of buffelgrass and lessened capacity to fight wildfire in Sonora, Mexico. The total area reported as burned is a relatively small proportion of BLM lands and has not likely been a significant impact to most Sonoran desert tortoise populations in Arizona so far. As the invasion of nonnative plants continues to expand, the high number of fire starts has a greater potential of creating larger and more destructive wildfires, especially where they occur in remote, inaccessible areas as a result of lightning strikes.

Indirect effects of wildfires on Sonoran desert tortoises are variable and can be significant, including habitat changes such as altered nutrient availability and quality, loss of perennial plant species that are important as temporary cover from predators, loss of thermal refugia, altered tortoise behavior, shifts in biotic community, pronounced desert tortoise emigration from burned habitat, and lower growth and reproductive output (Esque *et al.* 2003, p. 107; DeFalco 2006, p. 5; McLuckie *et al.* 2007, p. 8). While a single fire in an area may or may not produce long-term reductions in plant cover or biomass, repeated wildfires in a given area are capable of ecosystem type-conversion from native desertscrub to nonnative annual grassland, and render the area unsuitable for desert tortoises (Brooks and Esque 2002, p. 336). Increased frequency in wildfires caused by nonnative plant species invasion increases light intensity at ground level and soil nutrient availability, and reduces competition from native perennial plants. These changes further promote dominance by nonnative plant species (Brooks and D'Antonio 2003, p. 29). Wildfire in desertscrub habitats can reduce native and nonnative seed banks (Brooks and Draper 2006, p. 2). In Mojave desertscrub, the effects of fire are most pronounced under shrubs, where fire can kill seed banks and reduce annual grass diversity, due to higher burn intensity (Brooks 2002a, p. 1; 2002b, p. 1088). Microhabitat associated with shrubs in Sonoran desert tortoise habitat is an important source of temporary shelter and provides foraging opportunities while tortoises are thermoregulating.

Fires associated with nonnative plant species have already affected Sonoran desert tortoise populations in Arizona. The AGFD (2010, p. 13) reported results from an unpublished study after the Edge Complex Fire of 2005 in the Four Peaks area on the Tonto National Forest, which indicated higher numbers of Sonoran desert tortoises (or their scat were observed in unburned versus burned habitat), but they acknowledged that the study was preliminary and very limited in scope (AGFD 2010, p. 13).

In Sonora, Mexico, 5.5 million ac (2.2 million ha), representing an estimated 22 percent of Sonoran desert habitat in Mexico, or 11 percent rangewide, has been planted to bufflegrass. This figure still does not account for the land area

where buffelgrass has become naturally established or the 11.9 million ac (4.8 million ha) (or one-third of the land area of the state of Sonora) that are suitable for future natural establishment of buffelgrass (Stoleson *et al.* 2005, p. 62). Combining the current and predicted number of acres converted to buffelgrass in Mexico, 34 percent of the Sonoran desert tortoises' habitat is lost or at risk across its range. In the area of El Batamote, 29 mi (47 km) north of Hermosillo, Sonora, buffelgrass has invaded Sonoran desert tortoise habitat in the adjacent foothills, which has led to wildfires that burned so hot that the soil was scorched and the bedrock cracked (Esque *et al.* 2002, p. 321).

In addition to impacts from fire, Franklin and Molina-Freaner (in press, p. 1) found that these large-scale conversions from desertscrub to grasslands in Sonora have reduced plant species richness by half, and reduced tree and shrub cover by 78 percent, vastly affecting the ability of Sonoran desert habitat to meet the species' thermoregulatory needs (that is, using vegetation as cover to regulate body temperature). These changes have resulted in substantial changes in primary productivity (creation of organic nutrients and the lowest level of the food chain, the plant community) and vegetation structure (the physical structure of plant sizes and shapes as a mosaic on the landscape) which can affect the forage base and habitat suitability for Sonoran desert tortoises, as well as lessened the feasibility of restoring native plant communities in Sonora without aggressive land management (Franklin and Molina-Freaner, in press, p. 1). Dense stands of buffelgrass have also been shown to physically disrupt tortoise movements in the closely related Texas tortoises (*Gopherus berlandieri*) (Fujii and Forstner 2010, p. 61), so this may also be true for Sonoran desert tortoises. The grass can become so thick that the tortoises cannot walk through it, and the grass may be too tall for the tortoises to walk on top of it.

In addition to damaging Mojave and Sonoran desertscrub habitat, wildfires can directly injure and kill Sonoran desert tortoises. Wildfire may kill a desert tortoise by incineration, by elevating body temperature, by poisoning from smoke inhalation, or by asphyxiation (Brooks *et al.* 1999, p. 40; Brooks and Esque 2002, p. 335; McLuckie *et al.* 2007, p. 7). Survival rates of Sonoran desert tortoises may be contingent upon several factors, including soil type, substrate, vegetation, tortoise activity during fire, whether tortoises are active and above ground or in shelter during a fire, weather, fire behavior, and shelter depth (McLuckie *et al.* 2007, p. 8). The desert tortoise is most vulnerable to the direct effects of wildfire when they are surface active and away from primary cover sites such as burrows, caliche caves, and rock shelters, because these structures reduce direct exposure to heat and smoke (Brooks and Esque 2002, p. 335). Gravid (with fertilized eggs) female Sonoran desert tortoises may be more likely to perish from wildfire than other tortoises because peak wildfire season in Sonoran desertscrub occurs during the months of May and June. This is when reproductive females are actively foraging on spring growth to compensate for energy used in egg development; (Esque *et al.* 2002, pp. 323–324; 2003, p. 106).

Sonoran desert tortoises that survive the wildfire itself may struggle to survive in post-burned Sonoran desertscrub habitat due to: (1) A reduction in forage and shade structure, such as packrat (*Neotoma* sp.) middens and shrubs; and (2) increased visibility to predators (which may be further increased in intermountain valleys where temporary shade, predator avoidance, and available forage are particularly important in long-distance movements in these dispersal corridors) (Esque *et al.* 2002, pp. 325–326).

The effects on Sonoran desert tortoises of one particular fire were studied in some detail. Within Saguaro National Park, the Mother's Day Fire of 1994 burned 340 ac (138 ha) of Arizona Upland Sonoran desertscrub habitat that was occupied by Sonoran desert tortoises, killing an estimated 11 percent of the tortoise population (Esque *et al.* 2003, p. 105). To assess how Sonoran desert tortoises used burned versus unburned habitat following this fire, transmitters were attached to 12 tortoises, 6 each in burned and unburned habitat within or adjacent to the Mother's Day Fire footprint. Surprisingly, no differences were observed in movement or activity patterns between tortoises in burned and unburned areas, nor were long-term effects of the fire on surviving tortoises noted over the 6-year study period (Zylstra and Swann 2009, p. 7). These results indicate that different tortoise populations may respond differently to wildfires and that numerous variables and factors are at work.

One of the principal reasons that nonnative plants pose a significant impact to Sonoran desert tortoise habitat is because few, if any, reasonable methods currently exist to control the ongoing invasion of these plants or to remediate areas where they have become established. Mechanical removal is one option that has been implemented on a small scale in some areas, but is extremely labor intensive and not practical for treating large areas. Prescribed fire has been proposed as an alternative means to control nonnative plant species invasions, but also carries obvious inherent risks to habitat and to Sonoran desert tortoises (Brooks 2006, p. 31).

It is also important to note the limitations of Sonoran desert habitat with respect to post-disturbance (for example, after fires) regeneration (ability for native vegetation to recover). Desertscrub regions receive low annual precipitation totals, and the plant communities have correspondingly low growth rates. Based on the type of disturbance, recovery time estimates range from 40 years to centuries (Abella 2010, pp. 1271, 1273). Combined, these factors result in slow, post-disturbance recovery periods and it may take a long time before any area becomes suitable for Sonoran desert tortoises to recolonize, if at all. The presence of nonnative species such as buffelgrass, cheatgrass, or red brome in disturbed Mojave or Sonoran desertscrub may further limit post-disturbance recovery, delay recovery, or prevent recovery altogether (Brown and Minnich 1986, p. 411; Brooks 1999, p. 18).

In our review of the best available information, we have documented that nonnative plant species pose a significant threat to the Sonoran desert tortoise and its habitat, both in Arizona and Sonora, by promoting and carrying wildfire in an ecosystem that evolved in its absence. Wildfires that are facilitated by nonnative plant species invasions may have direct and indirect adverse effects on tortoises and tortoise populations. The threat from nonnative plant species to the Sonoran desert tortoise occurs throughout the species' range and is expected to increase over time with the expansion of nonnative plants. There is currently no viable solution to curbing this continued expansion across the landscape. This threat also acts synergistically with other threats discussed in this finding.

Urban Development and Agriculture

Human population growth results in the disturbance or loss of Sonoran desertscrub or the conversion of land for urban and agricultural development. Arizona increased its population by 394 percent from 1960 to 2000, and was second only to Nevada as the fastest growing State during this timeframe (Social Science Data Analysis Network (SSDAN) 2000, p. 1). Since 1990, Arizona's population has grown by 44

percent. From 1960 to 2000, population growth rates in Arizona counties where the Sonoran desert tortoise occurs have varied by county but are no less remarkable, and all are increasing: Maricopa (463 percent); Pima (318 percent); Pinal (54 percent); Santa Cruz (355 percent); Cochise (214 percent); Yavapai (579 percent); Gila (199 percent); Graham (238 percent); Yuma (346 percent); LaPaz (142 percent); and Mohave (2,004 percent) (see SSDAN 2000). The population of Phoenix, Arizona, grew 67 percent from 1980 to 2000 (Berry *et al.* 2006, p. 7).

Urban expansion and human population growth trends in Arizona are expected to continue into the future. Maricopa-Pima-Pinal county areas of Arizona are expected to grow by as much as 71 percent in the next 15 years, creating rural-urban edge effects across millions of acres of public lands currently supporting Sonoran desert tortoise populations (AIDTT 2000, p. 10; BLM files—Lands Livability Initiative). In another projection, the population in Arizona is expected to more than double within the next 20 years compared to the 2000 population estimate (U.S. Census Bureau 2005, p. 1). Many cities and towns within the distribution of the Sonoran desert tortoise have already experienced substantial growth during the 8-year time span, 2000–2008: City of Avondale (118.3 percent); City of Buckeye (392.5 percent); Bullhead City (20.3 percent), Town of Carefree (30.5 percent); Casa Grande (56 percent); Town of Cave Creek (44.2 percent); City of Chandler (37.5 percent); City of Coolidge (24.9 percent); City of El Mirage (195.6 percent); City of Eloy (22.3 percent); City of Florence (20.3 percent); Town of Fountain Hills (23.2 percent); City of Gilbert (84.5 percent); City of Goodyear (203 percent); City of Kingman (32.2 percent); Lake Havasu City (33.3 percent); City of Litchfield Park (34.2 percent); City of Mammoth (45 percent); Town of Marana (139.9 percent); City of Maricopa (2,508 percent); Town of Oro Valley (32.5 percent); Town of Queen Creek (544.5 percent); Town of Saguarita (507.3 percent); City of San Luis (58.5 percent); City of Somerton (63.2 percent); City of Surprise (187.3 percent); City of Tolleson (43.2 percent); and, Town of Youngtown (62.2 percent) (U.S. Census Bureau 2008, pp. 1–4).

This population growth has spurred a significant increase in urbanization and development in these areas. Regional development is predicted to be extreme in certain areas within the distribution of the Sonoran desert tortoise in Arizona. In particular, a wide swath from the international border in Nogales, through Tucson, Phoenix, and north into Yavapai County (called the Sun Corridor "Megapolitan") is predicted to have 8 million people by 2030, an 82.5 percent increase from 2000 (Gammage *et al.* 2008, pp. 15, 22–23). If build-out occurs as expected, it will encompass a significant proportion of the Sonoran desert tortoise distribution in Arizona, and will in effect permanently isolate Sonoran desert tortoise populations that occur on either side of the Interstate 19, Interstate 10, and Interstate 17 corridors.

The land area permanently altered by human activities from urban development and agriculture has grown to 13 percent of all land in the western United States, Lue *et al.* (2008, p. 1130). Lue *et al.* (2008, p. 1133) concluded that in low-productivity habitat, such as desertscrub habitats, slight human disturbances can have pronounced effects. Significant urban development occurs within intermountain valleys, within or adjacent to occupied Sonoran desert tortoise habitat, which increases the likelihood of effects along the rural-urban interface, and may also inhibit movement of individuals between populations on nearby hillsides or mountain ranges. Disturbances to Sonoran desert tortoise habitat on the landscape can take many forms and cover extreme distances. Roads, canals, pipelines, and railroad tracks are examples of linear habitat destruction. We discuss the potential effects of linear disturbances below in the section titled, "Development as a Barrier."

Development pressure across Arizona has slowed due to the recent economic downturn and decline in the housing market. However, development will likely continue in the future, although perhaps at a slower pace than in the earlier part of this century. We also recognize that economic trends are difficult to predict into the future. The most recent draft Pinal County Comprehensive Plan (February 2009) acknowledges that the county is in the middle of the Sun Corridor Megapolitan and proposes four shorter-term growth areas in defining where development will likely occur, or be encouraged to develop, over the next decade, but does not discourage growth outside of these areas (Pinal County Comprehensive Plan 2009, p. 109). These four growth areas (Gateway/Superstition Vistas, West Pinal, Red Rock, and Tri-Communities) fall completely within the range of the Sonoran desert tortoise. The Gateway/Superstition Vistas growth area alone encompasses 176,000 ac (71,225 ha), or 275 sq mi (712 sq km), of State Trust land, and it is anticipated that 800,000 to more than 1 million people will one day live in this development (Pinal County Comprehensive Plan 2009, p. 115). The loss of 176,000 ac (71,225 ha) constitutes a loss of 0.7 percent of Sonoran desert tortoise habitat in Arizona; rangewide, 0.34 percent. The Pinal County Comprehensive Plan (2009, p. 117) identifies many miles of new freeways and principal arterials in the analysis area at build-out, which the plan acknowledges may take over a half century to realize (Pinal County Comprehensive Plan 2009, p. 115). The effect of roads on Sonoran desert tortoises is discussed below.

Additionally, the Maricopa County Comprehensive Plan calls for growth areas to the south and east of Chandler and Mesa, Arizona, which are within the range of the Sonoran desert tortoise (Maricopa County Comprehensive Plan 2002 (revised), p. 92). City comprehensive plans within the range of the Sonoran desert tortoise also call for future growth areas. For example, the City of Eloy has designated six such areas encompassing 15,520 ac (6,281 ha), mostly along the Interstate 10 corridor (City of Eloy General Plan 2004, pp. 7–6 through 7–10). The loss of 15,520 ac (6,281 ha) constitutes a loss of 0.06 percent of their habitat in Arizona; rangewide, 0.03 percent. While much of this area has already been impacted by development or irrigated agriculture, any remaining dispersal habitat for the Sonoran desert tortoise will likely be negatively affected as development and its associated infrastructure progress into these areas.

Much of the past and projected development within the range of the Sonoran desert tortoise in central and southwestern Arizona has occurred and is expected to continue as a conversion from agricultural uses to municipal uses. Land traditionally used for agriculture is not occupied by Sonoran desert tortoises, but has a comparatively minor effect on adjacent Sonoran desert tortoises. When these lands are converted to municipal uses, the effect to adjacent Sonoran desert tortoise populations increases human access, and use of adjacent undeveloped land increases as a result of development of these former agricultural areas.

The human population of Sonora, Mexico, doubled in size from 1970 (1.1 million) to 2000 (2.2 million) (Stoleson *et al.* 2005, p. 54). The population of Sonora is expected to increase by 23 percent, to 2.7 million people, in 2020 (Stoleson *et al.* 2005, p. 54). In discussing threats to Sonoran desert tortoise populations adjacent to, and stemming from, urbanization in Sonora, Mexico, Fritts and Jennings (1994, p. 53)

stated, "Tortoise populations adjacent to large population centers such as Hermosillo, Guaymas, and Caborca probably have experienced long-term harm, including direct human exploitation, habitat degradation, road kills, predation by domestic dogs, and use as pets. However, we found evidence of tortoise populations on hillsides and mountain slopes near each of these cities, which suggests that some tortoise populations have survived despite perturbations by humans." Therefore, Sonoran desert tortoises may persist as depressed populations adjacent to urban development, but without long-term population trend data for these areas, we are unable to know for how long.

Urban development has been identified as a concern for Sonoran desert tortoise conservation in several areas within Arizona because of the associated increase in human-based threats to populations in close proximity. Averill-Murray and Swann (2002, p. 1) stated that urban development adjacent to the Saguaro National Park in Pima County threatens the Sonoran desert tortoise via several mechanisms including harassment and predation by feral or off-leash domestic dogs, illegal releases of captive Sonoran desert tortoises and exotic species that may transmit diseases to wild Sonoran desert tortoises, elevated mortality on roads, and illegal collection for pets. Averill-Murray and Swann (2002, p. 7) stated that mid- to large-scale development projects on the bajadas and foothills of the Rincon, Santa Rita, Santa Catalina, Tortolita, and Tucson Mountains has likely led to area-wide decreases in Sonoran desert tortoise populations. However, no population estimates for Sonoran desert tortoises before development of these areas exist, and, therefore, population responses to development of these areas cannot be ascertained.

In addition to the Tucson metropolitan area, urban encroachment on Sonoran desert tortoise habitat occurs adjacent to the greater Phoenix metropolitan area, in the area around South Mountain and adjacent to the Superstition Mountains (AGFD 2010, p. 7). Sonoran desert tortoises are known or suspected to still occur in 12 of the 16 Maricopa County and City of Phoenix urban mountain parks and reserves. The four parks where no tortoise sign has been found in recent years are completely surrounded by urban development (AGFD 2010, p. 7). Urban development has occurred adjacent to five monitoring plots, but only the Hualapai Foothills plot is completely surrounded by developed lands (AGFD 2010, p. 7). A development consisting of 48,000 single family homes, south of the Colorado River in western Mohave County, is also currently being planned (THS 2009, p. 4; Mardian 2010, p. 1).

Because less area is being used currently for agriculture in the United States, habitat loss due to agricultural development is more of a historical issue. However, impacts to Sonoran desert tortoise dispersal habitat within valley floors from historical agricultural use and wood harvesting are still evident. The vegetation and soils of many valleys in the Sonoran Desert were shaped by the periodic flooding of dynamic wash systems, which partially recharged a shallow, fluctuating groundwater table. Because of agricultural development, these valleys no longer experience these defining processes and there has been a permanent loss of meso- and xeroriparian habitat which are known to be corridors for movement by Sonoran desert tortoises (Jackson and Comus 1999, pp. 233, 249; Lutz *et al.* 2005, p. 22; Riedle *et al.* 2008, p. 418).

Agriculture in Sonora, Mexico, has shifted from small-scale, local markets toward large-scale agro-industry, with Sonora producing 40 percent of the country's total wheat crop (Stoleson *et al.* 2005, p. 59). While agriculture in Sonora is largely constrained to valleys (along the Rio Sonora), many types of habitat used by Sonoran desert tortoises have been cleared for agriculture, including Sonoran desertscrub, thornscrub, and tropical deciduous forest (Stoleson *et al.* 2005, p. 60). In 1994, the total irrigated acreage in Sonora was 128,000 ac; in 2004 that figure rose to 530,509 ac (214,689 ha), an increase of 314 percent (AQUASTAT 2007, p. 2). This constitutes an estimated loss of 2 percent of Sonoran desert tortoise habitat in Mexico; rangewide, 1 percent.

The projected growth of the human population in Arizona and northern Mexico and subsequent urbanization discussed above is expected to place onerous demands on lands where the Sonoran desert tortoise occurs, increasing the need for infrastructure associated with development, such as power lines, power plants, pipelines, landfills, roads, sand and gravel mines, and removal of boulders for landscaping (AIDTT 2000, p. 10). In addition, these growth projections will increase human visitation to formerly remote Sonoran desert tortoise habitat as urban-rural interface expands, whereby increasing human-associated threats discussed in detail below (AIDTT 2000, p. 10). The AGFD (2010, p. 7) concluded that "* * * as urbanization continues to expand, (Sonoran desert tortoise) habitat will continue to be lost." In a Global Information System exercise, we calculated that currently, 75 percent of potentially occupied Sonoran desert tortoise habitat within Arizona occurs within 30 mi (48 km) (a reasonable distance a person might travel to recreate outdoors on public land) or less of a city or town with a population of 1,000 or more. As the human population of Arizona grows and development expands as expected, we assume that 100 percent of Sonoran desert tortoise populations will occur within 30 mi (48 km) or less of a city or town with a population of 1,000 or more, in the foreseeable future. Tortoise populations are being increasingly exposed to humans and human activities, and therefore to numerous threats that would otherwise be minimized or nonexistent. We discuss these types of threats and how they affect Sonoran desert tortoises and their habitat below in Factors B, C, D, and E.

Some forms of development are likely to increase. The interest in renewable energy projects is expected to increase significantly in the future. Solar radiation levels in the southwestern United States, including Arizona, are some of the highest in the world, and interest in tapping into this source of potential energy is growing. Potentially significant tracts of BLM lands in southwestern Arizona have been identified for possible solar energy development, encompassing large percentages of Arizona's valley bottomland in La Paz and Yuma Counties and adjacent to or within the foothills of the Black Mountains of western Mohave County, which could isolate Sonoran desert tortoise populations and affect genetic exchange among regional populations in those areas (USDOE 2009, p. 1). Since most solar projects are in the early planning stages and have yet to be officially approved by the BLM, we are unable to ascertain the amount of Sonoran desert tortoise habitat likely to be impacted. However, we acknowledge that large areas within the distribution of the Sonoran desert tortoise in Arizona are being considered for solar projects.

In one example, 12,100–15,100 ac (4,897–6,110 ha) of BLM, State, and private land containing Sonoran desert tortoise habitat along the southern bajada of the Black Mountains in western Mohave County, Arizona, has been identified for development of the Sterling Solar Generating Facility within the next 4 to 6 years (Needle Mountain Power, LLC 2010, pp. 4, 8, 11). At build-out, the Sterling Solar Generating

Facility will consist of solar fields, power blocks, buildings, retention ponds, rainwater catch basins, evaporation ponds, wastewater and water treatment facilities, water storage tanks, on-site housing, a substation, a visitors center, a substation and switching station interconnection with the Western Area Power Administration power lines, and septic tanks (Needle Mountain Power, LLC 2010, p. 11). We expect the construction of this facility to render at least 13,100 ac (5,300 ha) of Sonoran desert tortoise habitat as unusable because this type of construction requires the complete grading (removal of vegetation) of the project footprint. It could, therefore, significantly affect the Black Mountains desert tortoise population, especially in consideration of other effects acting in combination with those poised from the proposed housing development and highway construction in the immediate area (THS 2009, p. 4; ADOT 2010, p. 3; Mardian 2010, p. 1). The estimated loss of 13,100 ac (5,300 ha) constitutes an estimated loss of 0.05 percent of their habitat in Arizona; rangewide, 0.025 percent.

Other solar energy development and transmission corridors pose similar threats to the Sonoran desert tortoise as development and roadway projects (see discussion below). An average utility-scale solar facility to generate 250 megawatts of electricity would occupy about 1,250 ac (500 ha) of land (BLM 2009a, p. 1), and would involve removal of all vegetation within its footprint. Additionally, concentrating solar power facilities requires liquids such as oils or molten salts to create steam to power conventional turbines and generators, as well as various industrial fluids, such as hydraulic fluids, coolants, and lubricants, all of which may present a contaminant risk should these fluids leak onto the ground (Scott 2009, p. 12). New transmission lines would need to be built for these facilities, as well as roads to maintain the facilities, posing additional threats to the Sonoran desert tortoise through the destruction or contamination of remaining habitat and increased potential for road-kill mortality.

In conclusion, the literature documents that urban development and population growth in Arizona and Sonora has been remarkable, and no information is available to suggest these trends will not continue into the foreseeable future. Sonoran desert tortoise habitat is permanently lost where urban development occurs. Sonoran desert tortoises and their habitats that occur adjacent to developed areas are also threatened by the increased incidence of an array of human activities or influences such as off-highway vehicle use, facilitation of the spread of nonnative plant species via soil disturbances, and increased wildfire ignitions. These threats act in combination with other threats discussed elsewhere in this finding, including ironwood and mesquite tree harvest, livestock grazing, nonnative plants and altered fire regimes, roads and highways, and undocumented human immigration and interdiction.

Development as a Barrier

Urban development, canals, and transportation infrastructure, such as roads and railroads, disrupt ecological processes, increase mortality in animals, promote the degradation, loss, and isolation of wildlife habitat, and cause fragmentation of populations (Spang *et al.* 1988, p. 9; Saunders *et al.* 1991, pp. 23–24; Averill-Murray and Klug 2000, p. 68; Seiler 2001, p. 3; Howland and Rorabaugh 2002, p. 335; Edwards *et al.* 2004, p. 496). Sonoran desert tortoise populations are island-like in their distribution, meaning they are generally concentrated on the bajadas and hillsides of mountains, and less-distributed within the valleys between these areas. As a result, they may be particularly vulnerable to large-scale disturbances that affect the suitability of intervening habitat (Spang *et al.* 1988, p. 9). Factors that affect inter-population dynamics in Sonoran desert tortoises include distance between populations, physical size of habitat areas, sizes of source populations, and the ease of which intervening areas can be crossed by dispersing individuals (Howland and Rorabaugh 2002, p. 335).

The effect of potential barriers to inter-population movements of Sonoran desert tortoises (discussed above in the *Species Information* section) is not equal across their range. The ability for the Sonoran desert tortoise to move among populations is also important for allowing shifts in their range in response to climate change, and to promote recolonization after fire or other regional disturbances (Beier and Majka 2006, p. 2). Dispersal of Sonoran desert tortoises between populations through sparse desertscrub is less likely in very hot, dry valleys in the Lower Colorado subdivision of Sonoran desertscrub and populations in mountain ranges, such as the Eagletails, Maricopas, and Sand Tanks, have likely been existing in isolation for a long time (Van Devender 2002a, p. 16).

Genetic analysis of blood samples collected from Sonoran desert tortoises in Saguaro National Park in Pima County, Arizona, suggest that intermediate gene flow still occurs, or occurred recently, among isolated populations at the rate of at least 1 migrant per generation (12–15 years) (Edwards *et al.* 2004, p. 485). However, thousands of acres of tortoise habitat have been recently lost to large residential developments in the foothills of the Santa Catalina, Tortolita, Rincon, and Tucson Mountains in the greater Tucson metropolitan area (Edwards *et al.* 2004, p. 485).

The importance of allowing movement of individual tortoises between populations is observable by evaluating historical gene flow. Edwards *et al.* (2004, p. 485) used seven microsatellite DNA markers to examine the genetic relationships of tortoises in eight populations in southern and central Arizona, in the vicinity of Tucson and Phoenix. They also calculated migration rates among these populations to estimate historical rates of gene flow, and, therefore, the importance of individuals moving between populations (Edwards *et al.* 2004, p. 485). Edwards *et al.* (2004, p. 496) found no evidence of recent loss of genetic diversity that would indicate genetic bottlenecking that could occur from lack of mixing among Sonoran desert tortoise populations in southern Arizona. However, the authors acknowledged that a small sample size and small number of genetic markers (alleles) used in their analyses would likely not detect this genetic effect. Despite reduced mixing among populations, Sonoran desert tortoises may be capable of maintaining small effective population sizes (still viable populations, despite small size), even with a low degree of genetic diversity (Edwards *et al.* 2004, p. 496). However, Edwards *et al.* (2004, p. 496) also stated, "Because effective population sizes of Sonoran desert tortoises are small, dispersal events probably play an important role in the long-term maintenance of these populations." This suggests that while dispersal and movement of tortoises may be rare, they may be important events. Therefore, barriers that prevent this movement could result in significant genetic impacts, by preventing mixing of populations over the long term.

The effect of urban barriers limits inter-population movements of Sonoran desert tortoises resulting in "closed" populations. Experts believe that an isolated population of Sonoran desert tortoises that experiences significant declines in population size could not overcome losses simply through an increase in reproduction, based on evidence of past gene flow (Edwards *et al.* 2004, p. 496). Therefore, if a

population were to experience a catastrophic decline as a result of a stochastic event such as drought, the immigration of new tortoises from adjacent populations would be necessary for population recovery (Edwards *et al.* 2004, p. 496). Urban barriers effectively prevent this immigration of new tortoises, resulting in closed, or isolated, Sonoran desert tortoise populations, which are now evident within the metropolitan areas of Phoenix and Tucson. Mountains and associated foothills with Sonoran desertscrub habitat occur in these urban areas, and although development within this habitat has been restricted by zoning laws, development is still allowed to virtually surround the bases of the mountains, isolating tortoise populations. Examples of this development include the Union Hills, White Tank Mountains, McDowell Mountains, Black Mountains, and South Mountain Park in the Phoenix metropolitan area and Tumamoc Hill, Tucson Mountains, and Saguaro National Park West in the Tucson metropolitan area (Edwards *et al.* 2004, p. 496). Zylstra and Swann (2009, pp. 10–11) remarked that the increasing negative effect of human-made barriers on Sonoran desert tortoise movements between populations may require translocation (moving animals out of harm's way into more secured areas of suitable habitat), or occasional augmentation of populations with tortoises from other populations, to remain viable.

Translocation has been considered an option, and implemented to some degree for Mojave desert tortoise conservation and recovery. In assessing the viability of translocation as a recovery and conservation tool for the Mojave population, concern has been expressed for potentially moving tortoises into areas where threats to desert tortoise populations remain, which could negate any conservation value associated with the action. Our (Mojave) Desert Tortoise Recovery Office stresses that translocation of tortoises should not occur under such circumstances, emphasizing the need to address threats which impact all tortoises regardless of origin.

Translocation of desert tortoises has received mixed reviews in the scientific literature and, as noted, may not be a viable option for the Sonoran desert tortoise. There are several factors that must be considered in deciding whether or not to translocate tortoises into new areas, including temporary or longer-term holding conditions of tortoises; the propensity for post-release, long-distance movements; drought; the status of receiving population; and disease screening, among other factors (Berry 1986a, p. 113; Field *et al.* 2007, pp. 232, 237, 240, 242; Martel *et al.* 2009, p. 218). Translocated Mojave desert tortoises have been shown to settle at release sites, travel in straight lines for substantial distances, or disperse up to approximately 4 miles (6.4 km) (Berry 1986a, p. 113). Translocated desert tortoises may disrupt social hierarchies in receiving populations by displacing residents or they may be displaced themselves (Berry 1986a, p. 113). Howland and Rorabaugh (2002, p. 341) suggest that translocation of Sonoran desert tortoises may not be a viable tool for conservation because most intact Sonoran desert tortoise populations in Arizona are currently considered relatively healthy, and likely occur at or near carrying capacity. Mullen and Ross (1997, pp. 145–146) found that translocated Mojave desert tortoises have a lower survivorship than resident individuals (especially when moved during the summer versus during the spring), but that negative effects commonly associated with translocations are generally short-lived (1–2 years).

A 2004 population viability analysis for the Mojave desert tortoise recommended that a minimum of 50,000 individuals are required for a 50 percent chance of persistence for 500 years, yet extrapolation of Sonoran desert tortoise population data from southern Arizona suggest that most populations number less than 20,000 individuals, with some as low as several hundred (Edwards *et al.* 2004, p. 496). Because the average generation time of a Sonoran desert tortoise is approximately 12–15 years and much of the urban development is relatively recent, the full effect of developments as barriers to genetic exchange among Sonoran desert tortoise populations cannot be fully assessed at this time (Edwards *et al.* 2004, p. 486). Edwards *et al.* (2004, p. 495) further cautioned that their estimates of gene flow are contingent on what occurred pre-settlement, and should not be taken as evidence that natural immigration or emigration still occurs.

In conclusion, the literature documents that urban development and population growth, roads and highways, canals, railroad tracks, and other types of development threaten the Sonoran desert tortoise by creating barriers to movement in Arizona and, perhaps to a lesser extent, in Sonora, Mexico. The creation of barriers affects the tortoises' genetic exchange capacity within and between populations, which in turn affects their ability to recolonize habitat in the event of population declines or extirpations, and may lead to isolation and eventual genetic bottlenecking. This threat acts synergistically with other factors as discussed above.

Off-Highway Vehicles

Off-highway vehicle use may pose a variety of threats to the suitability of habitat within the range of the Sonoran desert tortoise. Off-highway vehicle use in Sonoran desert tortoise habitat can result in damage to soil, riparian areas, wetlands, water quality, and air quality. This damage occurs due to reduced vegetation cover and growth rates, soil compaction, diminished water infiltration, diminished presence and impaired function of soil stabilizers (biotic and abiotic soil crusts), noise, wildlife habitat fragmentation, spread of invasive plant species, and accelerated erosion rates (Boarman 2002, pp. 43–51; Ouren *et al.* 2007, pp. 5, 11; USGAO 2009, pp. 10, 13; Vega 2010, p. 3). Off-highway vehicle use in Sonoran desert tortoise habitat can also potentially affect Sonoran desert tortoises directly by crushing individuals or their burrows (Boarman 2002, pp. 43–51).

Off-highway vehicle use has grown considerably in Arizona. Between 21 and 56 percent of Arizona residents (depending on the county in Arizona) consider themselves off-highway vehicle users as of 1999, and projected increases in population growth are expected to increase recreation on public lands, in particular off-highway vehicle use (AIDTT 2000, p. 10). As of 2007, 385,000 off-highway vehicles were registered in Arizona (a 350 percent increase since 1998), and 1.7 million people (29 percent of the Arizona's public) engaged in off-road activity from 2005–2007 (Sacco, pers. comm., 2007). Over half of off-highway vehicle users reported that merely driving off-road was their primary activity, versus using the off-highway vehicle for the purpose of hunting, fishing, or hiking (Sacco, pers. comm., 2007). The BLM (USBLM 2001, p. 1) stated that interest in off-highway vehicle use has increased substantially in recent years and cited several reasons, such as urban growth in the west, improved capabilities of off-highway vehicles in accessing previously inaccessible areas, and greater public interest in unconfined outdoor recreational opportunities.

The Forest Service stated that "the number of off-highway vehicle users has climbed sevenfold in the past 28 years, from approximately 5 million in 1972 to 36 million in 2000" (USFS 2009, p. 2). The Tonto National Forest, which encompasses a considerable amount of

Sonoran desert tortoise habitat, receives the highest off-highway vehicle use of any national forest nationwide, partially due to its close proximity to the Phoenix metropolitan area. The Arizona State Land Department recently closed to off-highway vehicle use many of their lands in Maricopa County (which includes Phoenix), to control dust pollution, which appears to have shifted off-highway vehicle access to the nearby Tonto National Forest (USFS 2009, p. 2; USGAO 2009, p. 11). The Tonto National Forest has indicated that soil erosion appears to be the most significant result from off-highway vehicle use on their lands and identified "unmanaged recreation" (off-highway vehicle use) as one of four key threats to soil, water, and wildlife habitat (USFS 2009, p. 1; USGAO 2009, pp. 10, 13).

Off-highway vehicle use is widespread across Arizona, occurring on Forest Service, BLM, private, tribal, and State Trust lands, and has been documented on all 17 Sonoran desert tortoise monitoring plots. Pronounced effects are found on the Four Peaks and Wickenburg Mountains plots, which are near urbanized areas (greater Phoenix and Wickenburg, respectively) (AGFD 2010, p. 13).

The Tonto National Forest has proposed to designate approximately 800 mi (1,287 km) of roads as open for use, and close 280 mi (451 km) of roads which are currently open (due to significant resource damage). This is a net increase of 520 mi (837 km) of off-highway vehicle trails and roads on the Tonto National Forest (USFS 2009, p. 3). In addition, the Tonto National Forest has proposed the designation of five more off-highway vehicle areas (representing 2,799 ac (1,132 ha) collectively, or 0.01 percent of its habitat in Arizona) within Sonoran desert tortoise habitat on the Mesa and Globe Ranger Districts (USFS 2009, p. 3). All other motorized travel not specifically designated will be prohibited by the Tonto National Forest except as authorized for dispersed camping access and big game retrieval (USFS 2009, p. 4). Because of the increase in off-highway vehicle access and subsequent use anticipated to occur on the Tonto National Forest, associated threats to the Sonoran desert tortoise and its habitat on the Forest are expected to increase in scope and magnitude in the immediate future.

BLM regulations require their lands be designated as open, limited, or closed to off-highway vehicle use (USGAO 2009, p. 7). As of March 2009, the BLM has nationally designated approximately 32 percent of its lands as open to off-highway vehicle use, 48 percent as limited-use, 4 percent as closed, and 16 percent of lands have yet to be designated (USGAO 2009, p. 7). These figures indicate that at least 80 percent of BLM lands allow for off-highway vehicle use in some capacity. However, we do not have specific information for BLM off-highway vehicle use in Arizona. The BLM is taking actions to help manage off-highway vehicle use on their lands.

Historically, competitive off-highway vehicle racing events have occurred on a comparatively infrequent basis in Arizona. On BLM lands in Arizona, these activities are generally restricted from March 31 to October 15, in consideration of potential surface activity of Sonoran desert tortoises (USBLM 2010, p. 4). However, similar considerations may not occur with respect to these events on lands managed by other agencies, thus making their lands more desirable for planning such events. For example, a Special Land Use Permit application was recently submitted to the Arizona State Land Department for the establishment of a semiannual competitive off-highway vehicle race within Sonoran desert tortoise habitat, slightly north of Tucson near Mammoth, Arizona (Vega 2010, pp. 1–16).

Competitive off-highway vehicle events can have a variety of detrimental effects on Sonoran desert tortoises or their habitat. Event courses have been found to create new destinations for increased, year-long use, and correspondingly greater impacts to local Sonoran desert tortoise habitats and higher incidence of illegal route proliferation (Vega 2010, p. 3). The high rates of speed associated with competitive off-highway vehicle events significantly increase the likelihood for damage to burrows or other habitat features (Vega 2010, p. 4). Lastly, event spectators seeking good views have been found to park their vehicles indiscriminately along the race course without regard to vegetation and may crush Sonoran desert tortoises and their burrows, or start wildfires if parked over dry vegetation (Vega 2010, p. 5).

In his literature review, Boarman (2002a, p. 50) found that, as of 2002, most research on the effect of off-highway vehicles had been performed in areas of high off-highway vehicle use within the Mojave desert tortoise distribution. As a result, there are fewer available data for lightly-traveled areas (Boarman 2002, p. 50).

On the Florence Military Reservation, Grandmaison *et al.* (in prep., p. 16) found that Sonoran desert tortoises use infrequently traveled gravel roads as movement corridors within their home ranges, placing individuals at greater risk of mortality from collisions with off-highway vehicles. Populations that occur in similar areas throughout their distribution may also be vulnerable to mortality associated with collisions, or previously discussed indirect effects to their habitat from off-highway vehicle use.

Effects of off-highway vehicle use on Sonoran desert tortoises are likely to be more significant within washes that separate steep slopes and rocky bajadas used by Sonoran desert tortoises, where tortoises are known to frequent and off-highway vehicle use often occurs (AGFD 2010, p. 13). For example, "rock crawling" (technical off-roading usually with highly-modified, high clearance, four-wheel drive vehicles), generally occurs in boulder-strewn washes where Sonoran desert tortoises are most likely to inhabit. This activity may be uniquely destructive to Sonoran desert tortoise habitat because: (1) It occurs on steep slopes and rocky bajadas within Arizona Upland Sonoran desertscrub where populations reach their highest densities; and, (2) the intent of rock crawling is to aggressively challenge aspects of a given landscape that would otherwise clearly represent barriers to overland travel, which places habitat and tortoises at greater risk. However, rock crawling activity is presumed to be less popular an activity than more conventional off-highway vehicle use and, therefore, likely affects a much smaller percentage of Sonoran desert tortoise habitat.

Bury (1987, p. 1) studied the effects of off-highway vehicle use on Mojave desert tortoises in Mojave desertscrub habitat. Some of his findings included a 60 percent reduction in perennial plant cover, 1.3 desert tortoises per hectare (2.47 ac) in a control plot in which off-highway vehicles were excluded, versus 0.3 desert tortoises in an area used by off-highway vehicles, and four times the number of active burrows in the control plot versus the off-highway vehicle area (Bury 1987, p. 1). Bury and Luckenbach (2002, p. 257) found that there were 1.3 times more live plants, 3.9 times more plant cover, 3.9 times the number of Mojave desert tortoises, and four times the number of active burrows in undisturbed Mojave desertscrub as compared to areas where off-highway vehicles were used. We are not certain whether the areas studied by Bury (1987, p. 1) and Bury and Luckenbach (2002, p. 257) were unregulated, or regulated areas with designated routes, but similar effects to Sonoran desert tortoises and their habitat can be expected in areas of high off-road

vehicle use in Sonoran and Mojave desertscrub habitat within Arizona, particularly in areas of higher accessibility (such as valley bottoms and lower foothills), such as the Florence Military Reservation in Pinal County (AIDTT 2000, p. 34; Lutz *et al.* 2005; p. 22; AGFD 2010, p. 7; Grandmaison *et al.* in press, p. 4).

Brooks and Lair (2005, pp. 7–8) found that, in Mojave desertscrub, off-highway vehicle routes can cause a myriad of effects including: (1) Altering precipitation runoff patterns which promote increased erosion; (2) producing air-borne pollutants laden with heavy metals that affect habitat at distances ranging from 65 to 650 feet (20 to 200 m) from the road; (3) increasing nitrogen deposition in soils, thereby favoring nonnative plant invasions; and (4) providing a pathway for nonnative plant species invasions. These impacts degrade Sonoran desert tortoise habitat as well as their forage base.

Soil disturbance from off-highway vehicle use, development projects, and other activities can facilitate the invasion of nonnative plant species by eliminating competition and creating a rougher soil surface for seeds to lodge and germinate (Hobbs and Huenneke 1992, pp. 329–330). Motorized and mechanical vehicles aid in the dispersal of plants by transporting seeds of both native and nonnative plant species. Rew and Pollnac (2010, p. 2) found that trucks and sport utility vehicles driven off road in dry conditions can pick up as many as 176 seeds from 50 mi (80 km) of driving, and recreational off-highway vehicles can pick up as many as 200,000 seeds in 48 mi (77 km) of off-road driving. Off-highway vehicles are generally transported via trailer from site to site and may spread nonnative plant species in subsequent uses. Off-highway vehicle use has also been shown to create edge effects along trails that generate dust, blanketing adjacent vegetation, and inhibiting plant growth rates, size, and survivorship, all of which affect the forage base and available cover for Sonoran desert tortoises (Ouren *et al.* 2007, p. 11).

We have documented that off-highway vehicle use poses a threat to the Sonoran desert tortoise and its habitat in Arizona because it damages soil, reduces vegetation cover and growth rates, leads to soil compaction, diminishes water infiltration, diminishes the presence and impairs the function of soil stabilizers (biotic and abiotic soil crusts), fragments habitat, facilitates the spread of nonnative plant species, ignites wildfire, accelerates soil erosion, enhances the potential for illegal collection (discussed below), and may crush or injure Sonoran desert tortoises (also discussed below). In addition, we have documented the tremendous growth in popularity of off-highway vehicle use in Arizona, as well as compliance deficiencies in off-highway vehicle licensing programs (and therefore deficient fees collected that are intended to fund enforcement and environmental mitigation) and enforcement programs (discussed above and below). This threat acts synergistically with other threats discussed herein. Considering the population growth estimates we have documented above for Arizona, we believe that the popularity of off-highway vehicle use will continue to grow, leading to an increase in severity and geographic extent of impacts across the distribution of the Sonoran desert tortoise in Arizona over time.

Roads and Highways

Foreman (2002, p. 35) estimated that at least 20 percent of land in the United States has been ecologically affected by roads. Roads and highways might also adversely affect Sonoran desert tortoises as they do Mojave desert tortoises. Studies of Mojave desert tortoises suggest that effects include providing human access to occupied habitat, facilitating the spread of nonnative plant species, altering movement patterns, enhancing the genetic fragmentation effect between populations of Sonoran desert tortoises by acting as barriers, and contaminating adjacent habitat (Boarman and Sazaki 1996, p. 1; Forman and Alexander 1998, p. 207; Boarman 2002, pp. 54–55; Edwards *et al.* 2004, pp. 495, 497; Boarman and Sazaki 2006, p. 95; Andrews *et al.* 2008, pp. 127, 129–130; Rew and Pollnac 2010, p. 2). Roads that act as barriers to genetic exchange between Sonoran desert tortoise populations may increase the risk of inbreeding depression and population extirpation (Boarman and Sazaki 2006, p. 95). In one example, biological connectivity between Sonoran desert tortoise populations of the Harquahala and Wickenburg Mountains is significantly limited due to several barriers to tortoise movement including highways U.S. 60 and U.S. 93, the Burlington Northern Santa Fe Railroad, and urban development, and would be further limited by the proposed Wickenburg bypass highways which are in the planning phase (Beier *et al.* 2006d, p. vi).

The use of dirt or gravel roads by vehicles generates dust which may adversely affect physiological processes of adjacent plants and reduce overall primary productivity, whereby affecting the amount and quality of available forage vegetation for Sonoran desert tortoises (Sharifi *et al.* 1997, pp. 844–845).

Construction of major highways planned in Arizona has the potential to greatly affect certain Sonoran desert tortoise populations. For example, the Arizona Department of Transportation (ADOT) has proposed rerouting State Route 95 through the southern and eastern bajada of the Black Mountains in Mohave County, Arizona (Jacobs Engineering Group, Inc. 2009, pp. 24, 33; ADOT 2010, p. 3; Goodman 2010, pp. 3–4). The proposed realignment of State Route 95 is expected to pass directly through 30 mi (48 km) of a Sonoran desert tortoise population (THS 2009, p. 4; Goodman 2010, pp. 3–4). We expect this new four-lane highway to eliminate considerable amounts of Sonoran desert tortoise habitat, become a significant source of mortality, and threaten the continued viability of the Black Mountains habitat to support the population of the Sonoran desert tortoise there, if appropriate mitigation measures are not enacted or are ineffective.

Both the ADOT and the Federal Highways Administration participate in the BLM's tortoise mitigation program and provide funding for the acquisition of Sonoran desert tortoise habitat using compensation rates prescribed for in the BLM's mitigation policy (ADOT 2010, p. 3). Compensation rates for disturbances in Category I or II habitat are 3–6:1 and 2–5:1, respectively (USBLM 2009, p. 18). To date, 584 ac (236 ha) of Sonoran desert tortoise habitat have been acquired through this program with ADOT and Federal Highways Administration. Another 98 ac (40 ha) are scheduled to be acquired as a result of the proposed rerouting of U.S. Highway 95 through the Black Mountains of Mohave County (ADOT 2010, p. 3).

Considerable planning efforts for future road and highway development in Arizona have been afforded to the preservation of wildlife corridors, or "linkages." Linkage design plans have been completed for several biological corridor areas in Arizona where Sonoran desert tortoises may be threatened by construction and development activities that could become barriers to movement between populations (Beier and Majka 2006, pp. 1–81; Beier *et al.* 2006a, pp. 1–189; 2006b, pp. 1–151; 2006c, pp. 1–88; 2006d, pp. 1–97; 2006e, pp. 1–135). These linkage design plans are specific to both individual corridors that may be affected throughout Arizona, and to species (including the Sonoran desert

tortoise) chosen as representative "focal species" in each individual assessment (Beier and Majka 2006, pp. 1–81; Beier *et al.* 2006a, pp. 1–189; 2006b, pp. 1–151; 2006c, pp. 1–88; 2006d, pp. 1–97; 2006e, pp. 1–135).

In one example, a series of voluntary conservation recommendations were proposed in Beier *et al.* (2006c, pp. 15–16; 2006e, pp. 14–15) to mitigate effects of major roadways, such as U.S. Highway 60 which traverses Sonoran desert tortoise habitat in Pinal and Gila Counties, Arizona. However, the Sonoran desert tortoise was not afforded consideration in all projects. For example, Sonoran desert tortoise populations in Rincon and Santa Rita mountains in eastern Pima County, Arizona, are adversely affected by Interstate 10 and State Highway 83 (known barriers to tortoise movement), yet were not addressed in the Rincon-Santa Rita-Whetstone linkage design plan (Beier *et al.* 2006a, pp. i–ii). In another example, the Sonoran desert tortoise was not afforded any consideration in the Santa Rita-Tumacacori linkage design plan, despite the likely adverse effects by Interstate 19, a known barrier to movement between populations located in the Santa Rita and the Atascosa-Pajarito-Tumacacori mountains complex in southern Santa Cruz County, Arizona (Beier *et al.* 2006b, pp. i–ii). While some highways have associated structures that prevent or funnel tortoises to underground crossings, several populations are still affected by barriers to movement from major roads and highways that have no such structures.

In our review of the literature, we have documented that roads and highways pose a threat to Sonoran desert tortoises in Arizona because they form barriers to movement, whether through direct mortality from vehicles or from avoidance of roads by tortoises. The effects associated with barriers are described in detail in the "Development as a Barrier" section above. While several roads or highways have associated tortoise fencing and or culverts to prevent road-kill of tortoises and facilitate safe movement, studies have shown that these devices are often not maintained and, therefore, become ineffective over time in achieving their desired goal. This threat also acts synergistically with other influences discussed herein.

Ironwood and Mesquite Harvest

The harvest of mesquite and ironwood trees for charcoal production and use in wood carvings adversely affects Sonoran desertscrub habitat in Mexico, both historically and more recently (Bahre 1991, pp. 143–146). The harvest of mature mesquites from Mexico's Sonoran desertscrub habitat permanently alters desert ecosystems because these leguminous (bearing seed pods similar to pea or bean plants) trees are important anchors for these systems and their associated flora and fauna (Taylor 2006, p. 8). More than 200 plant and animal species depend on mesquite trees in northern Mexico for survival and reproduction (American University Database 2010, p. 1). Mesquite and ironwood trees are ecologically important to Sonoran desert habitat as they serve as nursery plants (i.e., aiding in dispersal, germination, seedling development, and survival) for other plant species used as forage for desert tortoises, and provide valuable shade for temporary shelter sites for Sonoran desert tortoises (American University Database 2010, p. 2). In areas where harvest has been concentrated, the loss of mesquite trees results in the loss of organic matter, fixed nitrogen, and sulfur and soluble salts, affecting overall habitat quality and quantity (Rodriguez Franco and Maldonado Aguirre 1996, p. 47).

The demand for mesquite wood, used for cooking, has increased in the Sonoran Desert region of northern Mexico; one million ac (400,000 ha) have been cleared of mesquite to meet these growing demands (American University Database 2010, p. 1). The modification of one million ac contributes to the degradation or possible loss of 4 percent of tortoise habitat in Mexico; rangewide, 2 percent. Ironwood trees are also being harvested in the Sonoran desert of northern Mexico, where it is cherished for its hardness and carving potential in Seri Indian artwork (American University Database 2010, p. 2). The accelerated rate of legume tree depletion for charcoal and carvings in Sonora has affected the health of ironwood populations and associated communities (Suzan *et al.* 1997, p. 955). This is evidenced by an increased number of damaged and dying trees, as well as generally small size classes for sampled areas (Suzan *et al.* 1997, pp. 950–955). In the Sonoyta region of northern Sonora, more than 478,000 ac (193,000 ha) have been affected by deforestation related to charcoal production, brick foundries, tourist crafts, and pasture conversion (Nabhan and Suzan 1994, p. 64). The modification of 478,000 ac (193,000 ha) contributes to the degradation or possible loss of an estimated 2 percent of their habitat in Mexico; rangewide, 1 percent.

Pressure for fuel wood and crafts materials has been so intense in Mexico south of Organ Pipe Cactus National Monument that wood harvest, especially ironwood, has been detected more than a third of a mile inside the boundary of the Monument, as supplies have been decimated south of the border (Suzan *et al.* 1999, p. 1499). The structure of Sonoran desert tortoise habitat in both washes and upland habitats in the Monument boundary has been affected by this harvest (Suzan *et al.* 1999, p. 1499).

In conclusion, the literature documents that harvest of ironwood and mesquite trees has degraded Sonoran desert tortoise habitat in Mexico, primarily, by the loss of organic matter, fixed nitrogen, and sulfur and soluble salts, affecting overall habitat quality and quantity, which collectively and indirectly affect the forage base and protective cover for Sonoran desert tortoises in as much as 4 percent of its range in Mexico. This threat acts in combination with other threats that affect Sonoran desert tortoise populations in Mexico discussed in this finding.

Livestock Grazing

Sonoran desert tortoises, livestock, and wild burros potentially share habitat throughout their distribution in Arizona, with the exception of lands managed by the U.S. Fish and Wildlife Service or National Park Service. Wild burro herds range across millions of acres of Sonoran desert tortoise habitat in Arizona, predominantly on BLM lands northwest of Phoenix, although the literature is generally lacking in analysis of potential effects of wild burros on Sonoran desert tortoise populations or habitat (AIDTT 2000, p. 21).

The Mexican government has designated over 5 million ac (2 million ha) of Sonoran desertscrub for conversion into grasslands for livestock production (American University Database 2010, p. 1). Sonoran desert tortoises are not found in grasslands, and this habitat type is not considered suitable for the species. The loss of 5 million ac (2 million ha) would constitute an estimated loss of 20 percent of their habitat in Mexico; rangewide, 10 percent. Livestock grazing began to expand and modernize in its extent and distribution in Sonora, Mexico, in 1950, when land considered unsuitable for agriculture was subsequently used for livestock grazing (Hawks 2003, p. 3). During this time, new bulls were introduced throughout ranching operations to improve herd genetics, and artificial seeding of

pastures also commenced at this time (Hawks 2003, p. 3). By 1970, buffelgrass was the chosen seed for artificial range supplementation for a growing rural livestock industry, and pastures were seeded with the species throughout Sonora, Mexico. In Sonora, buffelgrass has trended towards a monoculture in many areas, and changed the fire regime to the detriment of native vegetation (Hawks 2003, p. 4). We discuss the threat of nonnative plant species such as buffelgrass in the "Nonnative Plant Species and Altered Fire Regimes" section above.

Livestock stocking rates in Sonora have been documented at 2–5 times the recommended rate for resource sustainability (Walker and Pavlakovich-Kochi 2003, p. 14; University of Arizona 2010, p. 2). Rorabaugh (2008, p. 25) found that livestock grazing "* * * is probably the most widespread human use of Sonora's landscapes" and that rangelands in Sonora are often heavily grazed, with effects most apparent during periods of drought. Livestock production in Mexico is concentrated in the northern states, and the numbers of livestock have grown from 10 million in 1940, to 37.5 million in 1983, largely due to the proximity to the United States, the major importer of Mexican cattle and beef (Stoleson *et al.* 2005, p. 60). In Sonora, 79 percent of agricultural and rangelands are devoted to livestock production (Stoleson *et al.* 2005, p. 60). Effects of poorly-managed livestock grazing observed in Sonora include changes in plant species composition and vegetation cover and structure, soil compaction, erosion, altered fire regimes, and nonnative plant species introductions and invasions (Stoleson *et al.* 2005, pp. 61–62).

In the United States, however, permitted levels of livestock grazing have been reduced to 10 percent of historical levels (Bostick 1990, p. 149). Potential effects of livestock grazing in desertscrub habitat received significant treatment in the literature, with varied scientific conclusions. Fleischner (1994, p. 631) listed specific attributes of ecosystems, such as composition, function, and structure, as vulnerable to the effects of livestock management through a variety of mechanisms including: (1) Decreasing the density and biomass of individual species, reducing species richness, and changing biological community organization; (2) interfering with nutrient cycling and ecological succession; and (3) changing vegetation stratification, contributing to soil erosion, and decreasing availability of water to biotic communities (Waser and Price 1981, pp. 409–410). In Mojave desertscrub, livestock grazing can increase soil compaction and decrease water absorption, thereby reducing water availability to potential Sonoran desert tortoise forage species and subsequently reducing available forage (Boarman 2002, p. 30). Oldemeyer (1994, pp. 100–101) commented that there remains much uncertainty on the exact effects of livestock grazing on desert tortoises. Meyer *et al.* (2010, p. 42) suggested that the effects of livestock grazing on Sonoran desert tortoises should be placed in the context of a grazing regime, effective precipitation, habitat type, topography, Sonoran desert tortoise behavior, and habitat requirements. Loeser *et al.* (2007, pp. 93–96) suggested that climatic variation is key in determining the ecological effects of grazing practices in arid rangelands.

The effects of soil compaction on desertscrub vegetation have been analyzed. In Mojave desertscrub where Sonoran desert tortoises also occur, Adams *et al.* (1982, p. 167) found that soil strength of drying compacted soils increased at a greater rate than non-compacted soils, and that even minor compaction produced similar effects to soil strength. Soil strength was found to be inversely proportionate to production of summer annual grass species (Adams *et al.* 1982, p. 167). Plant species with taproots appeared more vulnerable to the effects of soil compaction whereas fibrous root systems common in nonnative species such as *Schismus* spp. appeared less vulnerable, which indicates that root structure affects the response of plant species and that plant species respond differently to soil compaction, potentially favoring nonnative species in compacted soils (Adams *et al.* 1982, p. 174).

While the Mojave and Sonoran desert tortoises differ to some degree in their biology and behavior, research on livestock grazing effects on Mojave desert tortoises or their habitat does have applicability to Sonoran desert tortoises (especially where Sonoran desert tortoises occupy Mojave desertscrub habitat and by virtue of the arid-land commonality), representing the best scientific information available. However, because Mojave desert tortoises typically occur in flat or gently-sloped terrain and construct earthen burrows in soil, they may be more susceptible to direct effects from livestock grazing. In comparison, Sonoran desert tortoises typically occur on steeper slopes and often construct burrows that are reinforced by boulders and, consequently, less susceptible to direct effects from livestock grazing.

Observed effects of livestock grazing within Mojave desert tortoise habitat include dietary overlap and competition for food resources, destruction of vegetation structure used as temporary shelter sites, trampling of tortoises, collapsing of tortoise burrows, altering plant species composition by facilitating the invasion of nonnative plant species, and compaction of soil which may inhibit the construction of burrows (Avery and Neibergs 1997, p. 13). Boarman (2002a, p. 32) as well as Hobbs and Huenneke (1992, p. 329) found that livestock grazing can import nonnative plant propagules (seeds and other plant parts that may propagate) into native vegetation and subsequent physical alterations in vegetation structure and soil disturbance, such as trampling by livestock hoof-action, may increase germination rates of seeds through burying and compaction and provide microsites for establishment of nonnative plant species.

Avery and Neibergs (1997, p. 13) compared Mojave desert tortoise habitat in both grazed and ungrazed areas (where buffelgrass was not intentionally planted), and found no significant differences in annual plant cover, biomass, or density between study areas. The densities and individual volumes of big galleta (*Hilaria rigida*), a perennial grass species, were greater in grazed habitat than within the grazing exclosure (Avery and Neibergs 1997, p. 13). There was no significant difference in total cover of perennial plant species within study plots (Avery and Neibergs 1997, p. 13). Avery and Neibergs (1997, p. 13) documented livestock nudging and rubbing Mojave desert tortoises, collapsing (potentially occupied) desert tortoise burrows, and destroying vegetation shading actively used burrows. The number of damaged and undamaged burrows in grazed habitat was equal, whereas the number of undamaged burrows in ungrazed habitat was significantly higher (Avery and Neibergs 1997, p. 18). Winter grazing appears to affect a higher proportion of actively used Mojave desert tortoise burrows. Indirect effects from burrow damage include increased risk of tortoise mortality, increased energy costs, and altered activity time budgets as a result of the need to construct new burrows (Avery and Neibergs 1997, p. 19). The potential for livestock to damage Sonoran desert tortoise burrows on lower slopes not reinforced with granite boulders may be similar to the findings of Avery and Neibergs (1997, p. 18), as almost 200 Sonoran desert tortoise burrows were recorded as trampled during a survey of the East Bajada plot in the Black Mountains of

Arizona in 1997 (Woodman *et al.* 1998, pp. 74–75).

Some degree of overlap was observed in the forage plant preferences between Mojave desert tortoises and livestock, with both preferring green annual species when available, and most overlap occurring during the spring (Avery and Neibergs 1997, pp. 18–19). However, preferences began to diverge as spring and summer ensued, with Mojave desert tortoises preferring dried annuals, beavertail cactus (*Opuntia basilaris*), and stems and dried flowers of silver cholla (*Opuntia echinocarpa*), and livestock preferring California jointfir (*Ephedra californica*) and big galleta grass (Avery and Neibergs 1997, p. 18). We presume similar relationships between preferred forage species of livestock and Sonoran desert tortoises exist, because of their highly varied, and often opportunistic, foraging behavior as they take advantage of both summer and winter rainy seasons characteristic of the Sonoran desert. This precipitation pattern affords Sonoran desert tortoises greater access to standing water and, therefore, the ability to forage on a more varied forage base, compared to the Mojave desert tortoise.

Studies have shown that livestock grazing may result in varying effects on plant species richness, composition, and density of the Sonoran desert tortoise forage base. Blydenstein *et al.* (1957, pp. 523, 525) found that vegetation density in some perennial species can be affected by livestock grazing in Sonoran desertscrub, while species composition and annual plant species density were unaffected. Sixteen years of rest from livestock grazing in the desert grassland and oak woodlands in southeastern Pima County in Arizona (at the extreme periphery of the Sonoran desert tortoise range) showed increases in plant species richness and significant increases in canopy cover for midgrass, shortgrass, shrubs, and forbs (Brady *et al.* 1989, pp. 285–287). However, there was no statistical difference in total vegetation cover between grazed land and rested land (Brady *et al.* 1989, pp. 285–287).

Features that attract livestock to certain locations within an allotment may have pronounced effects on desert tortoises and their habitat. Livestock watering, supplemental feeding, or salt-lick sites in desertscrub attract higher use by greater densities of livestock in arid environments. Effects to desertscrub habitat are commensurate with livestock use of these areas and decrease with increasing distance from these sources (Avery and Neibergs 1997, p. 19; Boarman 2002, p. 34). The density of certain nonnative plant species, such as *Schismus* spp., has also been positively correlated to distance to watering sites, while others, such as red brome, are negatively correlated (Brooks *et al.* 2006, p. 139). Native plant species cover and richness has been shown to decrease with increasing proximity to livestock waters (Brooks *et al.* 2006, pp. 140–141). Brooks *et al.* (2006, p. 138) state that these effects can be anticipated from 164 to 656 ft (50 to 200 m) from the edge of the watering site. Juvenile and adult Sonoran desert tortoises were frequently observed by Meyer (1993, pp. 101–102) using salt licks provided for livestock. Frequenting salt licks may benefit desert tortoises (especially hatchlings and small juveniles), but likely increases risk of being trampled by livestock because the salt licks can attract higher concentrations of both livestock and tortoises in actively grazed pastures. Based on the results of a study conducted by Balph and Malecheck (1985, p. 227), cattle avoid stepping on uneven surfaces. Desert tortoises will likely be perceived as an uneven ground surface, therefore, cattle may intentionally avoid stepping on them.

Neff *et al.* (2005, p. 87) compared the effects to soil geology, geomorphology, and geochemical characteristics of biological soil crusts that had been disturbed, and the subsequent wind erosion due to livestock grazing, to an ungrazed area in arid lands of southeastern Utah. They found that "* * * despite almost 30 years without livestock grazing, surface soils in the historically grazed sites have 38–43 percent less silt, as well as 14–51 percent less total elemental soil magnesium, sodium, phosphorus, and magnesium content relative to soils never exposed to livestock disturbances" and 60–70 percent declines in surface soil carbon and nitrogen reserves (Neff *et al.* 2005, p. 87). We are not certain to what extent the loss of these surface soil nutrients may affect the forage quality or quantity for Sonoran desert tortoises in arid habitat. Approximately 46 livestock grazing allotments on the Tonto National Forest partially or wholly overlap the potential range of the Sonoran desert tortoise, with several rated as having impaired or unsatisfactory soil conditions (AIDTT 2000, p. 37).

We observed several instances in the literature that discussed an inherent partitioning of land used by livestock and that used by Sonoran desert tortoises. Livestock often take the paths of least resistance and are unlikely to venture great distances from water. These behavioral traits of domestic livestock limit, to some degree, the potential effects from livestock grazing in Sonoran desert habitat, as livestock are less likely to travel into rough, steep terrain, instead favoring valley bottoms and water sources (AIDTT 2000, pp. 9, 21). Effects from livestock grazing are expected to be attenuated due to the relatively steep slopes and rugged terrain often preferred by Sonoran desert tortoises, but quantitative studies have not been conducted to confirm this assumption (AIDTT 2000, p. 9; Oftedal 2007, p. 26). Because of the generalized differences in habitat usage by livestock (flats, ridge tops, and drainage bottoms) and Sonoran desert tortoises (steep slopes and rocky bajadas), ecological and dietary overlap is uncommon, but does occur to some degree (AGFD 2010, p. 6). Where such overlap is significant, in particular in periods of drought, the effect of livestock use on Sonoran desert tortoise habitat may be considerable (AGFD 2010, p. 7). Sonoran desert tortoises may also selectively avoid grazed areas. While Sonoran desert tortoises are generally known to use steep rocky slopes and bajadas as their primary habitat areas, they occasionally occur in more flat terrain, such as the Florence Military Reservation, where they are 35 percent less likely to use habitat where livestock grazing occurs (AGFD 2010, p. 7). Grandmaison *et al.* (in press, p. 2) examined microhabitat selection by the Sonoran desert tortoise on the Florence Military Reservation in south-central Arizona, and found that tortoises most strongly selected for canopy cover, followed by an absence of cattle activity and proximity to roads and washes.

Of the 17 long-term monitoring plots, evidence of some degree of habitat usage overlap with livestock has been observed on 12 plots. On several plots (Arrastra Mountains, Bonanza Wash, West Silverbell Mountain, and Tortilla Mountains) extensive overlap with livestock use has been documented in each year they were surveyed (AGFD 2010, p. 7). Heavy trampling and destruction of Sonoran desert tortoise burrows has been documented on the Bonanza Wash plot. One Sonoran desert tortoise was crushed by livestock trampling on the West Silverbell Mountain plot, although such extreme reports of livestock-related direct effects on Sonoran desert tortoises are uncommon in the literature (AGFD 2010, p. 7).

Sonoran desert tortoises might compete with livestock for high-PEP plants (for review, see discussion of diet in the *Species Information* section above) and therefore may place unique competitive pressure on Sonoran desert tortoise populations (Oftedal 2002, pp. 235–236). Many high-PEP plant species

are found primarily in the transition zone between areas where livestock and Sonoran desert tortoises compete directly for these plant species, as noted in several Arizona long-term monitoring plots (East Bajada of the Black Mountains, Hualapai Foothills, Little Shipp Wash, New Water Mountains, San Pedro Valley), in addition to similar observations from studies performed at Ragged Top, Saguaro National Park, and Sugarloaf Mountain (Oftedal 2007, p. 26). However, Oftedal (2007, p. 25) hypothesized that in situations where winter precipitation is modest, high-PEP plant species are in low abundance, and nonnative annual grass species are in high abundance, "the immediate effect of grazing (forage competition with Sonoran desert tortoise) would be [a] reduction of overall forage biomass, not [a] change in the quality of tortoise diets. This suggests that cattle grazing may be less damaging to tortoises in years of modest rainfall." In conclusion, Oftedal (2007, p. 26) found that "the high degree of diet selection that occurs during spring leaves (Sonoran) desert tortoises susceptible to influences that may alter the abundance of the somewhat scarce high-PEP plants, and thus that may reduce the overall quality of the diet. Tortoises foraging in summer appear less susceptible to the impacts of livestock grazing." Thus, seasonality and precipitation levels appear to affect the likelihood of grazing to adversely affect the forage base of Sonoran desert tortoises, with spring being a period of elevated sensitivity of Sonoran desert tortoises to livestock grazing where tortoises and livestock spatially overlap.

Livestock grazing can influence the microclimate at the ground surface. Grazing may positively affect soil temperature and, therefore, benefit desert tortoise burrow temperatures where burrows are not associated with boulders, but instead constructed in more open habitat such as underneath shrubs (Boarman 2002, p. 31). Field research in Mojave desertscrub indicates that when the undergrowth beneath shrubs is grazed, and the shrub itself is minimally browsed or unaffected by grazing, underlying soils may cool from effects from wind and shade. Heavily vegetated undergrowth traps heat and increases soil temperature (Boarman 2002, p. 31). Alternately, heavily browsed shrubs can increase soil temperatures (Boarman 2002, p. 31). Lower vegetative ground cover in northern Sonora, as a response to livestock overgrazing, was found to increase soil and air temperatures above the levels found in adjacent grazed lands within the United States (Bryant *et al.* 1990, p. 243). Increased soil temperatures may impact the Sonoran desert tortoise in a variety of ways, such as influencing changes in behavior, lowering survivorship, and skewing the sex ratios of hatchlings (which are determined by incubation temperatures; *see Species Information,* above).

Bostick (1990, pp. 150–151) suggested that high desert tortoise densities are correlated with high livestock use, citing health examinations of Mojave desert tortoises that existed in grazing exclosures in northwestern Arizona. Bostick (1990, p. 149) also asserted that desert tortoises feed "primarily on dung," inferring that with more livestock, there would be an abundance of available tortoise forage. Bostick (1990, p. 151) summarized his conclusions on the relationship between livestock grazing and desert tortoises with the following: (1) Desert tortoises have coexisted with cattle for 300 years in California and Mexico and at least 100 years elsewhere; (2) the highest tortoise densities known occurred at a time when overgrazing by livestock was the most severe ever known; (3) the fewer the cattle on a range, the fewer the number of tortoises; and, (4) excluding cattle for many years endangers the tortoise population. Boarman (2002, pp. 27, 35, 38) refuted the conclusions made by Bostick (1990, pp. 149–151) that grazing benefits the desert tortoise. In addition, we found no information in the scientific literature that supported the findings of Bostick (1990, pp. 149–151).

Some research has examined the effects of various livestock grazing regimes to Sonoran desert tortoise populations. Meyer *et al.* (2010, pp. 20–26) compared the number and density of Sonoran desert tortoises in study plots exposed to four different livestock grazing regimes: Yearlong light grazing (plot size 2,279 ac (922 ha)), yearlong moderate grazing (plot size 3,254 ac (1,317 ha)), yearlong heavy grazing (plot size 4,634 ac (1,875 ha)), and rest-rotation (plot size 4,758 ac (1,925 ha)). They found that the highest number and density of Sonoran desert tortoises (266 total individuals; 36.89 individuals per square mile) was observed in the pastures with yearlong heavy grazing as compared to rest-rotation (215 total individuals; 28.94 individuals per square mile), yearlong light grazing (52 total individuals; 14.61 individuals per square mile), and yearlong moderate grazing (47 total individuals; 9.23 individuals per square mile) (Meyer *et al.* 2010, p. 23). The study plots used for this comparison between the number and density of Sonoran desert tortoises and various livestock grazing regimes were of unequal size, with the yearlong light and moderate plots being the smallest. This could affect the number of tortoises observed but not likely the density of tortoises. Other variables that likely affected the analysis of Sonoran desert tortoise densities were differences in vegetation, topography, soil types, and the location of tortoise populations among study plots (Meyer *et al.* 2010, p. 38). In addition, the ability to detect Sonoran desert tortoises is likely to increase with intensity of livestock use and a subsequent decrease in ground cover, which could have further biased the number of observations in the yearlong moderate and heavy grazing study plots. Given the results of these analyses, Meyer *et al.* (2010, p. 42) surmised that "tortoise densities were affected by soil, topography and vegetation and had little or no relationship to livestock grazing or grazing systems."

Additional research examined effects of grazing regimes on fire behavior and wildlife and vegetation communities, citing beneficial effects. Bahre (1991, p. 141) compared the relative frequency of wildfires that occurred in the mid-1900s (carried by nonnative plants), to fires in more recent times, and suggested that mechanical fuel reduction by livestock grazing might assist in reducing the propensity of wildfires in Sonoran desertscrub habitat. Loeser *et al.* (2007, p. 97) found that in Arizona grasslands "* * * some intermediate level of cattle grazing may maintain greater levels of native plant diversity than the alternatives of cattle removal or high-density, short-duration grazing practices."

In an unpublished review of livestock grazing literature, Holecheck (undated, p. 2) found that "* * * controlled livestock grazing may enhance rangeland vegetation by accelerating plant succession, increasing plant diversity, increasing plant productivity, and reducing plant mortality during drought. These positive impacts of livestock grazing are most likely to occur when grazing intensities are light to conservative." Holecheck (undated, p. 2) countered the unanimous findings of over 30 independent livestock grazing impact studies that documented that controlled grazing increases compaction, reduces infiltration, and increases erosion by claiming that "these impacts are generally of small magnitude and are ameliorated by natural processes that cause soil formation, soil deposition, and soil loosening."

Some local land management organizations are currently working on proactive conservations efforts to reduce

potential impacts of ranching and other activities on the Sonoran desert tortoise. For example, the Winkelman Natural Resource Conservation District (WNRCD, a coalition of local livestock ranchers and grazing lease permittees in the Winkelman area of the lower San Pedro River in Arizona) has prepared a draft conservation plan for the desert tortoise within their area (WNRCD 2010, pp. 1–13). This draft plan proposes conservation and land management prescriptions for land managers in their area as recommended by the Arizona Interagency Desert Tortoise Team. However, presently the draft plan has not secured specific agreements with land managers responsible for Sonoran desert tortoise habitat, and it lacks financial commitments to carry out the recommended conservation actions. For example, Pinal County was identified as having responsibilities for conservation actions but has since indicated that they are unable to participate in the draft plan (Pinal County 2010, p. 1). While this draft conservation plan could further Sonoran desert tortoise conservation in this area once all the necessary management and financial agreements are in place and the plan is finalized, it currently provides limited conservation benefit to the Sonoran desert tortoise.

In consideration of the literature presented above, we conclude that grazing effects to the Sonoran desert tortoise may occur but are likely limited in severity and scope in Arizona, because habitat shared by livestock and Sonoran desert tortoises is not a significant proportion in most areas in Arizona, and because livestock grazing in Arizona is actively managed by land management agencies (see Factor D). We also acknowledge that data generated from research on grazing effects to tortoises and their habitat are variable, making it difficult to accurately assess the risk of livestock grazing to the Sonoran desert tortoise. However, due to limited regulations affecting livestock management in Mexico, and the information we have examined on its extent in Sonora, we conclude that livestock grazing likely poses a threat to the Sonoran desert tortoise in Mexico. We also acknowledge the potential for livestock grazing effects to act synergistically with other influences discussed herein.

Undocumented Human Immigration

United States border-enforcement efforts have significantly increased along the United States-Mexico international border in Arizona in recent years. Sonoran desert tortoise habitat occurs along approximately 140 mi (225 km) of the border, from approximately Nogales west to the California State line. International border fencing structures and barriers (especially the impenetrable pedestrian fencing) along the Arizona-Sonoran border pose population-connectivity problems for the Sonoran desert tortoise, which depends on emigration and immigration for genetic fitness of regional populations. However, along most of the border, just vehicle barriers occur, which allow tortoises to pass through them, and do not pose a barrier to movement (Cohn 2007, p. 96; Flesch *et al.* 2010, p. 179; Audsley 2010, p. 5; Sferra 2010, pers. comm.). The two primary types of barrier devices that have been constructed, or are planned for construction, are vehicle barriers and pedestrian fences, the latter of which may be impenetrable to Sonoran desert tortoises where the fence is buried into the ground (Audsley 2010, p. 5; Sferra 2010, pers. comm.). Where pedestrian fences are not buried completely and bollard fences (barriers formed by a series of vertical posts) are installed, Sonoran desert tortoises less than 4 in (10 cm) in width may be able to get through (Audsley 2010, p. 5; Sferra 2010, pers. comm.).

Undocumented immigrants affect Sonoran desert tortoise habitat by trampling vegetation along well-used routes and cutting wood for campfires, which affects the quality and amount of forage and also reduces the number of temporary shelter sites for Sonoran desert tortoises (Averill-Murray and Averill-Murray 2002, p. 29). Other human activities along the international border (off-road driving, high-speed driving, accidentally setting fires from cooking or purposefully for distraction of law enforcement personnel, and interdiction activities by the U.S. Border Patrol, U.S. Immigration and Customs Enforcement, and other enforcement agencies) also impact Sonoran desert tortoises and their habitat (AIDTT 2000, p. 27; Marris 2006, pp. 338–339; Sayre and Knight 2010, p. 347).

Historically, border enforcement policies and associated structures have indirectly channeled undocumented immigration pressure onto the Cabeza Prieta National Wildlife Refuge (Marris 2006, pp. 338–339; Cohn 2007, p. 96). Analysis has shown there are about 8,000 mi (12,875 km) of unauthorized routes on the approximate 1,000 sq mi (2,600 sq km) refuge, mostly in designated wilderness (McCasland 2010, pers. comm.). These routes are most likely attributable to illegal cross-border traffic and associated law enforcement response by Border Patrol (McCasland 2010, pers. comm.). Recently, 33.5 mi (54 km) of permanent vehicle barriers were installed along the international border within the Cabeza Prieta National Wildlife Refuge, which has likely reduced illegal vehicular access to the Refuge (SBBI Incorporated 2010, p. 1).

Along the entire southern boundary of the Buenos Aires National Wildlife Refuge, a 7-mi- (11.3-km-) long pedestrian barrier has been constructed (USDHS 2007, pp. 4, Figure 2–1). Because pedestrian barriers on the border are generally well-fortified, complete barriers to terrestrial movement, we assume that Sonoran desert tortoises in the larger juvenile and adult size classes are now prevented from making trans-border dispersal movements as a result of the barrier construction in this area.

The border region associated with the Tohono O'odham Nation in Pima County, Arizona, was recently considered to have one of the highest rates of attempted crossings, because it is relatively remote (Sferra 2010, pers. comm.). Currently, all but 3 mi (4.8 km) of the 70-mi (113-km) section of border between the Tohono O'odham Nation and Mexico is reinforced with a vehicle barrier (Lackner 2010b, pers. comm.). Vehicle barriers are not constructed where terrain is too steep or rocky, or where vehicular access is considered impossible (Lackner 2010b, pers. comm.). The lands of the Tohono O'odham Nation are predominantly classified as Arizona Upland Sonoran desertscrub. The lands presumably have significant numbers of Sonoran desert tortoises, although survey data are generally scarce from that area.

Along the Organ Pipe Cactus National Monument border with Mexico, vehicle barriers exist across most of the monument, and a potentially impenetrable pedestrian fence has been erected in Arizona Upland Sonoran desertscrub on Monument Hill and along 4 mi (6.4 km) of the border at the Lukeville Port of Entry (Sferra 2010, pers. comm.).

The comparison of 2009 and 2010 apprehension rates of undocumented immigrants reflects both the number of attempted illegal crossings and the intensity of enforcement activities within various regions of the Arizona-Mexico border, as well as areas north of the border (Lackner 2010a, pers. comm.). Within Sonoran desert tortoise habitat, significant increases in apprehension rates have occurred in the following areas (percentage denotes change from 2009 to June 2010): Tohono O'odham Nation (18.37 percent); Organ Pipe Cactus National Monument (63.8 percent), and the Sonoran Desert

National Monument (70.69 percent) (U.S. Border Patrol 2010, pers. comm.). In other areas, the apprehension rates have substantially decreased over the same time period: Ironwood Forest National Monument (−47.18 percent), Barry M. Goldwater Air Force Range (−32.02 percent), and the Cabeza Prieta National Wildlife Refuge (−13.19 percent) (U.S. Border Patrol 2010, pers. comm.). Over the same time period, and in total, there have been 79,307 apprehensions made, compared to 71,775 apprehensions in 2009, which represents a 10 percent increase (Lackner 2010a, pers. comm.).

New border- and access-road construction has connected previously remote and undisturbed habitat to the existing network of Arizona roads, providing vehicular access to areas previously only accessible by foot or on horseback (Sayre and Knight 2010, pp. 346–347; Sferra 2010, pers. comm.). An unintended consequence of these new roads is that they are used not only by U.S. Border Patrol, but by the public and illegal traffic, increasing the risk of wildfires, invasions of nonnative plant species, alteration of erosion and water movement patterns (affecting infiltration and soil stability), and mechanical damage to vegetation (Sayre and Knight 2010, p. 347; Sferra 2010, pers. comm.). Many new roads along the border have included cattle guards built with enclosed concrete pits that have the unintended consequence of acting as lethal pit-fall traps for reptiles, such as smaller size class Sonoran desert tortoises (Sayre and Knight 2010, p. 347).

Based on our review of the literature and communications with resource experts and enforcement personnel, we conclude that Sonoran desert tortoises and their habitat, both near the international border and within corridors of heavy undocumented immigrant travel and enforcement interdiction, are threatened by these activities. Specifically, off-road route proliferation, high-speed driving, road construction (providing new access to formerly inaccessible areas), human depredation of tortoises as food sources, and barriers to tortoise movement created by pedestrian fencing are recognized as having serious impacts to Sonoran desert tortoise habitat. The geographic scope of these threats is relatively small on the landscape, restricted to the immediate border region, and to undocumented immigrant migration corridors, such as that recognized through the Tohono O'odham Nation, extending through Ironwood Forest National Monument. However, these impacts are significant where they occur.

Summary of Factor A

Our analysis under Factor A identified an array of threats to Sonoran desert tortoise habitat. The documented invasion and purposeful cultivation of nonnative plant species within the distribution of the Sonoran desert tortoise in the United States and Mexico significantly increases the threat of wildfire in an ecosystem that evolved in the absence of wildfire. This threat is widespread and, although currently and comparatively less significant in Arizona, is substantial in Mexico, and is expected to increase in the future. When including the total land area adversely modified by ironwood and mesquite harvesting, an estimated 98 percent of the Sonoran desert tortoises' habitat will be lost or adversely modified in Mexico in the near future, or 47 percent of the Sonoran desert tortoise's habitat rangewide. It is important to recognize that while nonnative plant species are expanding their distribution on the landscape, Sonoran desert tortoise populations have persisted in affected areas that remain unburned, for decades. The effect of nonnative plants on Sonoran desert tortoise populations is most significant after a wildfire has occurred; effectively giving nonnative species a distinct competitive advantage over native vegetation, and threatening a type-conversion in habitat. While we have found evidence of numerous wildfires in occupied desertscrub, the majority of occupied habitat that has been invaded by nonnative plants has not yet burned and remains suitable habitat for the tortoise.

In addition, projections for human population growth and urban development throughout the species' range are likely to both pose significant problems for genetic exchange among Sonoran desert tortoise populations as well as increase the degree and scope of human interactions with tortoises and occupied habitat, which threatens the tortoise in a variety of ways. Currently in Arizona, 75 percent of potentially occupied Sonoran desert tortoise habitat occurs within 30 mi or less of a city or town with a population of 1,000 or more, and considering future growth projections, it is likely that 100 percent of occupied tortoise habitat will be affected in the future. Livestock grazing in Mexico poses significant threats to the Sonoran desert tortoise habitat there due to ineffective livestock management and continued overgrazing. Lastly, desertscrub habitat that has been disturbed takes a very long time to recover, on the order of decades or centuries, which hinders remediation projects with respect to their ability to prevent population declines in Sonoran desert tortoises in the short- or medium-term. Each of these impacts results in significant cumulative threats to the species' habitat and, based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate threat of high magnitude to the Sonoran desert tortoise, both now and in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Illegal Collection

In urban areas of Sonora, Mexico, such as Hermosillo, desert tortoises have become increasingly common as household pets. They have been mostly obtained from the wild in adjacent areas (Bury *et al.* 2002, p. 103). The sale of desert tortoises in Mexican pet stores ended when the tortoise was listed as threatened in that country in 1994 (Bury *et al.* 2002, p. 103).

Sonoran desert tortoises are a closed season species in Arizona (Commission Order 43), and therefore cannot be legally taken from the wild or possessed without special license. In Arizona, the current possession limit for Sonoran desert tortoises legally held in captivity, *i.e.,* either obtained prior to season closure or obtained through the tortoise adoption program, is one per person per household (AGFD 2010, p. 12). The AGFD allows for disposition of lawfully possessed tortoises by gift to another person in Arizona, or as directed by the AGFD (AIDTT 2000, p. 14). Despite collection prohibitions in Arizona, the Sonoran desert tortoise is a very common reptile pet in Arizona households and has been so for decades. The actual number of Sonoran desert tortoises in captivity is unclear because there are no special licenses or permits required to possess Sonoran desert tortoises, or laws that prohibit their propagation in captivity (Jarchow *et al.* 2002, p. 289; Jones 2008, p. 69). Jarchow *et al.* (2002, p. 289) state that the number of captive Sonoran desert tortoises in Arizona is so large that an outright prohibition of their possession is both impossible and impractical.

The popularity of Sonoran desert tortoises in captivity, as well as the various adoption programs around the State, may unintentionally mislead the public into thinking that Sonoran desert tortoises are not protected, and may, therefore, be collected from the wild

(Grandmaison in press, p. 6). For example, the area surrounding the Hualapai Foothills plot experienced increased development in 2001, which may have increased human-tortoise interactions and possibly illegal collection. Declines in tortoise encounters at this plot in 2001 and 2005 may have, in part, resulted from illegal collection due to that plot's proximity to developed land (AGFD 2010, p. 7).

Arizona's regulations have no provisions requiring permits for possession of Sonoran desert tortoises, which would aid in identification of those tortoises that were in lawful possession before January 1, 1988. In addition, there may be incentive created for the illegal release of captive tortoises into the wild because of the number of tortoises breeding in captivity, and the difficulty associated with finding recipients of offspring within the legal 24-month window (under Arizona's Commission Order 42). This could result in a higher number of illegal and indiscriminant releases into the wild (AIDTT 2000, p. 14). Edwards *et al.* (2010, pp. 801–807) conducted genetic testing of 180 captive tortoises from Arizona to discern their genetic origin (as Sonoran, Mojave, or a hybrid). They found that 45 percent of sampled captive tortoises were not of strictly Sonoran origin, but rather either pure Mojave, Sonoran-Mojave cross, or Texas tortoise (*Gopherus berlandieri*)—Sonoran desert tortoise hybrids (Edwards *et al.* 2010, p. 804). These data indicate there may be a risk of genetic contamination of wild populations when captives are released. Genetic contamination can weaken the genetic fitness of a population and render it vulnerable to extirpation. In addition, as documented in Factor C below, captive Sonoran desert tortoises have been shown to have a higher incidence of disease, and their release can place wild populations at risk.

Opportunities to collect Sonoran desert tortoises often result from incidental observations by motorists while using dirt, gravel, or paved roads. In a recent study, out of a total of 561 opportunities for motorist-Sonoran desert tortoise interaction, 1.43 percent resulted in attempted collection of a live decoy, and 7.4 percent attempted the collection of an artificial Sonoran desert tortoise decoy (Grandmaison in press, pp. 8–9). Combining the data, Grandmaison (in press, p. 11–12) found that collection attempts varied with road type and approximately 1 in 12 (8 percent) motorists that detect a Sonoran desert tortoise in the wild may attempt to illegally collect it. Adult tortoises are the most conspicuous and are likely the most-frequently collected age class, which could be detrimental to populations, especially when reproductive females are collected. Grandmaison (2010a, pers. comm.) stated, "Illegal collection of desert tortoises is a form of additive mortality resulting from the impacts of roadways in tortoise habitat. Given that adult tortoises are the most likely demographic to be collected (i.e., they are easier to detect than juveniles or hatchlings), and the sensitivity of tortoise population growth rates to even small increases in adult mortality, illegal collection really needs to be considered when discussing the cumulative impacts of roads."

While the actual collection of Sonoran desert tortoises detected on roadways is one form of interaction, a higher percentage of motorists attempt to move Sonoran desert tortoises off the roadway when they are detected. Grandmaison (2010a, pers. comm.) found that 28 percent of all motorists passing a desert tortoise will move the tortoise off of the road. While moving a Sonoran desert tortoise off the roadway may be considered well-intended, the stress to a Sonoran desert tortoise that is created when it is handled may result in intestinal torsion (which can cause intestinal obstructions), or lead to the tortoise voiding its bladder. As discussed below, bladder voiding has serious implications, potentially resulting in decreased survival, especially during late spring and early summer in the Sonoran Desert, when precipitation is usually rare or non-existent (Grandmaison 2010a, pers. comm.; in press, p. 11).

Although removal of Sonoran desert tortoises from the wild has clear negative effects on wild populations, their popularity as household pets may provide some educational benefits to the public. Jarchow *et al.* (2002, p. 310) provided evidence for potential conservation benefits from Sonoran desert tortoises that are already in captivity by stating, "The captive population of desert tortoises provides not only enjoyment to their custodians but, more importantly, opportunities for education of the public and increased awareness of the species among those who may never see a desert tortoise in nature. Thus, the captive population may play an important role in mustering public support for conservation of their wild relatives."

In conclusion, research suggests that about 1 in 12 motorists in Arizona who detect a Sonoran desert tortoise will attempt to collect it, and that the highest incidence of collection is within the adult age class. The removal of an adult Sonoran desert tortoise from a population poses a higher threat to that population, because the survivorship of tortoises in this size class is the highest, and the odds of a given Sonoran desert tortoise reaching this size class is believed to be comparatively low, further adding importance to the maintenance of adults within a population. The removal of an adult female from a population also removes the opportunity for numerous clutches of eggs. In addition, nearly one-third of all motorists who encounter a Sonoran desert tortoise will attempt to move it off the roadway, which increases the risk of bladder-voiding, which may place additional physiological stress on moved tortoises and may decrease their survivorship. We also found data on collection and sale of Sonoran desert tortoises in Mexico, which is likely less of a threat in current times, due to the prohibition of commercial sale and to the demographic trend associated with more people moving to urban areas, reducing the number of wild encounters with tortoises in Mexico.

Field Research and Physical Manipulation

Field research and monitoring of wild Sonoran desert tortoise populations has been ongoing since the 1970s, producing invaluable information for wildlife and habitat managers to make reasoned decisions with respect to conservation planning. However, some level of harassment or potential harm from disease transmission or dehydration is inherent to hands-on manipulation (such as collecting blood samples, affixing radio transmitters, and conducting health assessments).

One of the more significant risks to Sonoran desert tortoises from the handling of wild tortoises by researchers is the increased potential for them to void water reserves stored in their bladder. As a defense mechanism when threatened, Sonoran desert tortoises may occasionally evacuate their bladders, releasing valuable water stores important for survival in their arid habitat, especially during drought years. Averill-Murray (2002a, p. 430) noted, "This water loss could result in serious health threats or compromise normal behavior or physiology, especially during hot, dry summer months." Water loss in Sonoran desert tortoises can also result in reductions of reproductive output and survivorship (Averill-Murray 2002a, pp. 430, 433–434). Averill-Murray (2002a, pp. 430, 434) found that Sonoran desert tortoises that urinated during field research handling had a 5–13 percent lower survival rate.

Any kind of handling of tortoises during field research or monitoring of Sonoran desert tortoise populations during periods of excessive drought may be stressful to the tortoises (Berry *et al.* 2002b, p. 436). Berry *et al.* (2006b, p. 436) recommended that scientists working with wild desert tortoises recognize abnormalities in behavior and laboratory data as early warning signs of stress to modify, delay, or terminate specific field protocols on stressed populations.

Use of radio telemetry technology on desert tortoises may affect their behavior, survival, and reproductive success, but available literature is largely inconclusive (Boarman *et al.* 1998, p. 26). There is little doubt that radio telemetry studies have provided many insightful data on the biology and behavior of Sonoran desert tortoises, and are therefore more of a benefit than a potential threat.

Jacobson *et al.* (1992, pp. 238–239) reviewed the recommended procedures for obtaining blood samples from desert tortoises, including collection from the heart, jugular vein, brachial vein, ventral coccygeal vein, orbital sinus, and trimmed toenails, and assessed the potential risks associated with each collection site. At a minimum, the collection of blood samples from desert tortoises is considered relatively invasive and is likely a source of temporary stress to the animal, potentially leading to bladder voiding and subsequent dehydration if fluid levels are not replenished before release. However, we believe the majority of field researchers exercise appropriate caution when collecting blood samples from Sonoran desert tortoises, and the literature does not indicate these procedures are an appreciable source of mortality for wild Sonoran desert tortoises.

Over the years, field protocols have been developed and standardized to minimize risks to Sonoran desert tortoises while they are being physically handled. These protocols are outlined in Averill-Murray (2000, p. 17) and Berry and Christopher (2001a, pp. 433–434). We believe these field protocols have minimized potential risks to individual tortoises posed by researchers during their field work.

Summary of Factor B

We identified two possible mechanisms for which the potential overutilization of Sonoran desert tortoises for commercial, recreational, scientific, or educational purposes could occur: Illegal collection and field research. Many desert tortoises exist in captivity, and are generally available to those who want one as a household pet, through several channels within the captive population (discussed further in Factor D). In addition, efforts are being made to educate the public about the Sonoran desert tortoise, with an emphasis on leaving Sonoran desert tortoises in the wild when they are observed. We believe these factors may reduce the likelihood of illegal collection. However, a recent scientific study found that one in 12 tortoises that is detected by a motorist (mostly adult tortoises) is illegally collected. We expect that in the foreseeable future, incidence of collection will likely increase as the human population grows and more people will use off-road trails, with higher frequency, within occupied tortoise habitat. Scientists who conduct field research on and monitoring of wild Sonoran desert populations have identified the potential risk for bladder voiding and disease transmission during field manipulation of tortoises, and have now built appropriate protocols in their field methodology to minimize these risks. Based on this information, we find that overutilization for commercial, recreational, scientific, or educational purposes, in the form of illegal collection, is likely to threaten the Sonoran desert tortoise now or in the foreseeable future.

Factor C. Disease or Predation

Natural predation of Sonoran desert tortoises occurs as discussed previously in the *Species Information* section above. Unnatural sources of predation, such as from feral, or off-leash dogs, human depredation for recreation or as food, and as an indirect result of human land uses (referred to as subsidized predation) also occur. A subsidized predator is one whose survival in a particular area is facilitated by the availability of food, water, or other potentially limiting resources made available by the presence of human activities in that area (Boarman 1993, p. 192). Common examples of subsidized predators are coyotes and ravens. Human activity-related resources that provide basic biological needs for subsidized predators include such things as roads, landfills, sewage and septic ponds, open dumpsters, agricultural fields, feedlots, parks, picnic areas, livestock waters, utility poles, building sites, and overpasses (Boarman 1993, p. 193; Rosentstock *et al.* 2004, p. 3; Boarman *et al.* 2006, p. 259; Webb *et al.* 2009, p. 72).

For example, Averill-Murray and Swann (2002, p. 1) stated that urban development adjacent to the Saguaro National Park in Pima County threatens the Sonoran desert tortoise via several mechanisms, including harassment and predation by feral or off-leash domestic dogs, and illegal releases of captive Sonoran desert tortoises and exotic species that may transmit diseases to wild Sonoran desert tortoises.

Predation by Ravens

Ravens and coyotes are known predators on Mojave desert tortoises, and possibly on Sonoran desert tortoises, and are most likely to benefit from anthropogenic subsidization (Boarman 1993, p. 192; Boarman *et al.* 2006, p. 259). Ravens turn over hatchling desert tortoises and pierce through their soft plastrons, or pierce directly through their carapace, to access their meat and organs. Ravens are often less likely to emigrate long distances to colonize would-be suitable areas, but subsidization from human activities on the landscape create opportunities for rapid population growth of ravens where they formerly did not occur (Boarman *et al.* 1995, p. 1; Fleischner *et al.* 2008, p. 472). Ravens, in particular, have been identified as subsidized predators on juvenile Mojave desert tortoises, and possibly on juvenile Sonoran desert tortoises (Boarman 1993, p. 192). Roads and power line rights of way attract potential avian predators of Sonoran desert tortoises, such as ravens and red-tailed hawks that use power lines as nesting and perching sites, and roads can serve as sources of carrion (Knight and Kawashima 1993, p. 266). Raven populations, and potential risk of predation of Sonoran desert tortoises by ravens, are both higher with increasing proximity to human development (Kristan and Boarman 2003, p. 2432).

Documented reports of raven predation on Sonoran desert tortoises are rare in the literature, however. One local rancher in southeastern Mohave County, Arizona, reported an observation of raven predation on a Sonoran desert tortoise (Dieringer 2010, p. 1). Ravens have also been observed on the Four Peak monitoring plot on several occasions, but their predation on Sonoran desert tortoises within this plot has never been documented (Murray and Schwalbe 1997, p. 33). Mojave desert tortoises are most commonly associated with valley bottomlands characterized by relatively open, sparse vegetation communities which may be advantageous to a purely visual-based predator such as the raven. In Arizona Upland Sonoran desertscrub, where Sonoran desert tortoises reach their peak population densities, habitat is a more complex mosaic of boulders and denser vegetation, which would hamper the ability of such predators to locate

prey, in particular, small hatchlings. Some exceptions include habitat within sparsely vegetated valley bottoms that are used for dispersal between populations on adjacent mountains or foothills, or similar, uncharacteristic areas that maintain Sonoran desert tortoise populations, such as the Florence Military Reservation. The best scientific and commercial data available indicates that predation by ravens is significantly less of a concern for Sonoran desert tortoises than it is for Mojave desert tortoises.

In conclusion, although raven predation has been identified as a substantial threat to the Mojave desert tortoise, largely because of the relatively open, valley bottomland where they occur, the risk to Sonoran desert tortoise populations is relatively low. Very few observations of raven predation of Sonoran desert tortoises in Arizona or Sonora have been documented in the literature, leading us to conclude that raven predation on the Sonoran desert tortoise is not a concern.

Predation From Feral or Off-Leash Dogs

Feral dogs are known to interact with numerous species of animals, including desert tortoises and related species, and they may force Sonoran desert tortoises to use their habitat in an unnatural manner (Causey and Cude 1978, pp. 94–95; Lenth *et al.* 2008, pp. 222–223). The risk of feral or off-leash dog predation on Sonoran desert tortoises is expected to be highest within the urban-rural interface (a likely source of domesticated, feral dogs).

Jones (2008, p. 66) documented 35 separate incidences of harassment by wild or domestic dogs in surveys conducted in high-use public lands adjacent to the urban centers of Tucson, Phoenix, and Kingman, Arizona (Pima, Maricopa, and Mohave Counties, respectively), based upon observed shell damage. These incidences were positively correlated with increasing proximity to urban centers. Also, three to five packs of presumably feral dogs were observed in both the East Bajada monitoring plot in Mohave County and in Saguaro National Park West in Pima County (Jones 2008, p. 66). Researchers of Sonoran desert tortoises within the Tucson Mountain District of Saguaro National Park noted a high number of tortoises with injuries consistent with dog attacks, attributing these observations to the close proximity of this district to urban development (Zylstra and Swann 2009, pp. 14–15). The AGFD (2010, pp. 11–12) reported that domestic dogs, their scat, and chew marks on, or trauma to, Sonoran desert tortoises have been reported in 47 percent of the monitoring plots. Three such plots occur within 1 mi (1.6 km) of developed areas. Domestic dogs have been observed attacking and chewing on Sonoran desert tortoises in the Hualapai Foothills and Bonanza Wash plots (AGFD 2010, p. 12). Domestic dogs appear to be a significant problem, which may be worsening, in the East Bajada plot, where in 1997, 53 percent of live tortoises, and in 2002, 78 percent of live tortoises, exhibited injuries associated with domestic dogs (AGFD 2010, p. 12). One citizen commented that in 1997 a purebred Rottweiler was observed roaming freely on the Ironwood Forest National Monument with an adult Sonoran desert tortoise in its jaws. The tortoise was mortally wounded from a punctured carapace, suggesting that large, powerful domestic dog breeds may be able to penetrate the carapace of adult tortoises and kill them (Coping 2009, p. 7).

Numerous signs of attempted predation (consistent with those from feral dogs), ranging from mild to severe, were observed in wild Sonoran desert tortoises examined in Sonora, Mexico (Brown *et al.* 2006, p. 6). We are unaware of the locations where these wild Sonoran desert tortoises were captured by Brown *et al.,* but the proximity to human settlements, and free-ranging domestic dogs (a common sight in Mexico) may have been responsible.

In conclusion, the threat of feral dog predation exists in both Arizona and Sonora, Mexico, and has been shown to be strongly correlated with distance to urbanized areas in most cases. We found numerous reports of observed or suspected feral dog predation in the literature, most in immediate proximity to urban areas. Feral dog predation has been documented in approximately half of the long-term monitoring plots in Arizona, and may be a significant cause of population decline in one plot. As urbanization and human population growth continues into the future, as described in Factor A, the incidence of feral dog predation of Sonoran desert tortoises is expected to also increase.

Human Depredation and Vandalism

Human depredation (intentional killing) of Sonoran desert tortoises has been documented to occur either as a result of vandalism (most commonly via gunshot) or as a source of food. The intentional shooting of Mojave desert tortoises in southern California was reported to be relatively common, at least before the Mojave population was Federally listed. Berry (1986b, p. 127) found that 14 percent of 635 carcasses taken from 11 sites in the Mojave Desert over a 6-year time period exhibited signs of gunshots. Many of these observations occurred before the listing of the Mojave desert tortoise, indicating that tortoises may have been shot simply for misdirected recreational sport or entertainment, not from politically-driven motives (people disliking the protections of the Act). Bury and Marlow (1973, p. 11) described examples of Mojave desert tortoise mortalities in California as a result of shooting, including eight independent observations of shot Mojave desert tortoises along two miles (3.2 km) of dirt road; an individual's confession of using juvenile desert tortoises as skeet (aerial shotgun) targets; and a report of an individual lining up a total of 47 desert tortoises and shooting each of them with a shotgun.

Recreational firearms target practice occurs in dispersed fashion throughout Federal and State lands in Arizona within the distribution of Sonoran desert tortoises. Some reports of gunshot deaths of Sonoran desert tortoises on these lands have been made (Hart *et al.* 1992, p. 120; AGFD 2010, p. 9; Jones 2010, pers. comm.). In some locations, recreational firearms target practice is highly conspicuous (as evidenced by large amounts of debris used as targets and left behind) in densely occupied Sonoran desert tortoise habitat, most notably in areas near urban population centers, such as at Sugarloaf Mountain on the Cave Creek Ranger District of the Tonto National Forest. In this location, two incidences of shot Sonoran desert tortoises have been reported, although it could not be determined whether these wounds occurred pre- or post-mortem (Jones 2010, pers. comm.). Another incidence of shooting was reported in the Hualapai Foothills monitoring plot (Hart *et al.* 1992, p. 120). The AGFD (2010, p. 9) reported 13 separate incidences of vandalism on Sonoran desert tortoises on or adjacent to 7 different monitoring plots; several of the Sonoran desert tortoises appeared to have been killed by gunshot.

When studying Mojave desert tortoises, Berry (1986b, p. 129) found that the incidence of gunshot deaths is likely to be higher in areas of greater vehicular access and in proximity to urban areas. The potential effect of gunshot deaths on Sonoran desert tortoise populations is not entirely known, but is likely most significant on the adult size class, which is the most conspicuous, and this effect may act synergistically with other threats we have identified. Combined with the relatively low recruitment rate of juvenile desert tortoises into adult size

classes, adverse effects to survivorship of populations adjacent to urban areas might be expected (Berry 1986b, p. 130).

Sonoran desert tortoises are sometimes used as a food source in Sonora, and likely experience population declines where they occur adjacent to moderately sized settlements (Fritts and Jennings 1994, p. 52). Bury *et al.* (2002, p. 102) reported several historical incidences of Sonoran desert tortoises being used as a source of food by native peoples in Sonora, but less frequently in current times. According to 12 interviews at 6 ranches in central Sonora, 67 percent of local people described Sonoran desert tortoises as declining. All but one interviewee stated they have eaten Sonoran desert tortoise meat at some point in their lives (Bury *et al.* 2002, p. 102). However, demographic trends in Sonora indicate the number of people living on ranches and ejidos (commonly owned lands used for agriculture and livestock grazing) have declined, while city populations have increased, potentially reducing the likelihood of Sonoran desert tortoises being used for food (Bury *et al.* 2002, pp. 102–103).

Sonoran desert tortoises have also been documented as a food source for undocumented immigrants on their journey through the Sonoran Desert of Arizona, specifically in the Ironwood Forest National Monument. Coping (2009, p. 4) claims that by the time undocumented immigrants reach the Ironwood Forest National Monument, many have been abandoned by their guides and left without food, water, or a sense of direction, leaving them in intense desperation (Coping 2009, p. 4). In one instance on June 2, 1997, a small group of undocumented immigrants approached a resident living within the Ironwood Forest National Monument. The immigrants had a live Sonoran desert tortoise they had captured along the way that had a rope tethered to its front leg. They told this resident that if they did not receive food from him, they planned to eat the tortoise (Coping 2009, p. 5). In another reported observation, a livestock grazing permittee on the Ironwood Forest National Monument stated that he had seen immigrants carrying tortoises, "presumably with the intent to consume" (Averill-Murray and Averill-Murray 2002, p. 29). Indigenous communities of the Sonoran Desert historically used Sonoran desert tortoises for food and medicine, and their shells for ladles, dippers, bowls, and shovels (Nabhan 2002, p. 356). However, we have no information to suggest these uses have continued into modern times.

In conclusion, direct human depredation on Sonoran desert tortoises is most likely to occur via vandalism (*i.e.,* shooting) and utilization as a source of food. While the deliberate shooting of Sonoran desert tortoises has been documented in Arizona, reports are comparatively rare, especially considering the amount of monitoring and survey effort that has been afforded to wild populations over the past several decades. However, as the human population continues to grow and urbanization expands, we expect the incidence of human depredation to increase. Sonoran desert tortoises have been used for food in Mexico historically, but these occurrences are suspected to be comparatively rare in current times. Sonoran desert tortoises may also be captured by undocumented immigrants as they pass through remote areas of Arizona, but increasing border-enforcement activities are expected to reduce the number of undocumented immigrants entering Arizona in the foreseeable future, reducing this risk.

Upper Respiratory Tract Disease

The threats of mycoplasmosis (or upper respiratory tract disease (URTD)), and cutaneous dyskeratosis (shell disease) were major factors in the listing of the Mojave desert tortoise (Berry 1997, p. 91). Genetic analyses were performed by Brown *et al.* (1994, p. 4580) on seven *Mycoplasma* organisms that were recovered from the upper respiratory tract of clinically ill desert tortoises. These laboratory tests led to the discovery and subsequent species description of *Mycoplasma agassizii,* the species of bacteria that causes upper respiratory tract disease in infected tortoises (Berry and Christopher 2001b, p. 413). Although *M. agassizii* has been studied in Mojave and Sonoran desert tortoises, as well as gopher tortoises (*G. polyphemus*), since the 1980s, its origins are unknown. It may be a naturally occurring or an exotic pathogen. There are several potential routes of inoculation of vertebrates by microbiota such as *Mycoplasma* spp., including horizontal (transmission between individuals), vertical (passed down from parent to offspring), and environmental (passed from environment to individual) (Belden and Harris 2007, p. 536). Brown (2002, p. 1340) states that direct contact with infected individuals is the most likely route of transmission. Brown (2003, p. 1) stated that *M. agassizii* is not known to be transferred through the eggshell.

Disease may be spread to wild populations as a result of the release of captive native or nonnative tortoise species, which can be carriers of diseases that could affect wild Sonoran desert tortoises (Howland and Rorabaugh 2002, p. 343). The release of any captive reptile or amphibian is strictly prohibited by the AGFD. In a study investigating the relationship between exposure to *M. agassizii* and an urban gradient of Greater Tucson, Arizona, Jones (2008, p. 36–37) found evidence to suggest a positive correlation between the likelihood of testing seropositive for antibodies to *M. agassizii* (meaning a tortoise has been exposed to URTD), and proximity to urban centers. These results suggest that there may be a relationship between urbanization and this pathogen. Tortoises from suburban sites are 2.3 times more likely to test seropositive for antibodies to *M. agassizii* than tortoises from other sites in the greater Tucson area. In fact, Sonoran desert tortoise populations in the Rincon Mountains (adjacent to Tucson, Arizona) had the highest prevalence of exposure to URTD of any sites tested in Arizona, with 72.7 percent of sampled Sonoran desert tortoises identified as seropositive (Jones 2008, p. 93).

Jones (2008, p. 60) also explored the relationship between URTD and captive and wild desert tortoises from high-use public lands in Maricopa, Mohave and Pima counties, and found that captive desert tortoises are 1.8 times more likely to test seropositive for exposure to *M. agassizii* than wild tortoises (p. 65). Sonoran desert tortoises from Pima County (wild and captive) had the highest incidence of exposure to URTD and were 5.4 times more likely to be seropositive for antibodies to *M. agassizii* than those from Mohave or Maricopa Counties (Jones 2008, p. 65). While clinical signs of URTD are infrequently observed in wild Sonoran desert tortoises in Arizona, Jones (2008, pp. 37, 74) found that *M. agassizii* is widespread among captive desert tortoises in Arizona, suggesting that the captive population may be an important reservoir of URTD-infected tortoises that can spread the disease to wild populations if unlawfully released or allowed to escape.

Even though URTD appears to occur widely and has been documented in Sonoran desert tortoise populations, no die-offs have been attributed to URTD in Arizona. Currently, URTD does not appear to be a source of mortality for Sonoran desert tortoise populations (Hart *et al.* 1992, p. 120; AIDTT 2000, p. 9; Averill-Murray and Klug 2000, p. 69; Dickinson *et al.* 2002, p. 256; Howland and Rorabaugh 2002, p. 343; Jones 2008, p. 22; AGFD 2010, p. 9). Howland and Rorabaugh (2002, p. 343) hypothesized that if disease does

become a significant threat to Sonoran desert tortoise populations in the future, their patchy distribution may limit the spread of disease. However, because the captive population of desert tortoises may serve as a reservoir of disease and because captives are unlawfully released into the wild by the public, monitoring wild tortoise populations that occur near urban areas will continue to be important (Howland and Rorabaugh 2002, p. 343; Jones 2008, pp. 6–7, 41, and 72–73).

An indirect effect of disease is that it may also subject individuals to increased predation. Sonoran desert tortoises that are exhibiting clinical signs of URTD may be more active during winter months, in order to increase their metabolism and elevate their body temperatures. This increase in surface activity might result in a greater chance of predation or human detection (Jones 2008; p. 105). Jones (2008, p.103) found that periods of surface activity may increase in clinically ill Sonoran desert tortoises; however, home range size did not differ between seropostive and seronegative tortoises (p. 103), so seropositive tortoises which are more active in winter months do not appear to be increasing the areas over which they move.

Wild Sonoran desert tortoises in Sonora, Mexico, were tested for the presence of antibodies to two *Mycoplasma* species, *M. agassizii* and *M. testudineum,* and were found to be generally unexposed (Brown *et al.* 2006, p. 5). Twenty-seven of 28 wild Sonoran desert tortoises were found to be seronegative, indicating they had not been exposed to *Mycoplasma* spp.; and one individual was serosuspect (a result indicating that the antibody level is intermediate between positive and negative, and is considered inconclusive) for *M. testudineum* (Brown *et al.* 2006, p. 5). However, 11 of 21 captive Sonoran desert tortoises in Sonora, Mexico, tested seropositive for antibodies, indicating exposure to *M. agassizii;* and four were serosuspect for exposure to *M. testudineum.* Ten captive desert tortoises had *M. agassizii* isolated from nasal flushes, indicating a current infection, suggesting that disease may be more prevalent in the Sonora captive population (Brown *et al.* 2006, pp. 5–6). Nearly all of the captive desert tortoises exhibited mild to severe clinical signs of URTD. Of the captive tortoises, six had swollen or draining chin glands and four had evidence of nasal discharge (Brown *et al.* 2006, p. 5–6). Once infected by URTD, tortoises may ultimately die from the disease.

Cutaneous Dyskeratosis

Cutaneous dyskeratosis, a shell disease, was also a major factor considered in the listing of Mojave desert tortoises. In populations of Mojave desert tortoises exhibiting clinical signs of this disease, significant die-offs have been documented, some as high as 70 percent mortality rate (Jacobson *et al.* 1994, p. 69). Cutaneous dyskeratosis may appear on the carapace, plastron, and thickened scales of the forelimbs, but is most often apparent on the plastron (Jacobson *et al.* 1994, pp. 70–74). Potential causes of cutaneous dyskeratosis have not been confirmed, but may be related to deficiency diseases and environmental contamination (Berry 1997, p. 91).

Cutaneous dyskeratosis has been reported as more prevalent than URTD within Sonoran desert tortoise populations across Arizona. As of 2000, Sonoran desert tortoises infected with cutaneous dyskeratosis had been observed in every monitored population, with the exception of the Wickenburg Mountains plot (AIDTT 2000, p. 9; Averill-Murray and Klug 2000, p. 69). However, noticeable population-level effects have not been reported in any of the monitoring plots (AIDTT 2000, p. 9; Averill-Murray and Klug 2000, p. 69; AGFD 2010, p. 9). Of the 36 individual Sonoran desert tortoises sampled from the Little Shipp Wash and the Harcuvar Mountains from 1990 to 1994, only 5 (all females presumed to be at least 30 years old) had signs of cutaneous dyskeratosis, and all lived through the end of the field study. This prompted Dickinson *et al.* (2002, p. 258) to suspect that Sonoran desert tortoises might not be affected by this disease, although they acknowledged that more research was necessary. As of 2000, the highest incidence of cutaneous dyskeratosis (62 percent of individuals) was reported from the East Bajada plot (AIDTT 2000, p. 9). In Sonora, Mexico, 14 of the 28 wild Sonoran desert tortoises examined exhibited clinical signs of cutaneous dyskeratosis (Brown *et al.* 2006, p. 6).

In conclusion, disease has been documented as a serious threat to the Mojave desert tortoise, and was a primary cause for its listing under the Act. The two most prevalent diseases that could affect Sonoran desert tortoise populations are URTD and cutaneous dyskeratosis. Researchers have speculated that Sonoran desert tortoises may be able to clear infections of *M. agassizii,* and no wild Sonoran desert tortoises have been found to have died from URTD in Arizona, although it is nearly impossible to document the precise cause of death in many situations. The literature documents that Sonoran desert tortoise populations in proximity to urbanized areas are most at risk of disease (as a result of released captives), because the captive population (both in Arizona and Mexico) has a significantly higher percentage of seropositive tortoises and tortoises that have acquired URTD. Cutaneous dyskeratosis has been documented in virtually all Sonoran desert tortoise long-term monitoring plots in Arizona, although no Sonoran desert tortoises have been documented to have succumbed to this disease, and we conclude that cutaneous dyskeratosis is not a substantial threat to populations. Disease screening has been a regular component to field research and monitoring of wild Sonoran desert tortoise populations throughout their range for many years, and has not indicated that either URTD or cutaneous dyskeratosis pose a current threat to the Sonoran desert tortoise.

For additional information on disease in desert tortoises, or specific disease data from monitored Sonoran desert tortoise populations, see Hart *et al.* (1992, p. 120); Berry (1997, p. 91); Brown *et al.* (1994, p. 4580; 1995, p. 350; 2002, p. 497; 2006, pp. 5–6); Jacobson *et al.* (1994, pp. 69, 70–74); Schumacher *et al.* (1999, pp. 829–830); AIDTT (2000, p. 9); Averill-Murray and Klug (2000, p. 69); Berry and Christopher (2001b, p. 413); Averill-Murray and Averill-Murray (2002, pp. 16, 19, 26); Brown (2002, pp. 1340, 1343; 2003, p. 1); Dickinson *et al.* (2001, pp. 254–256; 2002, pp. 256, 258, 260–261; 2005, p. 841); Howland and Rorabaugh (2002, p. 343); Tracy *et al.* (2006a, p. 1191); Belden and Harris (2007, pp. 536, 538); Wendland *et al.* (2007, p. 1190); Jones *et al.* (2005, p. 1); Boarman and Kristan (2008, p. 19); Jones (2008, pp. 6–7, 70, 93, 103, 105); Zylstra and Swann (2009, pp. ix–x); and AGFD (2010, p. 9).

Summary of Factor C

In review of the information presented above, we conclude that predation from feral domestic dogs and, to a lesser extent, human depredation and vandalism, in combination with other threats, threaten Sonoran desert tortoise populations, most notably as a result of the expansion of urbanization and associated increases in human activity in remote areas. We conclude this threat to be of moderate magnitude. Based upon our review of the available literature, disease does not appear to be significantly affecting the status of wild Sonoran desert tortoise populations. Therefore, we conclude that disease

does not pose a significant threat to the Sonoran desert tortoise now or in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Within its distribution in the United States, the Sonoran desert tortoise occurs on lands managed by a myriad of Federal and State agencies and Native American tribes, and on private lands. State agencies, such as the Arizona Game and Fish Department (AGFD) or the Arizona Department of Transportation (ADOT), have either direct management authority over the Sonoran desert tortoise, or could potentially impact Sonoran desert tortoise populations or habitat directly or indirectly in carrying out their intended missions. Internationally, the Sonoran desert tortoise is listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (commonly referred as to CITES), which requires permits to transport individuals between member nations (Bury *et al.* 2002, p. 86; Howland and Rorabaugh 2002, p. 348). Under the International Union for Conservation of Nature's "Red List," the desert tortoise (rangewide) is considered "vulnerable"—meaning it faces a high risk of extinction in the medium-term (Rorabaugh 2008, p. 27). In our review, we found that the Sonoran desert tortoise is commonly considered in conservation planning where it occurs on public or tribal lands in Arizona. Below we discuss how each agency or entity manages their land, or otherwise considers the Sonoran desert tortoise in their planning activities.

U.S. Bureau of Land Management

BLM is very proactive in their conservation management, directly and indirectly, through three main mechanisms: (1) Sonoran desert tortoise habitat categorization and compensation (monies derived from adverse effects to Sonoran desert tortoise habitat for the acquisition of new habitat, funding research, etc.); (2) resource management planning; and (3) land designation. The BLM has developed numerous documents that outline how Sonoran desert tortoise habitat management goals and objectives are to be achieved and accounted for in their land use planning.

The BLM developed the document titled "Desert Tortoise Management on the Public Lands: A Rangewide Plan" (authored by Spang *et al.* 1988), and created the designation of three categories of desert tortoise habitat throughout the species' range, using four main criteria to indicate the importance of the habitat: (1) Maintaining viable populations, (2) resolvability of conflicts, (3) desert tortoise density, and (4) population status (stable, increasing, or decreasing) (AIDTT 2000, p. 16; USBLM 2010, p. 1). The BLM categorized habitat based upon its suitability for the desert tortoise, with Category I being the most suited, and Category III the least, with the goals of maintaining viable desert tortoise populations in Category I and II habitat, and limiting population declines in Category III habitat to the extent possible (AIDTT 2000, p. 16). However, not all Sonoran desert tortoise habitat was included in this categorization process.

AIDTT (2000, p. 19) depicts the distribution of the categorized habitat included in Arizona. In Arizona, there are 723,769 ac (292,899 ha) of Category I Sonoran desert tortoise habitat, 2.6 million ac (1.1 million ha) of Category II habitat, and 3.8 million ac (1.5 million ha) of Category III habitat, totaling 7.1 million ac (2.9 million ha) of categorized habitat (AIDTT 2000, p. 18). The 1988 Rangewide Plan also indentified 14 different management objectives the BLM has defined specifically for desert tortoise management, each with its own itemized management action plan. These management objectives include the following categories: (1) Increased awareness; (2) inventory and monitoring; (3) cumulative impacts; (4) identification of endangered populations; (5) coordination and cooperation; (6) research and studies; (7) management of tortoise habitat; (8) regulation of lands and realty actions; (9) regulation of off-highway vehicles; (10) regulation of livestock use; (11) regulation of wild horses and burros; (12) wildlife habitat management; (13) predator control; and (14) management of energy and minerals research and extraction (Spang *et al.* 1988, pp. 14–23; AIDTT 2000, p. 18).

In 1990, BLM's Arizona State Office issued the policy titled Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona, Instruction Memorandum No. AZ–91–16. It outlined objectives and management actions to be implemented, and also established the BLM Desert Tortoise Mitigation Policy, which was later reissued in 1999 (USBLM 2010, p. 2). In 2009, the BLM finalized the Desert Tortoise Mitigation Policy, in order "to articulate mitigation policy including off-site compensation for the Sonoran desert tortoise and its habitat on public lands managed by (BLM) in Arizona, in a consistent manner between District and Field Offices" (USBLM 2009b, p. 1). The BLM's Desert Tortoise Mitigation Policy "establishes policy to mitigate for impacts to desert tortoises and their habitats including compensation for residual impacts that cannot otherwise be mitigated. Mitigation, including compensation must be designed to meet the purposes of the Rangewide Plan, including maintaining viable populations as well as maintaining the quantity and quality of Category I and II desert tortoise habitat" (USBLM 2009b, p. 1). Compensatory funds derived from BLM's compensation policy are then used for a variety of conservation activities to lessen impacts to Sonoran desert tortoises including protective tortoise fencing, culverts for crossing, land acquisition, and research (AIDTT 2000, p. 19). Details of this policy can be found in USBLM (2009b, pp. 1–45).

The BLM implements various objectives and management actions through resource management plans unique to certain geographic regions of BLM-managed lands (USBLM 2010, p. 3). Currently, there are eight individual resource management plans, some recently issued and others up to 22 years old, representing the areas with potential Sonoran desert tortoise habitat (USBLM 2010, p. 3). The Phoenix Resource Management Plan, which directs the management of approximately 440,000 ac (178,000 ha) of Sonoran desert tortoise habitat, does not contain district-specific management actions, but incorporates management actions described in the Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona (USBLM 2010, p. 3). Approximately 1.1 million ac (455,000 ha) in the Yuma, Lake Havasu, Bradshaw-Harquahala, and Kingman resource management planning areas that were considered Sonoran desert tortoise habitat have been designated as "priority habitats," meaning that the BLM prioritizes management of wildlife habitat over other multiple-use activities (USBLM 2010, p. 3).

The BLM can directly or indirectly manage for the Sonoran desert tortoise through the process of land designation, such as Areas of Critical Environmental Concern (ACEC) and Wilderness Areas. In the case of ACECs, those values may pertain to specific species or habitats, or cultural or scenic values (AIDTT 2000, p. 22). Sonoran desert tortoises were the impetus for the Poachie and McCracken ACECs, while other ACECs benefit the Sonoran desert tortoise through broad protections, such as in the Agua Fria and Ironwood Forest National Monuments (AIDTT 2000, p. 22). Sixteen Arizona ACECs contain Sonoran

desert tortoise habitat (AIDTT 2000, p. 22). ACEC designations facilitate the minimization of surface-disturbing activities, such as vehicular travel, camping, fire use, mineral extraction activities, and grazing (AIDTT 2000, p. 22). There are also 48 wilderness areas managed by the BLM in Arizona, including approximately 850,000 ac (344,000 ha) of Sonoran desert tortoise habitat, through "reclaiming damaged areas, reclaiming old vehicle ways and routes, establishing campfire and camping policies to avoid resource impacts, establishing livestock grazing use objectives with respect to desired vegetation, setting objectives for wildlife habitat including the desert tortoise, and setting prescriptions for wildfire" (AIDTT 2000, pp. 22–23). In addition, the BLM manages Sonoran desert tortoise habitat in Wilderness Areas and National Monuments with an emphasis on maintaining natural conditions and biological function of these areas (USBLM 2010, p. 10). Approximately 22 percent of categorized Sonoran desert tortoise habitat falls under these management prescriptions on BLM lands in Arizona (USBLM 2010, p. 10).

Livestock grazing is the most widespread land-use activity permitted on BLM lands, with 273 individual allotments covering approximately 6 million ac (2.4 million ha), and 74 percent of Sonoran desert tortoise habitat in the U.S. on their lands (Rosmarino and Connor 2008, p. 49). A policy was developed by the BLM's Arizona State Office in 1994, addressing livestock use of upland vegetation growth in response to significant winter precipitation, ensuring adequate amounts of forage remained for the Sonoran desert tortoise (and other species) before and after livestock use. These "ephemeral" pastures or allotments are permitted for 30 days of livestock grazing, with additional 30-day extensions if monitoring concludes adequate forage capacity exists (AIDTT 2000, p. 22). AIDTT (2000, p. 22) viewed this grazing policy as a "significant protective change that ensured forage for other animals, such as desert tortoises, and also ensured that perennial plants would not be damaged due to insufficient ephemeral growth." In 1997, the BLM (USBLM 1997, pp. 1–18) further developed standards and guidelines for livestock grazing and rangeland health. In upland sites, the BLM standard is "Upland soils exhibit infiltration, permeability, and erosion rates that are appropriate to soil type, climate and landform (ecological site)" (USBLM 1997, p. 5). To assess whether an allotment is meeting this standard, the BLM uses descriptive criteria that pertain to soil conditions, ground cover, and erosion rates (USBLM 1997, p. 5).

The BLM generally prohibits mineral material sales (mining activities) in Category I and II Sonoran desert tortoise habitat, but requests are evaluated on a case-by-case basis (USBLM 2010, p. 3). For example, in the Phoenix District, the BLM has denied 11 such mineral material sales, while others have been denied in the Tucson District, to prevent potential impacts to Sonoran desert tortoises and their habitat (USBLM 2010, p. 4).

In summary, the BLM considers the Sonoran desert tortoise in its land management planning and has denied or altered projects which could adversely affect the Sonoran desert tortoise or its habitat, specifically with respect to mining and livestock-grazing activities. However, we are not aware of specific actions the BLM is taking with respect to invading nonnative plant species and subsequent wildfire concerns, vandalism of tortoises, feral dog predation, or management to counter anticipated climate change. In addition and as discussed below, BLM management of off-highway vehicle use on their lands is not protective of Sonoran desert tortoise populations. Therefore, we conclude that BLM management of the Sonoran desert tortoise and its habitat is currently inadequate.

U.S. Forest Service

The Sonoran desert tortoise is included on the U.S. Forest Service's Regional Forester's Sensitive Species List, which means it is evaluated in all biological evaluations for activities and projects proposed within its habitat (AIDTT 2000, p. 35). Sonoran desert tortoises occur on the Prescott (Bradshaw Ranger District), Coronado (Santa Catalina and Nogales Ranger Districts), and Tonto National Forests in Arizona (Murray and Schwalbe 1993, p. 39). The Tonto National Forest manages the most Sonoran desert tortoise habitat of the three National Forests in Arizona, where they occur in the Cave Creek, Mesa, Globe, and Tonto Basin Ranger Districts.

Multiple land uses occur on these National Forests, including recreation, camping, livestock grazing, and off-highway vehicle use. Approximately 46 livestock grazing allotments on the Tonto National Forest partially or wholly overlap the potential range of the Sonoran desert tortoise, with several rated as having impaired or unsatisfactory soil conditions (AIDTT 2000, p. 37). We are not aware of the exact number of livestock grazing allotments that overlap Sonoran desert tortoise habitat on the Coronado or Prescott National Forests. With the exception of livestock grazing, the majority of land uses that have the highest potential to affect the Sonoran desert tortoise occur in districts adjacent to urbanized areas, such as the Santa Catalina Ranger District on the Coronado National Forest (adjacent to the Tucson metropolitan area) and the Cave Creek and Mesa Ranger Districts on the Tonto National Forest (adjacent to the Phoenix metropolitan area). While the Coronado National Forest does not have specific management policies for the Sonoran desert tortoise, two policies may serve its benefit: (1) "Provide habitat for wildlife populations consistent with the goals outlined in the Arizona and New Mexico Department of Game and Fish Comprehensive Plans and consistent with other resource values;" and, (2) "Provide for ecosystem diversity by at least maintaining viable populations of all native and desirable nonnative wildlife, fish, and plant species through improved habitat management" (AIDTT 2000, p. 36).

In September 2005, Region 3 of the U.S. Forest Service adopted a new policy for rangeland adaptive management (USFS 2007, pp. 1–34), called the Chapter 90 policy. Under this policy, limits on timing, intensity, frequency, and duration of livestock grazing are set in Allotment Management Plans. Monitoring and adaptive management are key attributes of the Chapter 90 policy and are intended to ensure livestock grazing outcomes meet desired resource conditions which include the needs of wildlife such as the Sonoran desert tortoise. The term "conservative use" in this policy is defined as forage utilization on key forage species between 30 and 40 percent or less of annual forage production by weight for herbaceous perennials, and 50 percent or less on woody browse species (USFS 2007, pp. 26, 30). It is inherent in the term "conservative use" that watershed conditions and vegetative ground cover will be optimized as appropriate to various range sites. At no time is excessive use considered acceptable. The goal is to achieve conservative use in the uplands over successive years. This strategy recognizes the importance of adaptive management, and may include adjustments of timing, intensity, frequency, and duration of grazing to reach resource objectives (USFS 2007, pp. 13–14).

Implementation monitoring of livestock grazing under conservative use practices can be done using a variety of methods, and is designed to provide

information that will enable decision-makers to practice adaptive management by making necessary changes needed for plant development and recovery, and to assess physical improvements to allotments (USFS 2007, pp. 16–17). Effectiveness monitoring of conservative use practices documents whether management actions are having the expected progress toward achieving resource-management objectives, and is used to track upland vegetative and soil condition over the long term (USFS 2007, pp. 16–17). From a short-term (within-year) perspective, wildlife habitat and watershed conditions are gauged by monitoring seasonal utilization on key forage species during the grazing period. Due to a warmer climate, variable precipitation, and mild winters, seasonal-utilization monitoring is important because the end of a particular growing season is not well-defined for all plant communities in Sonoran desert tortoise habitat on Forest Service lands. In review of this policy, we conclude that implementation of the Forest Service's rangeland management strategy is likely to retain physical characteristics necessary to provide for the necessary forage and shelter requirements for Sonoran desert tortoise.

In summary, the USFS considers the Sonoran desert tortoise in all biological evaluations for activities and projects proposed within its habitat. The USFS has developed a system of adaptive management for livestock grazing on their lands, using resource monitoring to indicate when changes in land conditions occur or prescribed use levels are unsustainable, preventing excessive harm to sensitive Sonoran desert tortoise habitat. However, we are not aware of specific actions the USFS is taking with respect to management of invasive, nonnative plant species and subsequent wildfire concerns, vandalism of tortoises, feral dog predation, or efforts to counter anticipated climate change. In addition, and as discussed below, USFS management of off-highway vehicle on their lands is not protective of Sonoran desert tortoise populations. Therefore, we conclude that USFS management of the Sonoran desert tortoise and its habitat is currently inadequate.

Off-Highway Vehicle Management and Enforcement on Public Lands

While both the USFS and BLM have developed broad, strategic plans to manage off-highway vehicle use, these plans have been found to be missing some key elements that could improve off-highway vehicle management, such as results-oriented goals, strategies to achieve the goals, timeframes for implementing strategies, or performance measures to monitor incremental progress (USGAO 2009, p. 16). Limitations of the USFS's strategic plan have resulted from a general failure to address motorized travel designations on the ground, communicate with the public, monitor off-highway vehicle trail systems, or enforce off-highway vehicle regulations (USGAO 2009, p. 16).

In response to public concerns, the BLM developed the "National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands" (USBLM 2001, p. 9). This strategy outlines action items that are to be implemented "as soon as practical" (USBLM 2001, pp. 10–21). However, the U.S. Government Accountability Office (2009, pp. 17–18) found that "[d]espite identifying numerous goals and strategies to achieve the goals, BLM's recreation plan does not identify any timeframes for implementing the strategies or any performance measures for monitoring incremental progress * * *. Without performance measures and timeframes, the BLM cannot ensure that it is making progress on achieving its goals in a timely manner."

The BLM generally prohibits competitive off-highway vehicle events that could adversely affect Sonoran desert tortoises, from March 31 through October 15, but noncompetitive off-highway vehicle activities are evaluated on a case-by-case basis, and mitigation measures are implemented to reduce potential impacts to Sonoran desert tortoises (USBLM 2010, p. 4). Although requests to permit rock crawling events (defined in *Factor A,* above) have been denied where they were proposed in Sonoran desert tortoise habitat (USBLM 2010, p. 4), this activity still occurs outside of organized "events." Rock crawling is allowed where it might adversely affect the Sonoran desert tortoise or its habitat (USBLM 2010, p. 4).

Both the USFS and BLM acknowledge limited staff and financial resources for off-highway vehicle management (USGAO 2009, p. 37). Off-highway vehicles that pass over undisturbed desertscrub habitat may leave tracks which are then noticed by others and subsequently used until the trail is mistakenly recognized as a designated route; this process is known as "route proliferation" (Brooks and Lair 2005, p. 5). Illegal proliferation of roads and unauthorized use of off-highway vehicles has left persistent scars in the Sonoran Desert (Abella 2010, p. 1249). In the Kingman area, between 1994 to 1999, the BLM tracked an increase of greater than 20 percent of off-highway vehicle use within the range of the Sonoran desert tortoise, and reported 124 and 123 violations of improper vehicle use Statewide in 1998 and 1999, respectively (AIDTT 2000, p. 10). The BLM has only 195 law enforcement officers nation-wide, which means that on average, each officer is responsible for overseeing approximately 1.2 million ac (490,000 ha) of land, or 1,875 sq mi (4,856 sq km) (USGAO 2009, p. 38). Law enforcement of off-highway vehicle use in the Arizona-Mexico border region is further complicated by increasing demands to address drug smuggling and other border-related issues (USGAO 2009, p. 39). To address an inadequate law enforcement presence, the BLM's Phoenix District has initiated an "ambassador program" which recruits volunteers to "educate users and promote safe, sustainable off-highway vehicle use in the area" (USGAO 2009, p. 38). The use of signs is a common method to enforce off-highway vehicle regulations on Federal lands, but signs are often vandalized (sometimes within 48 hours of their installation), and must be frequently replaced (USGAO 2009, p. 40).

In addition to wildlife management (described below), the AGFD also licenses, promulgates rules for, and assists with regulatory enforcement of off-highway vehicles use on public lands. In January 2009, the AGFD created an off-highway vehicle decal program, designed to increase revenues for off-highway vehicle enforcement, education, and signage on public lands (AGFD 2009, p. 1). However, as of November 2009, only 21 percent of all eligible off-highway vehicles and off-highway vehicle owners in Arizona were participating in the off-highway vehicle decal program (AGFD 2009, p. 1).

In review of off-highway vehicle management on USFS and BLM lands in Arizona, we conclude that the current status of law enforcement is inadequate to protect Sonoran desert tortoises and their habitat. We considered the following in making this conclusion: (1) The documented adverse effects of off-highway vehicle use on Sonoran desert tortoise habitat (see *Factor A*); (2) the propensity for off-highway vehicle users to illegally collect Sonoran desert tortoises in the wild (discussed in *Factor B*); (3) the significant, and growing, use of off-highway vehicles in Arizona (discussed above in *Factor A*); and (4) the deficient level of law enforcement staff responsible for regulating the use of off-highway vehicles on these lands discussed above.

In addition, we accept the U.S. Government Accountability Office finding that the USFS and BLM goals and objectives, intended to protect trust resources from damage associated with off-highway vehicle use, miss some key elements that could improve off-highway vehicle management.

Ironwood and Mesquite Harvest

To address ecological problems stemming from wide-ranging mesquite and ironwood harvesting in northern Mexico (discussed above in *Factor A*), the Arizona-Mexico Commission, and state government in Sonora, Mexico, made it illegal to cut and export these species (American University Database 2010, p. 4). Additionally, Mexico's Federal government has protected the ironwood tree, adding additional monitoring and enforcement to protect remaining ironwood trees (American University Database 2010, p. 4). Finally, non-profit, bi-national groups are raising awareness and funds to help stop these practices in Mexico (American University Database 2010, p. 4). We consider these regulations effective in reducing the harvest of ironwood and mesquite in the future, but the land area already adversely modified by ironwood and mesquite harvesting, as discussed in *Factor A* above, constitutes a current threat to Sonoran desert tortoise habitat.

U.S. Department of Defense

Three prominent Department of Defense-administered lands maintain populations of Sonoran desert tortoise: The Yuma Proving Ground, Barry M. Goldwater Range, and Florence Military Reservation. The Yuma Proving Ground, administered by the Department of the Army, encompasses 840,000 ac (340,000 ha) in LaPaz and Yuma Counties of southwestern Arizona (AIDTT 2000, p. 32). The majority of land on the Yuma Proving Ground is closed to public access year-round with the exception of 133,000 ac (54,000 ha) that are open to hunting access for 6 months per year. The relative inaccessibility of these lands results in little disturbance to the Sonoran desert tortoise and its habitat (AIDTT 2000, p. 33). In addition, the Yuma Proving Ground developed a management plan for the Sonoran desert tortoise in 1996 (AIDTT 2000, pp. 33–34). We are uncertain whether or not this management plan is effective in Sonoran desert tortoise conservation on the Yuma Proving Ground.

The Barry M. Goldwater Range, used for aerial training exercises, is the largest contiguous portion of Department of Defense lands in Arizona (1.7 million ac, 690,000 ha), and is jointly administered by the Luke Air Force Base and Marine Corps Air Station—Yuma, and is located in portions of Maricopa, Yuma, and Pima Counties (AIDTT 2000, pp. 32–33). The majority of military training exercises occur over the valleys where Sonoran desert tortoise densities are low, leaving the majority of Sonoran desert tortoise populations unexposed to potential threats from these exercises (AIDTT 2000, p. 34). Outside of training exercises, the public may access the Barry M. Goldwater Range with a permit, via designated routes (AIDTT 2000, p. 34).

The Florence Military Reservation encompasses 25,752 ac (10,421 ha), and is jointly administered by the Arizona Army National Guard, the Arizona State Land Department, and the BLM (AIDTT 2000, p. 34). As stated previously, the Sonoran desert tortoise population on the Florence Military Reservation is unique among other populations across their range, because of the conspicuous absence of boulder outcrops and use by tortoises of broad alluvial fans and incised washes (Riedle *et al.* 2008, p. 418; Grandmaison *et al.* in press, p. 4). There is significant public access and multiple land uses allowed on the Florence Military Reservation, with no specific protections afforded to the Sonoran desert tortoise (AIDTT 2000, p. 34). Sonoran desert tortoise home ranges overlap with concentrated military training areas on the Florence Military Reservation (Grandmaison *et al.* in press, p. 1). When not used for military training, these areas serve as recreational areas for camping, hunting, and off-highway vehicle use, which cumulatively have degraded Sonoran desert tortoise habitat by removing vegetative cover, which in turn may have led to reduced use of these areas by Sonoran desert tortoises (Grandmaison *et al.* in press, p. 4).

There are few data on the potential effects of military operations to Sonoran desert tortoises on U.S. Department of Defense lands, specifically with respect to aircraft operations. However, Bowles *et al.* (1999, pp. 19–26) tested the response of Mojave desert tortoises to simulated aircraft sound and to sonic booms associated with aircraft, in an attempt to ascertain potential effects to wild desert tortoises that are exposed to such auditory stimuli within and adjacent to aircraft flight paths and military training areas. They found that Mojave desert tortoises could detect these sounds and had somewhat subdued reactions ranging from "freezing" all movements, to bladder voiding (Bowles *et al.* 1999, pp. xxii-xxiv). We are not certain whether Sonoran desert tortoise populations on U.S. Department of Defense lands are subjected to aircraft noise at similar sound pressure levels, but we presume they are, because aircraft training occurs on these lands in Arizona.

In summary, the Barry M. Goldwater Range and Yuma Proving Ground provide for considerable protection of Sonoran desert tortoise habitat on their installations as a result of access restrictions or through a permitting program. The Barry M. Goldwater Range also created a management plan specifically for the Sonoran desert tortoise in 1996. In addition, since these lands are unlikely to be developed in the future, these areas will likely be important in future Sonoran desert tortoise conservation planning. However, the literature has documented that current management on the Florence Military Reservation is not adequate for protecting Sonoran desert tortoises or their habitat. In discussion under *Factors A* and *B,* we discussed several activities that occur in this area which adversely affect the Sonoran desert tortoise and its habitat.

U.S. Fish and Wildlife Service National Wildlife Refuges

Sonoran desert tortoises occur on several National Wildlife Refuges in Arizona. Sonoran desert tortoise populations are highest on the Kofa, Buenos Aires, and Cabeza Prieta National Wildlife Refuges, although they also may occur in low densities within the Cibola, Imperial, and Lake Havasu National Wildlife Refuges along the Colorado River (AIDTT 2000, p. 31). The mission of the National Wildlife Refuge System is " * * * to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans" (AIDTT 2000, p. 31). Management on these National Wildlife Refuges is largely protective of Sonoran desert tortoises, as multiple use activities such as livestock grazing and off-highway vehicle use are prohibited (AIDTT 2000, p. 31). However, the U.S. Border Patrol uses administrative roads, which are closed to public use in these areas, along the border region of the Buenos Aires and Cabeza Prieta National Wildlife Refuges, which may affect Sonoran desert tortoises or their habitat in these areas. For further discussion of the effect of U.S. Border Patrol operations on Sonoran desert tortoises or their habitat, see the section on Undocumented Immigration in *Factor A* of this finding.

In summary, we conclude that the regulations establishing the mission and management of the National Wildlife Refuge system are consistent with Sonoran desert tortoise habitat management, and are therefore adequate to protect the tortoise where it occurs on our lands.

National Park Service

Sonoran desert tortoise habitat occurs on Organ Pipe Cactus National Monument, Saguaro National Park, and the Lake Mead National Recreation Area (AIDTT 2000, p. 27). The National Park Service is mandated by law to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (AIDTT 2000, p. 26). The resource-management goals on National Park Service lands are broad in scope, and include reducing ground disturbance, developing and implementing inventory and monitoring programs, assessing and mitigating resource disturbance, and developing environmental restoration and research programs (AIDTT 2000, p. 26). Livestock grazing and off-highway vehicle use are not permitted on National Park Service lands. While the National Park Service has no specific provision for Sonoran desert tortoise conservation on their lands, all wildlife inhabiting National Park Service lands in Arizona, including the Sonoran desert tortoise, are protected, and possession or removal of wildlife is prohibited (AIDTT 2000, p. 26).

However, where National Park Service lands are adjacent to urban areas, such as Saguaro National Park outside of the Tucson metropolitan area, threats to Sonoran desert tortoises have been documented. Averill-Murray and Swann (2002, p. 1) and Jones (2008, p. 66) documented threats such as harassment and predation by feral domestic dogs, releases of captive Sonoran desert tortoises and exotic species (that may transmit diseases), road mortality, and illegal collection of tortoises, as affecting the Sonoran desert tortoise population on Saguaro National Park land.

In summary, we acknowledge that the mission and management of the National Park Service and their lands is consistent with Sonoran desert tortoise habitat management, but where Park Service land is affected by adjacent urbanized areas, adequate regulatory protections for the tortoise have not been realized.

Arizona State Land Department

Arizona State Trust Land, managed to derive revenues for trust beneficiaries including educational, health, and penal institutions, comprises 13 percent of all land in Arizona, much of which contains Sonoran desert tortoise habitat (AIDTT 2000, p. 15). In general, the mission of the Arizona State Land Department is to maximize economic return (AIDTT 2000, p. 16). The Arizona State Land Department has no broad management practices, policies, or directives that pertain to Sonoran desert tortoise management, but does coordinate with the AGFD on some projects to reduce potential impacts to the Sonoran desert tortoise (AIDTT 2000, p. 16). Four Sonoran desert tortoise monitoring sites occur partially or fully on Arizona State Trust Lands: Granite Hills, Little Shipp Wash, Tortolita Mountains, and Picacho Mountains; two of these sites, Granite Hills (Pinal County) and Little Shipp Wash (Yavapai County) are long-term monitoring plots (AIDTT 2000, pp. 5–6, 15). Other blocks of Sonoran desert tortoise habitat on Arizona State Trust Lands occur west of the Upper Burro Creek, Arrastra Mountain, and Tres Alamos wilderness areas in Yavapai County and from the Tortolita to the Tortilla Mountains in Pinal County (AIDTT 2000, p. 15). Recreation on State Trust Lands is generally not monitored and therefore may not be protective of Sonoran desert tortoises or their habitat.

The Arizona State Land Department is considering restricting access to its lands for purposes of conducting wildlife studies. These access restrictions may prohibit further research due to numerous permit requirements. These new policies are not yet in place and could be changed prior to final issuance (Jody Latimer, ASLD, 2010, pers. comm.). If implemented as described by Latimer (ASLD, 2010, pers. comm.), these proposed procedures and fees have the potential to limit Sonoran desert tortoise monitoring and research on Arizona State Trust lands in the future through new monetary and procedural requirements. While these new policies and regulations are not yet in effect, even if they are implemented it appears they will not address conservation and management of the Sonoran desert tortoise and its habitat, and further, may have a negative effect by potentially restricting important research needed for conservation of the tortoise. Furthermore, we are not aware of specific actions the Arizona State Land Department is taking with respect to management of invasive, nonnative plant species and subsequent wildfire concerns, vandalism of tortoises, feral dog predation, or efforts to counter anticipated climate change. Therefore, we conclude that Arizona State Land Department management of the Sonoran desert tortoise and its habitat is currently inadequate.

Arizona Game and Fish Department

The Arizona Game and Fish Department (AGFD) currently classifies the Sonoran desert tortoise as a Tier 1b "Species of Greatest Conservation Need" AGFD (2006, p. 485). A Tier 1b species is one that requires immediate conservation actions aimed at improving conditions through intervention at the population or habitat level. Before April 28, 1989, the AGFD allowed the collection and possession of one lawfully captured Sonoran desert tortoise per person (AIDTT 2000, p. 14). After this date, under Commission Order 43, the AGFD closed the season on Sonoran desert tortoises, which prohibited the take of desert tortoises from the wild, except under special permit (for example, scientific or educational) (AIDTT 2000, p. 14). Unless otherwise prescribed in title 17, it is unlawful to [t]ake, possess, transport, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title" (ARS 17–309). It is also unlawful to release wildlife into the wild except as authorized by the Arizona Game and Fish Commission or as defined in title 3 (see ARS 17–306). As a closed-season species, the desert tortoise cannot be taken from the wild or possessed without special permit (Commission Order 43). As restricted live wildlife (R12–4–406), they cannot be imported, exported, or possessed without special license or lawful exemption.

Enforcement of the State closure on collection of Sonoran desert tortoises occurs when directly observed by law enforcement personnel, but the remoteness of many Sonoran desert tortoise populations makes enforcement strategies and techniques problematic (AIDTT 2000, p. 14). Furthermore, regulations regarding the collection or possession of Sonoran desert tortoises are poorly known to the public, emphasizing the importance of education efforts (AIDTT 2000, p. 14). The effect of illegal collection of Sonoran desert tortoises on wild populations in Mexico is largely unknown (see *Factor B*).

The AGFD has led Sonoran desert tortoise conservation in Arizona through research, guidance provided to the public and other agencies, and cooperative conservation management

on public lands. For example, the AGFD (2007a, p. 1) provides construction and development contractors with guidance, should a Sonoran desert tortoise be encountered within an area of a development. In addition, the AGFD (2007b, p. 1) also provides environmental consultants guidance on proper survey techniques and considerations when surveying for Sonoran desert tortoises. AGFD (2006, pp. 485–487) described numerous management priorities with respect to mitigating potential threats facing the tortoise in Arizona. The recommendations outlined in these documents are recommended guidance, voluntary in nature, and no reporting requirements are mandated. Therefore, we are uncertain whether project proponents implement these recommendations.

Arizona Interagency Desert Tortoise Team

As part of a multi-agency collaborative project, the Arizona Interagency Desert Tortoise Team (AIDTT) was formed in 1985 to coordinate research and management of Sonoran desert tortoise populations in Arizona. Participating agencies in the AIDTT manage habitat, manage the species, or conduct research, and include the AGFD, Arizona State Lands Department, U.S. Forest Service, BLM, U.S. Bureau of Reclamation, U.S. Bureau of Indian Affairs, U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, and several U.S. Department of Defense military reservations (AIDTT 1996, Preface; AIDTT 2000, p. 2). The AIDTT is co-chaired by representatives from the U.S. Fish and Wildlife Service (Arizona Ecological Services Office) and the AGFD. Since its inception, the AIDTT has collaborated in the development of numerous documents addressing conservation of the Sonoran desert tortoise including "Survey Protocol for Sonoran Desert Tortoise Monitoring Plots: Reviewed and Revised" (Averill-Murray 2000a), "Status of the Sonoran Population of the Desert Tortoise in Arizona: An Update" (Averill-Murray 2000b), "Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects" (AGFD 2007a), "Desert Tortoise Survey Guidelines for Environmental Consultants" (AGFD 2007b), and "Recommended Standard Mitigation Measures for Projects in Sonoran Desert Tortoise Habitat" (AIDTT 2008). Available online, the AIDTT (2008, pp. 1–7) offers guidance on standard types of mitigation for projects that may affect Sonoran desert tortoises; these measures are voluntary.

The AIDTT's Memorandum of Understanding, signed in 1995, established specific objectives for the team including: (1) Ensuring the survival of the species; (2) preventing loss of the species; and (3) improving the quality of Sonoran desert tortoise habitat in Arizona, with the team to function as an advocate for the Sonoran desert tortoise (AIDTT 1996, Preface; AIDTT 2000, p. 2). A management plan for the Sonoran desert tortoise completed in 1996 called for improved monitoring protocols, the implementation of threat-minimization activities, and the creation of Sonoran Desert Management Areas (AIDTT 1996, pp. 20–26). However, common criticisms of the 1996 plan include: (1) Lack of meaningful goals and objectives; (2) lack of political willpower without legal protection for the Sonoran desert tortoise; (3) failure to designate Sonoran Desert Management Areas; and (4) poor funding (AIDTT 2000, p. 2). Collectively, these recognized shortcomings hampered the implementation of threat-minimization activities. In recognition of these shortcomings, the AIDTT is currently in the process of developing a State Conservation Agreement, Assessment and Strategy with the goal of identifying reasonable, obtainable conservation goals and objectives that will contribute to Sonoran desert tortoise conservation on public lands in a meaningful capacity.

Mexican Government (Secretaria de Medio Ambiente y Recursos Naturales)

Throughout Mexico, the desert tortoise is listed as "Amenazadas," or Threatened, by the Secretaria de Medio Ambiente y Recursos Naturales (SEMARNAT) (Bury *et al.* 2002, p. 86; Howland and Rorabaugh 2002, p. 348; SEDESOL 2008, p. 99). Threatened species are "those species, or populations of the same, likely to be in danger of disappearing in a short or medium timeframe, if the factors that negatively impact their viability, cause the deterioration or modification of their habitat or directly diminish the size of their populations continue to operate" (SEDESOL 2008 (NOM–059–ECOL–2008), p. 5). This designation prohibits taking of the species, unless specifically permitted, and also prohibits any activity that intentionally destroys or adversely modifies its habitat (SEDESOL 2000 and 2001 (NOM–059–ECOL–2001). However, activities that unintentionally destroy or adversely modify their habitat do not appear to be specifically prohibited (*e.g.,* cultivation of buffelgrass for livestock grazing). In 1988, the Mexican Government passed a regulation that is similar to the National Environmental Policy Act of the United States (42 U.S.C. 4321 *et seq.*). This Mexican regulation requires an environmental assessment of private or government actions that may affect wildlife or their habitat (SEDESOL 1988 (LGEEPA)).

The Mexican Federal agency known as the Instituto Nacional de Ecología (INE) is generally considered the Mexican counterpart to the U.S. Fish and Wildlife Service. INE is responsible for the analysis of the status and threats that pertain to species that are proposed for listing in the Norma Oficial Mexicana NOM–059 (the Mexican equivalent to a threatened and endangered species list), and if appropriate, the nomination of species to the list. INE developed the Method of Evaluation of the Risk of Extinction of the Wild Species in Mexico (MER), which unifies the criteria of decisions on the categories of risk, and permits the use of specific information fundamental to listing decisions. The MER is based on four independent, quantitative criteria: (1) Size of the distribution of the taxon in Mexico, (2) state (quality) of the habitat with respect to natural development of the taxon, (3) intrinsic biological vulnerability of the taxon, and (4) impacts of human activity on the taxon. INE implemented use of the MER in 2006; therefore, all species previously listed in the NOM–059 were, in many cases, based solely on expert review and opinion. Specifically, until 2006, the listing process under INE consisted of a panel of scientific experts who convened as necessary for the purpose of defining and assessing the status and threats that affect Mexico's native species that are considered to be at risk, and for applying those factors to the definitions of the various listing categories.

In summary, while the desert tortoise is federally listed in Mexico, we have documented significant threats to its persistence in that country (see *Factors A* and *C*) that are not controlled by the listing, and therefore conclude that regulations establishing management of the Sonoran desert tortoise in Mexico do not provide adequate assurances of its continued existence in that country.

Summary of Factor D

Numerous State and Federal entities have regulations or policies which implement management of either the Sonoran desert tortoise or its habitat throughout the species' range in Arizona. In Mexico, the species is currently listed as threatened. In our

review of the available information on each entity's management policies and regulations, we found numerous examples where the Sonoran desert tortoise is considered in management actions and tortoise-specific mitigation measures are mandated, or where land activities that could appreciably threaten Sonoran desert tortoise populations are prohibited. While several land managers and agencies in Arizona actively consider the Sonoran desert tortoise in their resource planning, we found deficiencies in management of off-highway vehicle use, policies and procedures inconsistent with Sonoran desert tortoise conservation, and some threats such as invasive, nonnative plant species and subsequent wildfire concerns, vandalism of tortoises, feral dog predation, or efforts to counter anticipated climate change were not addressed by land management control. Lastly, significant threats we discuss above in *Factors A* and *C* are not being adequately addressed by land managers, including invasive, nonnative plant species and associated wildfire concerns, vandalism of tortoises, feral dog predation, and management to counter anticipated climate change.

Although the Sonoran desert tortoise is considered a threatened species in Mexico, we are not aware of conservation planning or enforcement of regulations that has occurred because of this status. Based upon our review of the information pertaining to threats in Mexico, it is unlikely that protections afforded to the Sonoran desert tortoise are adequate to ensure conservation for the foreseeable future in Mexico. As a result, we conclude that the Sonoran desert tortoise is threatened due the inadequacy of existing regulatory mechanisms, in combination with the other threats identified in this finding, both now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Environmental Contaminants

Many sources of potential contamination presently occur throughout the distribution of the Sonoran desert tortoise. Copper mining in the Sonoran Desert has occurred in Arizona and adjacent Mexico for centuries, and many of these sites have smelters (now decommissioned), which are former sources of airborne contaminants. In Arizona, historical or current large-scale copper mining operations exist in Pima, Pinal, Yavapai, Gila, and Mohave Counties, which are sources of low-level, persistent contaminants in surrounding areas as a result of fugitive dust, contaminated surface runoff, and other mechanisms consistent with contaminant fate and transport. Soil contamination within ephemeral washes from leaching operations associated with mining activities has occurred throughout the Sonoran Desert, and will likely continue to occur where these activities take place. Sonoran desert tortoises that forage in contaminated ephemeral washes may ingest toxic constituents through soil or contaminated plant matter, but we are not aware of any specific reports of tortoises that became sick or deceased from this risk. The mining industry in Mexico is largely concentrated in the northern tier of that country, with Sonora as the leader for generating copper, gold, graphite, molybdenum, and wollastonite, as well as the leader among Mexican States with the most surface area dedicated to mining (Stoleson *et al.* 2005, p. 56). The three largest mines (all copper) are found in Sonora (Stoleson *et al.* 2005, p. 57). The sizes of mines in Sonora vary considerably, as do the known environmental effects from mining-related activities (from exploration to long after closure), which include contamination and drawdown of groundwater aquifers, erosion, acid mine drainage, fugitive dust, pollution from smelter emissions, and landscape clearing (Stoleson *et al.* 2005, p. 57).

Rowe (2008, p. 623) investigated potential effects of persistent, low-level contaminants (*e.g.,* heavy metals, polychlorinated biphenols, organochlorides) on long-lived vertebrates (such as the Sonoran desert tortoise). Cadmium and lead are of special concern due to their toxicity, and because they are persistent, common environmental contaminants (Martínez-López *et al.* 2010, p. 671). Cadmium may affect turtle gonadal development, and lead may affect an individual tortoise's susceptibility to infections and disease, because it may suppress its immune capacity. The latter can potentially affect the spread of known diseases such as herpesvirus, cutaneous dyskeratosis, and URTD within and among affected populations (Martínez-López *et al.* 2010, p. 671). As stated previously, cutaneous dyskeratosis is prevalent within most populations of Sonoran desert tortoise throughout their distribution in Arizona, but this disease has not been determined to currently be a significant threat to Sonoran desert tortoise populations. Another common environmental contaminant is the heavy metal arsenic, which is carcinogenic (cancer-causing) and may also already occur in naturally-high levels in some areas of the American Southwest (Seltzer and Berry 2005, p. 263).

Because the Sonoran desert tortoise is characterized as having a delayed sexual maturation and a long generation time, potential effects from persistent, low-level contaminants in the environment include: (1) Mortality before reproduction, (2) chronic accumulation of contaminants that may be transferred to offspring upon maturation, (3) reduced size at maturity reducing offspring quantity or quality, (4) delayed expression of fitness effects at the population level, and (5) delayed recovery of populations following abatement of fitness effects (Rowe 2008, p. 626). In several areas of the Sonoran Desert in Arizona and Sonora, Mexico, mining operations and other human-related activities can result in remobilization and concentration of elemental toxicants in the air, on the soil surface, and on the surfaces of forage plants, both from ground disturbance and from long-range atmospheric deposition associated with old copper smelter sites, coal-fired power plants, and fugitive dust from abandoned and active mining sites (Seltzer and Berry 2005, p. 263; Rowe 2008, p. 628). The most likely routes for exposure of Sonoran desert tortoises to these types of contaminants are through ingestion of contaminated soil or plant matter, or through inhalation of contaminated dust or particles, especially when a tortoise constructs or modifies a burrow (Seltzer and Berry 2005, p. 263; Hinck *et al.* 2010, p. 287). We have no specific records of Sonoran desert tortoises becoming sick or dying from this type of contamination; effects from these contaminants can be significantly delayed and slow to manifest. Also, few field researchers are sampling wild tortoises to test for contaminant exposure.

Conversion of habitat to large-scale agriculture has been concentrated in Sonora, Mexico, which has provided sources of surface and groundwater pollution such as salt intrusion due to agricultural water use extraction; municipal and agricultural discharges; and solid waste, including cast-off agrochemical containers, winery residues, and hog farm muck (Nauman 2007, p. 1). The extent to which Sonoran desert tortoises drink freely from perennial or intermittent streams is not known, but since tortoises are opportunistic drinkers, we presume they use streams as a source of water in addition to ephemeral pools generated by precipitation events, and that they may subsequently ingest such toxins.

In conclusion and based upon our review of the best available scientific or commercial data, little is known of the potential effect of low-level environmental contamination on Sonoran desert tortoises. We did ascertain that the risk of environmental contaminants affecting Sonoran desert tortoise populations is most likely from the presence of persistent, low-level toxicants such as heavy metals, polychlorinated biphenols, and organochlorides. However, potential effects of this type of environmental contamination are often delayed and difficult to observe in long-lived species such as the Sonoran desert tortoise, largely because of delayed sexual maturation and long generation times. We did not find documentation of population-level effects in Sonoran desert tortoises as a result of environmental contamination. Therefore, we conclude that environmental contamination of Sonoran desert tortoise habitat is not currently threatening populations; however, we acknowledge that further study is warranted to identify whether there is a risk for population-level impacts, and we recommend that land managers consider collecting baseline soil data in areas that may be vulnerable.

Vehicle Strike Mortalities

We expect that the increased use of off-highway vehicles within Sonoran desert tortoise habitat will increase the likelihood of encounters with Sonoran desert tortoises which can result in a variety of potential outcomes for tortoises. According to the Arizona Interagency Desert Tortoise Team (AIDTT 2000, p. 10), "[a]n abundance of anecdotal knowledge indicates that contacts between people and wild tortoises usually end to the detriment of tortoises (*e.g.,* collection, handling, vandalism, crushing under vehicle tires, and shooting)."

Averill-Murray and Swann (2002, p. 1) stated that urban development adjacent to the Saguaro National Park in Pima County threatens the Sonoran desert tortoise via several mechanisms, including elevated mortality on roads. The high rates of speed associated with competitive off-highway vehicle events significantly increase the risk of direct mortality of Sonoran desert tortoises from vehicle collisions (Vega 2010, p. 4).

Reptiles, including the Sonoran desert tortoise, may be particularly vulnerable to roads due to the higher risk of mortality as a result of vehicle strikes (Boarman and Sazaki 1996, p. 1; Boarman *et al.* 1997, p. 57; Forman and Alexander 1998, p. 213; Boarman 2002, pp. 54–55; Boarman and Sazaki 2006, p. 98; Dieringer 2010, p. 1). Anticipated adverse effects of roads on Sonoran desert tortoise populations are likely related to the level of their use. For example, Hoff and Marlow (2002, pp. 451–454) found that the impact of roads on the prevalence of Mojave desert tortoise signs (tracks, scat, etc.) was commensurate with traffic volume—with the impacts more significant adjacent to heavily traveled roads. Mojave desert tortoise populations showed depressed numbers within 1,300 feet (400 m) of highways in the Mojave Desert (Boarman and Sazaki 2006, p. 98). Similar effects to Sonoran desert tortoise populations might be expected when heavily used roads are adjacent to, or are routed through, core Sonoran desert tortoise habitat such as steep, boulder-strewn slopes within Arizona Upland Sonoran desertscrub (Dieringer 2010, p. 1; Grandmaison 2010b, p. 3).

Sonoran desert tortoises move slowly and take a relatively long time to cross roads and highways, which may place them at elevated risk (Andrews *et al.* 2008, p. 124). However, we suspect that, due to their size and shape (particularly in the sub-adult and adult size classes), drivers may instinctively avoid striking a crossing tortoise because of their similarity to rocks, and the subsequent damage that hitting a "rock" could do to a vehicle. However, intentional vehicle strikes of Mojave desert tortoises have been reported (Bury and Marlow 1973, p. 11). While unpaved roads traverse 16 of the 17 Sonoran desert tortoise monitoring plots, the AGFD is only aware of one instance of direct mortality of a Sonoran desert tortoise from a vehicle on a long-term monitoring plot, on the East Bajada Plot (AGFD 2010, p. 14).

Increased vegetation adjacent to paved or heavily compacted roads resulting from increased water runoff may be beneficial to Sonoran desert tortoises, serving as a means to rehydrate them, but it may also attract them to these areas, indirectly increasing the likelihood of adverse interactions from: (1) Tortoises wandering onto the road, (2) vehicles pulling onto the vegetated shoulder of the road and crushing tortoises, (3) injury from grading or mowing activities, (4) exposure to herbicides applied to control growth of weeds along the road shoulder, and (5) increased potential for observation and collection by passers-by (Boarman 2002, p. 55). As stated previously, Sonoran desert tortoises may use infrequently traveled gravel roads as travel routes within their home ranges (Grandmaison *et al.* in press, p. 16). This suggests that low density Sonoran desert tortoise populations observed adjacent to heavily traveled roads may be the result of mortality from vehicle collisions and illegal collection rather than road avoidance behavior (Grandmaison *et al.* in press, p. 16).

There appears to be a concerted effort to mitigate the potential effect of several roads and highways on Sonoran desert tortoise populations and their habitat. Barrier fencing (or tortoise fencing) and culverts along roads and highways are recognized methods employed throughout Arizona to reduce potential mortality through vehicle strikes of Sonoran desert tortoises. Installing tortoise fencing along roads and highways minimizes the risk of road mortality of tortoises but may also enhance the barrier effect between populations by restricting long-distance movements (Boarman and Sazaki 1996, p. 3). Culverts that pass under roads and highways may provide opportunities for Sonoran desert tortoises to safely cross roads and highways (Boarman and Sazaki 1996, pp. 3–4).

The ADOT constructs and maintains roads and highways that comprise Arizona's transportation system. It routinely implements varied conservation and mitigation actions with respect to Sonoran desert tortoise populations that may be affected by these activities. The ADOT (ADOT 2010, pp. 2–5) listed numerous conservation measures including those which address standard (voluntary and involuntary) mitigation measures, education, new construction design, habitat acquisition, native plant restoration, nonnative plant control, establishment of wildlife corridors, and research that have been integrated into their road system planning, construction, and improvement activities. Tortoise-proof fencing adjacent to highways has been installed along numerous routes throughout Arizona including 27.6 mi (44.4 km) along U.S. Highway 93 and 10.8 mi (17.4 km) along State Route 85 (ADOT 2010, p. 3). Numerous, additional structures that assist Sonoran desert tortoises to cross roads safely, such as pathways, ramps, and culverts, have been installed along the U.S. Highway 93 corridor and along a segment of the U.S. Highway 60 through the Tonto National Forest (ADOT 2010, p. 3).

The ability of tortoise fencing to prevent road mortality of Sonoran desert tortoises is highly contingent on inspections and maintenance. Sonoran desert tortoise fencing along 10 mi (16 km) of U.S. Highway 93 in Mohave and

Yavapai Counties in Arizona, between mile markers 144 and 155, was shown to have major deficiencies, including 567 individual fencing breaches and instances of culvert undercutting, which diminish the effectiveness of these mitigation techniques (Grandmaison 2010b, p. 3). Five Sonoran desert tortoise road-mortalities were documented in 2008 in this stretch of highway, though none was documented in 2009 (Grandmaison 2010b, p. 5). A rancher in southeastern Mohave County, Arizona, reported observations of Sonoran desert tortoises being killed on U.S. Highway 93, particularly after heavy rains, when adjacent tortoise barrier fencing along the highway gets washed out, allowing access of tortoises to the highway surface (Dieringer 2010, p. 1). Using radio-telemetry, Grandmaison (2010b, p. 6) found that Sonoran desert tortoises with home ranges within 0.62 mi (1 km) adjacent to this stretch of Highway 93 did not cross the highway. However, additional instances of Sonoran desert tortoise mortality on this and other major routes within the distribution of Sonoran desert tortoises undoubtedly occurs but is rarely reported.

Many activities undertaken by the ADOT minimize the effect of roads and highways on tortoise populations. However, we have concern regarding the lack of ongoing maintenance of protection structures such as tortoise barrier fencing. Therefore, we conclude that maintenance of tortoise protection structures is not adequate to meet the desired objective of these structures in many areas, or to protect Sonoran desert tortoise populations affected by heavily used roads and highways in Arizona.

Balloons and Trash

Helium-filled balloons are capable of dispersing great distances (greater than 164 mi (264 km)) from their release points, and have been shown to make up the largest percentage of litter types encountered in desert tortoise field studies (Walde *et al.* 2007a, p. 148). Desert tortoises are known to eat trash, such as balloons, plastic, and other garbage, which may kill them by becoming lodged in the gastrointestinal tract or by entangling the tortoise (Averill-Murray and Averill-Murray 2002, p. 27; Walde *et al.* 2007a, p. 148). Balloons and balloon string can also entangle the tortoise, sometimes leading to induced amputation of an appendage (Burge 1989, p. 7). Averill-Murray and Averill-Murray (2002, p. 27) reported 36 balloons found on Ironwood Forest National Monument in Pima County, Arizona, indicating that opportunities for a Sonoran desert tortoise to consume, or become entangled with balloons, exist. However, Averill-Murray and Averill-Murray (2002, p. 29) posited that while balloons may affect individuals, they are unlikely to cause population-level impacts to Sonoran desert tortoises.

Illegal dumping in Arizona is ubiquitous throughout the Sonoran Desert, but most concentrated in areas adjacent to human settlements. These relatively small but widely dispersed piles of solid and potentially hazardous waste may also serve as sources of toxicological contamination of Sonoran desert tortoises in areas where ingestion of contaminated soils or plant matter can occur.

In conclusion, balloons and trash occur throughout the range of the desert tortoise. Trash piles are most concentrated adjacent to human settlements but helium-filled balloons can travel many miles away from cities or towns and be deposited in remote habitat as they fall from the sky. We have documented that balloons in particular may pose health risks to Sonoran desert tortoises and are encountered in monitoring plots although specific reports of tortoises directly affected by balloons are rare in the literature. While effects can occur to individual tortoises, the literature did not indicate that population-level effects can be expected from such exposure.

Climate Change

There is unequivocal evidence that the earth's climate is warming based on observations of increases in average global air and ocean temperatures, widespread melting of glaciers and polar ice caps, and rising sea levels (IPCC 2007, p. 4). Furthermore, the Intergovernmental Panel on Climate Change (IPCC 2007, p. 7) summarized the likelihood of general future trends in several climatic variables, predicting: (1) Warmer and fewer cold days and nights over most land areas, (2) warmer and more frequent hot days and nights over most land areas, (3) more frequent warm spells/heat waves over most land areas, (4) changes in precipitation patterns favoring an increased frequency of heavy precipitation events (or proportion of total rainfall from heavy falls) over most areas, and (5) an increase in the area affected by droughts. All of these changes are caused by alterations in the energy balance within the atmosphere and the Earth's surface. The primary factors that affect this balance are concentrations of greenhouse gases (mainly carbon dioxide), aerosols, land surface properties, and solar radiation. These global climate changes will influence climatic patterns at regional and local scales.

At a regional scale, there is a broad consensus among climate models that the area encompassing the southwestern United States and northern Mexico will get drier in the twenty-first century and that the trend towards a more arid climate is already under way (Seager *et al.* 2007). Evidence to support such changes in temperature and rainfall in the southwest deserts is abundant. For example, maximum summer temperatures in the southwestern United States are expected to increase over time in response to changes in the climate system (Christensen *et al.* 2007, p. 887). Weiss and Overpeck (2005, p. 2075) examined low-temperature data over a 40-year timeframe from numerous weather stations in the Sonoran Desert ecoregion of Arizona and California, as well as the Mexican States of Baja California, Baja California Sur, and Sonora. They found: (1) Widespread warming trends in winter and spring, (2) decreased frequency of freezing temperatures, (3) lengthening of the freeze-free season, and (4) increased minimum temperatures per winter year. Such changes are likely to have widespread impacts on Southwestern ecosystems.

While temperatures in the Southwest are predicted to increase, rainfall patterns will also be affected. The current, multi-year drought in the western United States, including most of the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall, 2010, p. 1642). Numerous models predict a decrease in annual precipitation in the southwestern United States and northern Mexico. Solomon *et al.* (2009, p. 1707) predict precipitation amounts in the southwestern United States and northern Mexico will decrease by as much as 9 to 12 percent (measured as percentage of change in precipitation per degree of warming, relative to 1900 to 1950 as the baseline period). Christensen *et al.* (2007, p. 888) state, "The projection of smaller warming over the Pacific Ocean than over the continent, * * * is likely to induce a decrease in annual precipitation in the southwestern USA and northern Mexico." In addition, Seager *et al.* (2007, pp. 1181–1184) analyzed 19 models of differing variables to estimate the future climate of the southwestern United States and northern Mexico in response to predictions of changing climatic patterns. All but one of the 19 models predicted a drying trend within the southwest (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models and all but 3

predicted a shift to increasing aridity (dryness) in the southwest as early as 2021 to 2040 (Seager *et al.* 2007, p. 1181). While most climate change models predict less precipitation in the southwestern United States, a model produced by the Hadley Centre for Climate Prediction and Research (HadCM2) predicted increased precipitation throughout most of the United States, and particularly in the southwest (Weltzin *et al.* 2003, p. 942). While there may be some uncertainty associated with the predictions of decreased rainfall in the arid deserts, there is broad agreement that the overall trend will be reduced precipitation.

In addition to increasing trends in aridity, the timing of precipitation may also be altered as a result of climate change, which would result in important changes in the vegetation community within habitat of the Sonoran desert tortoise. The IPCC (2007, p. 20) found that winter precipitation in the southwestern United States is predicted to decline by as much as 20 percent as a result of climate change, while summer precipitation may increase slightly. Precipitation in Mojave desertscrub occurs predominantly during the cool-season (winter) months but, depending on location, it may also occur during the warm-summer months (Hereford *et al.* 2006, p. 29). Perennial plant species in Mojave desertscrub are most affected by changes in winter precipitation, as increases in winter precipitation increases germination and the establishment of new plants (Hereford *et al.* 2006, p. 25). In contrast, decreases in winter precipitation substantially increase mortality in perennial plants, most notably in short-lived species (Hereford *et al.* 2006, p. 25). In addition, decreasing winter precipitation has been linked with a high mortality of drought-resistant shrubs in parts of the Sonoran and Mojave deserts (McAuliffe and Hamerlynck 2010, p. 885). A reduction in winter precipitation could significantly alter the plant communities of the Sonoran and Mojave deserts.

Arid environments are especially sensitive to climate change, because the plants and animals that inhabit these areas are near their physical tolerances for temperature and water stress. Slight changes in temperature and rainfall, along with increases in the magnitude and frequency of extreme climatic events, can significantly alter species distributions and abundance (Archer and Predick 2008, p. 23). In fact, warming effects may be particularly severe for reptiles and amphibians. For instance, Walther *et al.* (2002, pp. 393–394) found that because of their physiology, reptiles and amphibians are sensitive to climatic changes, which may result in effects to their development, spatial distribution, and interactions with other species. Specifically, egg development, sperm development, and sex ratios may be affected by climatic changes in temperatures. Increased temperatures may influence sex ratios within clutches to favor females over males, which may benefit populations as one male can fertilize several females. However, if temperatures rise too much, the effect could strongly select for female-only clutches, significantly skewing the sex ratio within populations, and posing long-term problems for reptiles such as Sonoran desert tortoise populations (Walther *et al.* 2002, pp. 393–394). But as stated earlier, Sonoran desert tortoises build their nests in burrows underground, thereby tempering the effects of rising surface temperatures.

Sonoran desert tortoises may be affected directly by regional climate change. For example, increasing temperatures may cause desert tortoises to overheat (Ernst and Lovich 2009, p. 544). Sonoran desert tortoises are vulnerable to overheating because they heat up 10 times faster than they can cool down, making them potentially sensitive to temperature extremes associated with anticipated climate change (Ernst and Lovich 2009, p. 544). While climate change may directly affect the Sonoran desert tortoise, most of the impacts of climate change are anticipated to be indirect effects to the tortoise caused by other changes in the ecosystem that supports them. The following discussion describes anticipated indirect effects to the tortoise in response to predicted climate change effects.

Changes in atmospheric carbon dioxide and soil nitrogen levels are anticipated to affect the Sonoran desert tortoise through responses observed in their forage base. The desert ecosystems inhabited by the Sonoran desert tortoise are also expected to be sensitive to increased levels of carbon dioxide in the atmosphere. Desert shrub cover may increase with increasing carbon dioxide, but nonnative species may also respond positively, out-competing native vegetation (Smith *et al.* 2000, p. 79; Loubimsteva and Adams 2004, p. 401), thereby increasing the risk of fire. In addition, water and nitrogen are the biggest constraints that influence biological productivity in desert ecosystems (Ramanujan 2009, p. 1). Predicted higher temperatures are expected to cause higher levels of nitrogen to escape as a gas from desert soils, leading to a decrease in soil fertility (Ramanujan 2009, p. 1). Murphy *et al.* (in prep., p. ii) expect these responses in the vegetation community to adversely affect the quality of forage for Sonoran desert tortoises, leading to dietary nitrogen deficiencies.

Desert tortoises are likely to be affected by decreases in precipitation due to climate change. Rain is the single most important climatic factor that drives desert ecosystems because it ultimately determines recruitment rates, growth and reproduction rates, nutrient cycling, and net ecosystem productivity, resulting in these ecosystems being the most vulnerable to changes in precipitation levels (Weltzin *et al.* 2003, p. 944; Huxman *et al.* 2004, p. 254; Hereford *et al.* 2006, p. 25). Peterson (1996a, p. 1831) highlights the importance of rain for desert tortoises: "Energy acquisition and expenditure in desert tortoises are strongly constrained by the contingencies of rainfall, both indirectly through effects on availability and quality of food, and directly through reliance on freestanding water for drinking, which is apparently necessary for achieving a net annual energy profit." Desert tortoises evolved in arid conditions, and possess numerous physiological and behavioral adaptations to survive some degree of drought (Schmidt-Nelson and Bently 1966, p. 911; Peterson 1996b, p. 1325; Christopher 1999, p. 365; Duda *et al.* 1999, p. 1188; AIDTT 2000, p. 4; Berry *et al.* 2002b, pp. 443–446; Dickinson *et al.* 2002, pp. 251–252). Peterson (1996a, p. 1831) found desert tortoises have a very low field metabolic rate when compared to other desert reptiles, which may provide them an advantage in drought conditions. However, a decrease in winter precipitation may disproportionately affect reproductive females because they are highly dependent upon springtime forage. A decrease in winter precipitation is expected to adversely affect the quantity and quality of their forage. This, in turn, is likely to directly affect reproductive output of Sonoran desert tortoise populations (Hereford *et al.* 2006, p. 25). Persistent drought, and subsequent changes in the tortoise forage base, can affect blood chemistry and water metabolism, reduce or eliminate the thymus and fat stores, and result in skeletal muscle and liver atrophy in desert tortoises (Berry *et al.* 2002b, pp. 443–446; Dickinson *et al.* 2002, pp. 251–252).

Seasonal changes in rainfall may contribute to the spread of invasive species, such as Sahara mustard and exotic grasses, which are capable of explosive growth, and able to quickly

out-compete native species (Barrows *et al.* 2009, p. 673). As explained in *Factor A,* invasive species displace the native vegetation, reducing forage for tortoises, and increasing the threat of wildfires in desert ecosystems, resulting in further reduction of forage plants for the tortoise.

Droughts, which are likely to be more frequent and severe as a result of climate change, have been suggested to have caused in declines in local Sonoran desert tortoise populations. Periodic times of drought are not uncommon in the Southwest, and tortoises have evolved with drought. However, future drought conditions may be more severe and long-lasting than previously recorded droughts (Cook *et al.* 2004, p. 1016). The effects of drought have been shown to have significant population-level impacts on Mojave desert tortoises, as exhibited by the observed declines in their populations during years of drought-induced reductions in annual plants (Longshore *et al.* 2003, p. 169). As stated previously, Sonoran desert tortoises strongly benefit from the bimodal precipitation pattern characteristic of the Sonoran Desert region, specifically from precipitation received during the summer monsoon. However, the monsoon is characterized by highly-localized rainfall events of short duration and high magnitude, and can be spatially unpredictable. Therefore, while some Sonoran desert tortoise populations may receive satisfactory amounts of summer precipitation, others may be exposed to reduced monsoon precipitation totals, and potentially zero precipitation in a given year. This seems to have been the case during the late 1980s in the Maricopa Mountains near Phoenix, Arizona. The precipitous loss of 226 Sonoran desert tortoises in the Maricopa Mountains plot, which occurred between 1987 and 1990, is believed to have resulted from severe, localized drought, when no measurable rainfall occurred in that area in 1989. This indicates that even Sonoran desert tortoises may succumb to excessive drought conditions (Schwalbe 2010, p. 2). Subsequent surveys have shown that survivorship within this population has improved, and there is evidence that reproduction has resumed in this population. Also, a lack of additional carcasses found on the plot indicates that population declines have stabilized, and the population might be rebounding (AGFD 2010, p. 4). Drought conditions also apparently played a significant role in a decline of new Sonoran desert tortoise captures between 1988 and 1990 in the San Pedro Valley (Meyer *et al.* 2010, p. 11). Localized cases of population declines as a result of drought could be more common in the future, due to decreasing rainfall caused by climate change.

Another way to evaluate the threats to a species is the use of vulnerability assessments. The results of one assessment, conducted by Galbraith and Price (2009, p. ii) concluded that the desert tortoise within the United States was "highly vulnerable" to extinction as a result of climate change. The framework used by Galbraith and Price (2009, pp. 80–82) considered numerous factors including: (1) Current population size and trends, (2) range trends, (3) likely future stressor trends, (4) individual replacement time, (5) likely future vulnerability to stochastic events, (6) future vulnerability to policy/management change, (7) likely future vulnerability to natural stressors, (7) physiological sensitivity to temperature and precipitation change and to extreme weather events, (8) dispersive capability and potential rate of increase, (9) habitat specialization, (10) likely event of future habitat loss due to climate change, (11) ability of habitats to shift in response to climate change, and (12) dependence on temporal inter-relations and other species. They summarized: "Over the last three or four decades, these populations (Mohave and Sonoran) have come under high degrees of stress due largely to human activity (particularly urbanization and recreational intrusion) * * * Climate change may be a significant new stressor, causing even more habitat loss and exacerbating an already difficult situation. Together, existing stressors and the direct and indirect effects of climate change could result in desert tortoises being put at even greater risk of population reduction and extinction in their U.S. range."

Galbraith and Price (2009, pp. 79–80) estimate that at least 20 to 50 percent of habitat today will not be available to desert tortoises by 2020 as a result of climate change and, to a much lesser extent, anticipated development. However, in their analysis, Galbraith and Price (2009, pp. 74–84) largely disregarded the fact that the Sonoran desert tortoise ranges into Mexico (which represents approximately half of its total distribution), which should be factored into their vulnerability analysis. They also often misapplied or gave disproportionate influence to specific research on the Mojave desert tortoise in addressing the desert tortoise in the U.S. as a whole. While we found certain attributes of Galbraith and Price (2009, pp. 74–84) to be accurate, these identified shortcomings provide an incomplete picture of the status of the desert tortoise and its vulnerability to the effects of climate change.

Weiss and Overpeck (2005, p. 2074) disagreed with Galbraith and Price (2009, pp. 74–84). Accelerated increases in temperature projected as a result of climate change will potentially result in changes to the current geographical boundaries of the Sonoran Desert, as well as the distribution of associated plant species (Weiss and Overpeck 2005, p. 2074). Specifically, Weiss and Overpeck (2005, p. 2074) predicted that the current geographic boundary of the Sonoran Desert will contract in its southeast portion and expand in distribution and rise in elevation in the eastern and northern portions, thus potentially expanding areas of suitable habitat for the Sonoran desert tortoise. Weiss and Overpeck (2005, p. 2075) and Galbraith and Price (2009, p. 80) agreed that observed changes to the fire regime of the Sonoran Desert favor nonnative plant species, and may impede the trajectory or degree of potential expansion of the Sonoran Desert.

With the differences in predicted climate change under different scenarios, and the uncertainty of those effects on the tortoise, it is difficult to come to a definitive conclusion as to the potential impacts of climate change on the Sonoran desert tortoise. All, none, or a combination of these predictions may actually be realized in the future within the distribution of the Sonoran desert tortoise, which adds uncertainty to how the tortoise may respond to any given combination of these predictions. For example, warmer average temperatures may affect the Sonoran desert tortoise positively by lengthening annual surface-activity periods which may enhance reproduction potential and survivorship. Increased frequencies in heavy precipitation may provide more opportunities for rehydration of Sonoran desert tortoises and promote the production of forage species, whereby reducing daily foraging periods to both avoid excessive high temperatures and, as a consequence, lessen predation risks. However, higher temperatures coupled with drought conditions could also negatively affect the Sonoran desert tortoise by increasing metabolism rates, foraging needs, and associated foraging time, therefore increasing predation risk. Higher temperatures coupled with drought conditions could also reduce forage availability of plant species that depend on higher frequencies of precipitation events for growth (annual plant species that respond to monsoon storms).

The temporal aspect of anticipated changes in climate and their effects on the Sonoran desert tortoise and its habitat must be considered in context with the rate of evolutionary adaptation of the species. Skelly *et al.* (2007, pp. 1353–1355) examined preferred temperature ranges and thermal maxima, and suggested that some species with short generation times might evolve to meet the demands of a changing climate. The Sonoran desert tortoise has much longer generation times (approximately 12 to 15 years) and may therefore be more vulnerable to the effects of climate change, because they are unlikely to be able to rapidly adapt to environmental changes. Specifically, we do not expect their evolutionary processes to keep pace with the relatively fast-paced changes predicted as a result of climate change in the near- or mid-term.

Perhaps the most important aspect of projected changes in climate is the relative irreversibility of these changes into the future. Solomon *et al.* (2009, p. 1704) state that the effects of climate change will be irreversible for approximately 1,000 years, even if carbon emissions dropped to zero in current times, as a result of the longevity of atmospheric carbon dioxide and feedbacks associated with ocean warming (Solomon *et al.* 2009, p. 1709).

Summary of Factor E

Our review of the best scientific and commercial data available indicated that Sonoran desert tortoises may be vulnerable to the effects of environmental contamination: Ingestion of trash, including balloons; and substances from illegal solid waste dumps. However the literature did not indicate these threats were currently affecting populations and specific reports of affected individual tortoises were rare. Vehicle strike mortalities have been documented, and may have some local sub-population effects in close proximity to more heavily traveled roads and highways, but again, these effects are more localized and not rangewide, and thus do not appear to have overall population-level effects. Further, while management and mitigation actions are being implemented, such as the construction of barrier fences and culverts, these devices are generally not maintained and appear to be ineffective in helping to reduce these individual mortalities.

Climate change may also affect Sonoran desert tortoises. The combined effects of global and regional climate change, along with the effects of long-term drought, will play a role in the long-term persistence of the species. However, we are not able to quantify, with certainty, how the direct and indirect effects of climate change will affect Sonoran desert tortoise populations. Tortoise habitat may shift, native vegetation may change depending on rainfall patterns, increasing temperatures may affect the growth of native vegetation, the quality and quantity of desert tortoise forage may be affected, precipitation patterns will likely affect desert vegetation, and tortoises may experience physiological effects that could result in changes in reproduction and overall survival. We conclude that climate change may be a significant stressor that exacerbates current threats, both directly (physiological effects to the tortoise) and indirectly (habitat loss and fragmentation). As such, climate change, in and of itself, may affect Sonoran desert tortoise populations, but the magnitude of the impacts to the Sonoran desert tortoise remains uncertain. Climate change is not currently a threat to the Sonoran desert tortoise, but it has the potential to be a threat in the foreseeable future. Impacts from climate change in the future will likely exacerbate the current and ongoing threat of habitat loss caused by other factors, as discussed above.

Finding

As required by the Act, we conducted a review of the status of the Sonoran desert tortoise DPS and considered the five factors in assessing whether the DPS is threatened or endangered throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the Sonoran desert tortoise. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with species experts, land managers, and numerous stakeholders including Federal, State, and Tribal agencies.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat; however, reasonably strong data-based inferences are the minimum standard for considering a threat significant. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

Despite the history of conservation and management efforts afforded the Sonoran desert tortoise in Arizona, our review of the literature identified threats to the Sonoran desert tortoise attributable to all Threat Factors (*A–E*). The primary threats to the Sonoran desert tortoise from habitat modification and destruction (*Factor A*) include the: (1) Current and ongoing invasion of nonnative plant species resulting in an unnatural, destructive wildfire regime in portions of the species' distribution; (2) cumulative, anticipated indirect effects to habitat and individual tortoises from increased human activity tied to urbanization and human population growth; (3) current and anticipated creation of barriers to genetic exchange among populations from urbanization and associated infrastructure; (4) high and growing use and popularity of OHV use in Sonoran desert tortoise habitat; (5) mesquite and ironwood tree harvest in Mexico; (6) improper livestock grazing in Mexico; and (7) undocumented human immigration and interdiction activities. The primary threat to the Sonoran desert tortoise from overutilization for commercial, recreational, scientific, or educational purposes (*Factor B*) is illegal collection. The primary threat to the Sonoran desert tortoise from predation (*Factor C*) is the increase in feral or off-leash domestic dog predation and human depredation associated with anticipated increases in urbanization and human population growth. The Sonoran desert tortoise is also threatened by the inadequacy of regulatory mechanisms (*Factor D*). In our review of the available information, we found numerous examples where the Sonoran desert tortoise is considered in management actions and tortoise-specific mitigation measures are mandated, or where land activities that could appreciably threaten Sonoran desert tortoise populations are prohibited. However, significant threats we have identified in *Factors A, C,* and *E* (primarily invading nonnative plant

species and subsequent wildfire concerns, vandalism of tortoises, feral dog predation, and climate change) are not being adequately addressed by land managers or other regulatory mechanisms. The primary threats to the Sonoran desert tortoise from other natural or manmade factors affecting its continued existence (*Factor E*) include the threats from vehicle strike mortality due to unmaintained structures intended to prevent tortoise mortality along heavily traveled routes through core Sonoran desert tortoise populations. In addition, anticipated effects from climate change are likely to exacerbate the ongoing threat of habitat loss and degradation by other factors, but we were unable to conclude that climate change, by itself, currently threatens the Sonoran desert tortoise. We have documented adverse effects of many of these threats on existing Sonoran desert tortoise populations, both historically and currently, and note that many threats act in synergistic combination in their effects to the tortoise. The factors that are the primary drivers of these threats, such as urbanization, human population growth, and drought, are predicted to increase in the foreseeable future.

As a result of the numerous threats to the Sonoran desert tortoise identified above—which have occurred historically, continue today, and are predicted to continue in the foreseeable future—the tortoise has lost appreciable amounts of habitat to the collective footprint of urban development, agriculture, and infrastructure on the landscape. Collectively, these land changes have not only destroyed former Sonoran desert tortoise habitat, but have fragmented remaining populations, threatening long-term genetic fitness of the tortoise and precluding their recolonization ability in the event of population extirpations. In Mexico, significant areas of former Sonoran desert habitat have been significantly altered by the cultivation and natural colonization of invasive, nonnative plant species, and in combination with other threats, have likely greatly affected the viability of the Sonoran desert tortoise in that country.

Available monitoring data are not adequate to accurately determine how the Sonoran desert tortoise historically responded to the loss of habitat or how populations have individually responded to threats, but we are reasonably certain that there are fewer Sonoran desert tortoises currently than historically, and that populations have become significantly fragmented over time. Currently within Arizona, approximately 75 percent of potential Sonoran desert tortoise habitat is within 30 mi (48 km) or less of human populations of 1,000 people or more. The factors that have resulted in the loss or degradation of habitat, or threaten the tortoise directly, are predicted to worsen in the foreseeable future as the footprint of development and infrastructure grows and human population growth ensues. Some populations may disappear altogether, while others become smaller and more contracted; each of these scenarios exacerbates isolation and genetic and demographic exchange. Therefore, we reasonably anticipate that the Sonoran desert tortoise DPS is in danger of extinction in the foreseeable future throughout all or a significant portion of its range.

On the basis of the best scientific and commercial information available, we find that the petitioned action, to list the Sonoran desert tortoise is warranted. In making this finding, we gave significant deference to the irreversible effect of threats as they are anticipated to occur in the foreseeable future. We will make a determination on the status of the species as threatened or endangered when we do a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction at this time such that issuing an emergency regulation temporarily listing the DPS under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for this species at this time because we have not documented any significant population extirpations. However, if at any time we determine that issuing an emergency regulation temporarily listing the Sonoran desert tortoise is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098) to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). As a result of our analysis of the best available scientific and commercial information, we assigned the Sonoran desert tortoise a Listing Priority Number of 6, based on the high magnitude and non-imminence of threats. One or more of the threats discussed above are occurring in virtually every known population throughout its range. These threats are ongoing, and will continue to occur into the foreseeable future and, in some cases (such as nonnative plant species invasions and climate change effects), are considered irreversible. Our rationale for assigning the Sonoran desert tortoise an LPN of 6 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. Threats to the Sonoran desert tortoise vary in their magnitude. We found the most significant threats to the Sonoran desert tortoise to be the expansion of range and increase in number of nonnative plant species, urban development and associated human population growth in Arizona, and the highly popular and growing use of OHVs in Arizona. These threats have both direct and indirect effects to the Sonoran desert tortoise and its habitat. The area of land affected by nonnative species is widespread and, although currently and comparatively less significant in Arizona, it is substantial in Mexico. It is also expected to increase in the foreseeable future in both countries. When including the total land area adversely modified by ironwood and mesquite harvesting, it is projected that an estimated 98 percent of the Sonoran desert tortoises' habitat in Mexico (47 percent of habitat rangewide) will be lost or adversely modified in the foreseeable future. Additionally, there is currently no viable solution to the threat posed by the increase in nonnative plants on this landscape. The projected human population growth and urban development throughout this DPS are

likely to both pose significant problems for genetic exchange among Sonoran desert tortoise populations. This will increase the degree and scope of human interactions with tortoises and occupied habitat, which threatens the tortoise in a variety of ways that we discuss in detail above. Currently in Arizona, 75 percent of potentially occupied Sonoran desert tortoise habitat occurs within 30 mi (48 km) or less of a city or town with a human population of 1,000 or more, and, considering future growth projections, it is likely that 100 percent of occupied tortoise habitat will be affected in the future. The ever-expanding human population in Arizona is also likely to lead to commensurate increases in OHV use. As of 2007, 385,000 off-highway vehicles were registered in Arizona (a 350 percent increase since 1998), and 1.7 million people (29 percent of the Arizona's public) engaged in off-road activity from 2005 to 2007. We identified significant threats from OHV use in Sonoran desert tortoise habitat, including habitat destruction, increased illegal collection of tortoises, and significant problems with law enforcement of OHV users. Despite problems associated with OHV management, several land management agencies responsible for Sonoran desert tortoise habitat have plans to expand OHV use on their lands. These three major threats operate in combination with other threats which, by themselves, might not be as serious, but acting together, cause a more serious cumulative impact. These threats include improper livestock management in Mexico, illegal collection and release of tortoises, undocumented human immigration and associated interdiction activities, predation from feral or off-leash dogs, vehicle strike mortality from unmaintained, roadside mitigation devices, and anticipated possible effects from climate change. In their totality, these threats are high in magnitude because of the amount of habitat that is likely to be affected and the irreversible nature of the effect of these threats in sensitive habitats that are slow to rebound.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species that face actual, identifiable threats are given priority over those species for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. The threats are non-imminent because they are not ubiquitous throughout the range of the Sonoran desert tortoise where they occur. Some are acting currently in some areas, but not the whole DPS; some threats are likely to expand geographically over time; some are stabilized or even reducing in impact. Although we reviewed and discussed the numerous ways that individual Sonoran desert tortoises are affected by various threats, there is currently no evidence that any existing population is threatened with extirpation in the near future. So while some of the threats are happening now, impacts to tortoise populations are not likely to be evident in the immediate future.

For example, we have documented that the invasion of nonnative plants is most significant in Sonora, Mexico, because of active planting for livestock grazing purposes. However, while there were historic practices of planting nonnative plant species as forage for livestock in the United States, these activities have ceased, leaving only slower, natural mechanisms to facilitate the expansion of nonnative plant species in this country. Thus, comparatively less habitat area is significantly altered by nonnative plant distribution and abundance in Arizona, representing approximately half of the Sonoran desert tortoises' range. Additionally, monitoring data indicate that Sonoran desert tortoise populations persist in habitat that is unburned, but where nonnative species have become established. As stated in Factor A, wildfire is an important trigger, capable of making nonnative-invaded habitat unsuitable for Sonoran desert tortoises. The majority of nonnative-invaded Sonoran desert tortoise habitat remains unburned in the United States; however we are less certain about the occurrence of wildfire in nonnative-invaded habitat in Mexico. In both cases in Arizona and Mexico the ongoing conversion of habitats to nonnative grasses are not expected to impact tortoise populations in the very immediate future. Therefore, the actual impacts on tortoise populations from these and similar threats, such as climate change, are more likely to occur in the mid- to long-term future and are not considered imminent.

Also, many of the threats we discuss above are linked to urbanization and human population growth. In Arizona, we have observed significant development and human population growth over the past several decades, but a weakened economy has slowed growth in recent years. We documented that the Sun Corridor Megapolitan is expected to nearly double the human population of southern and central Arizona by 2030. However, much of the urbanization that has already occurred replaced agricultural land that was not usable Sonoran desert tortoise habitat. Additionally, our evaluation of Sonoran desert tortoise population monitoring data has not indicated that any monitored population has been extirpated and less than one-third of monitored populations have shown declines, indicating that impacts on Sonoran desert tortoise populations are not currently imminent. These actual, identifiable threats are covered in detail under the discussion of *Factors A* through *E* of this finding and currently include habitat destruction, modification, and fragmentation, overutilization, predation from unnatural sources, inadequate regulatory mechanisms, and other natural and manmade factors.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The Sonoran desert tortoise is a valid taxon at the DPS level, and therefore receives a lower priority than species in a monotypic genus. The Sonoran desert tortoise faces high magnitude, non-imminent threats, and is a valid taxon at the DPS level. Thus, in accordance with our LPN guidance, we have assigned the Sonoran desert tortoise an LPN of 6.

We will continue to monitor the threats to the Sonoran desert tortoise, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the Sonoran desert tortoise is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2011 we anticipate that we will be unable to use any of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have, in effect, determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying P.L. 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2010, $10,471,000 is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Therefore, a proposed listing is precluded if pending proposals with higher priority will require expenditure of at least $10,471,000, and expeditious progress is the amount of work that can be achieved with $10,471,000. Since court orders requiring critical habitat work will not require use of all of the funds within the critical habitat subcap, we used $1,114,417 of our critical habitat subcap funds in order to work on as many of our required petition findings and listing determinations as possible. This brings the total amount of funds we had for listing actions in FY 2010 to $11,585,417.

The $11,585,417 was used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. For FY 2011, on September 29, 2010, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we use a portion of our funding to work on the actions described above as they apply to listing actions for foreign species. This has the potential to further reduce funding available for domestic listing actions. Although there are currently no foreign species issues included in our high-

priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our administrative record).

Based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with an LPN of 2. Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species, or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest-priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. During FY 2010, we have completed two proposed delisting rules and two final delisting rules. Given the limited resources available for listing, we find that we made expeditious progress in FY 2010 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/08/2009	Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range.	Final Listing Threatened	74 FR 52013–52064.
10/27/2009	90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	74 FR 55177–55180.
10/28/2009	Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System.	Notice of Intent to Conduct Status Review for Listing Decision.	74 FR 55524–55525.
11/03/2009	Listing the British Columbia Distinct Population Segment of the Queen Charlotte Goshawk Under the Endangered Species Act: Proposed rule.	Proposed Listing Threatened	74 FR 56757–56770.
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout Its Range with Special Rule.	Proposed Listing Threatened	74 FR 56770–56791.
11/23/2009	Status Review of Gunnison sage-grouse (*Centrocercus minimus*)	Notice of Intent to Conduct Status Review for Listing Decision.	74 FR 61100–61102.
12/03/2009	12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	74 FR 63343–63366.
12/03/2009	90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	74 FR 63337–63343.
12/15/2009	90-Day Finding on Petitions To List Nine Species of Mussels From Texas as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	74 FR 66260–66271.
12/16/2009	Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat.	Notice of 90-day Petition Finding, Not substantial and Substantial.	74 FR 66865–66905.
12/17/2009	12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico.	Notice of 12-month petition finding, Warranted but precluded.	74 FR 66937–66950.

FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range.	Proposed Listing Endangered	75 FR 605–649.
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range	Proposed Listing Endangered	75 FR 286–310.
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310–316.
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges.	Final Listing Threatened	75 FR 235–250.
1/20/2010	Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*.	Notice of Intent to Conduct Status Review for Listing Decision.	75 FR 3190–3191.
2/09/2010	12-month Finding on a Petition to List the American Pika as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 6437–6471.
2/25/2010	12-Month Finding on a Petition To List the Sonoran Desert Population of the Bald Eagle as a Threatened or Endangered Distinct Population Segment.	Notice of 12-month petition finding, Not warranted.	75 FR 8601–8621.
2/25/2010	Withdrawal of Proposed Rule To List the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) as Threatened.	Withdrawal of Proposed Rule to List.	75 FR 8621–8644.
3/18/2010	90-Day Finding on a Petition to List the Berry Cave salamander as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 13068–13071.
3/23/2010	90-Day Finding on a Petition to List the Southern Hickorynut Mussel (*Obovaria jacksoniana*) as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial.	75 FR 13717–13720.
3/23/2010	90-Day Finding on a Petition to List the Striped Newt as Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 13720–13726.
3/23/2010	12-Month Findings for Petitions to List the Greater Sage-Grouse (*Centrocercus urophasianus*) as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 13910–14014.
3/31/2010	12-Month Finding on a Petition to List the Tucson Shovel-Nosed Snake (*Chionactis occipitalis klauberi*) as Threatened or Endangered with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 16050–16065.
4/5/2010	90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 17062–17070.
4/6/2010	12-month Finding on a Petition To List the Mountain Whitefish in the Big Lost River, Idaho, as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 17352–17363.
4/6/2010	90-Day Finding on a Petition to List a Stonefly (*Isoperla jewetti*) and a Mayfly (*Fallceon eatoni*) as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 17363–17367.
4/7/2010	12-Month Finding on a Petition to Reclassify the Delta Smelt From Threatened to Endangered Throughout Its Range.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 17667–17680.
4/13/2010	Determination of Endangered Status for 48 Species on Kauai and Designation of Critical Habitat.	Final Listing Endangered	75 FR 18959–19165.
4/15/2010	Initiation of Status Review of the North American Wolverine in the Contiguous United States.	Notice of Initiation of Status Review for Listing Decision.	75 FR 19591–19592.
4/15/2010	12-Month Finding on a Petition to List the Wyoming Pocket Gopher as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	75 FR 19592–19607.
4/16/2010	90-Day Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 19925–19935.
4/20/2010	Initiation of Status Review for Sacramento splittail (*Pogonichthys macrolepidotus)*.	Notice of Initiation of Status Review for Listing Decision.	75 FR 20547–20548.
4/26/2010	90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 21568–21571.
4/27/2010	12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 22012–22025.
4/27/2010	90-day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 22063–22070.
5/4/2010	90-Day Finding on a Petition to List Hermes Copper Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 23654–23663.
6/1/2010	90-Day Finding on a Petition To List *Castanea pumila* var. *ozarkensis*.	Notice of 90-day Petition Finding, Substantial.	75 FR 30313–30318.
6/1/2010	12-month Finding on a Petition to List the White-tailed Prairie Dog as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 30338–30363.
6/9/2010	90-Day Finding on a Petition To List van Rossem's Gull-billed Tern as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 32728–32734.
6/16/2010	90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 34077–34088.
6/22/2010	12-Month Finding on a Petition to List the Least Chub as Threatened or Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 35398–35424.
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 35746–35751.
6/23/2010	Listing *Ipomopsis polyantha* (Pagosa Skyrocket) as Endangered Throughout Its Range, and Listing *Penstemon debilis* (Parachute Beardtongue) and *Phacelia submutica* (DeBeque Phacelia) as Threatened Throughout Their Range.	Proposed Listing Endangered Proposed Listing Threatened.	75 FR 35721–35746.

FY 2010 AND FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
6/24/2010	Listing the Flying Earwig Hawaiian Damselfly and Pacific Hawaiian Damselfly As Endangered Throughout Their Ranges.	Final Listing Endangered	75 FR 35990–36012.
6/24/2010	Listing the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace as Endangered Throughout Their Ranges.	Proposed Listing Endangered	75 FR 36035–36057.
6/29/2010	Listing the Mountain Plover as Threatened	Reinstatement of Proposed Listing Threatened.	75 FR 37353–37358.
7/20/2010	90-Day Finding on a Petition to List *Pinus albicaulis* (Whitebark Pine) as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 42033–42040.
7/20/2010	12-Month Finding on a Petition to List the Amargosa Toad as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 42040–42054.
7/20/2010	90-Day Finding on a Petition to List the Giant Palouse Earthworm (*Driloleirus americanus*) as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 42059–42066.
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule.	Final Listing Endangered	75 FR 43844–43853.
7/27/2010	Final Rule to List the Medium Tree-Finch (*Camarhynchus pauper*) as Endangered Throughout Its Range.	Final Listing Endangered	75 FR 43853–43864.
8/3/2010	Determination of Threatened Status for Five Penguin Species	Final Listing Threatened	75 FR 45497–45527.
8/4/2010	90-Day Finding on a Petition To List the Mexican Gray Wolf as an Endangered Subspecies With Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 46894–46898.
8/10/2010	90-Day Finding on a Petition to List *Arctostaphylos franciscana* as Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial.	75 FR 48294–48298.
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 50813–50842.
8/17/2010	90-Day Finding on a Petition to List Brian Head Mountainsnail as Endangered or Threatened with Critical Habitat.	Notice of 90-day Petition Finding, Not substantial.	75 FR 50739–50742.
8/24/2010	90-Day Finding on a Petition to List the Oklahoma Grass Pink Orchid as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial.	75 FR 51969–51974.
9/1/2010	12-Month Finding on a Petition to List the White-Sided Jackrabbit as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	75 FR 53615–53629.
9/8/2010	Proposed Rule To List the Ozark Hellbender Salamander as Endangered.	Proposed Listing Endangered	75 FR 54561–54579.
9/8/2010	Revised 12–Month Finding to List the Upper Missouri River Distinct Population Segment of Arctic Grayling as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 54707–54753.
9/9/2010	12-Month Finding on a Petition to List the Jemez Mountains Salamander (*Plethodon neomexicanus*) as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 54822–54845.
9/15/2010	12-Month Finding on a Petition to List Sprague's Pipit as Endangered or Threatened Throughout Its Range.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 56028–56050.
9/22/2010	12-Month Finding on a Petition to List *Agave eggersiana* (no common name) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 57720–57734.
9/28/2010	Determination of Endangered Status for the African Penguin	Final Listing Endangered	75 FR 59645–59656.
9/28/2010	Determination for the Gunnison Sage-grouse as a Threatened or Endangered Species.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 59803–59863.
9/30/2010	12-Month Finding on a Petition to List the Pygmy Rabbit as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 60515–60561.
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690.
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095.

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011, but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
6 Birds from Eurasia	Final listing determination.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Flat-tailed horned lizard	Final listing determination.
Mountain plover [4]	Final listing determination.
6 Birds from Peru	Proposed listing determination.
Pacific walrus	12-month petition finding.
Wolverine	12-month petition finding.
Solanum conocarpum	*12-month petition finding.*
Desert tortoise—Sonoran population	12-month petition finding.
Thorne's Hairstreak butterfly [3]	12-month petition finding.
Hermes copper butterfly [3]	12-month petition finding.
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
Georgia pigtoe, interrupted rocksnail, and rough hornsnail	Final listing determination.
7 Bird species from Brazil	Final listing determination.
Southern rockhopper penguin—Campbell Plateau population	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace) [4].	Final listing determination.
Altamaha spinymussel	Final listing determination.
Salmon crested cockatoo	Proposed listing determination.
CA golden trout	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mount Charleston blue butterfly	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding.
Dusky tree vole	12-month petition finding.
3 MT invertebrates (mist forestfly(*Lednia tumana*), *Oreohelix* sp.3, *Oreohelix* sp. 31) from 206 species petition.	12-month petition finding.
5 UT plants (*Astragalus hamiltonii, Eriogonum soredium, Lepidium ostleri, Penstemon flowersii, Trifolium friscanum*) from 206 species petition.	12-month petition finding.
2 CO plants (*Astragalus microcymbus, Astragalus schmolliae*) from 206 species petition	12-month petition finding.
5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere* (*Arabis*) *pusilla, Penstemon gibbensii*) from 206 species petition.	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition)	12-month petition finding.
Gopher tortoise—eastern population	12-month petition finding.
Wrights marsh thistle	12-month petition finding.
67 of 475 southwest species	12-month petition finding.
Grand Canyon scorpion (from 475 species petition)	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition)	12-month petition finding.
Rattlesnake-master borer moth (from 475 species petition)	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition)	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezi*) (from 475 species petition).	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Berry Cave salamander [1]	12-month petition finding.
Striped Newt [1]	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Puerto Rico Harlequin Butterfly	12-month petition finding.
Western gull-billed tern	12-month petition finding.
Ozark chinquapin (*Castanea pumila* var. *ozarkensis*)	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
Whitebark pine	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
Smooth-billed ani [1]	90-day petition finding.
Bay Springs salamander [1]	90-day petition finding.
32 species of snails and slugs [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Red knot *roselaari* subspecies	90-day petition finding.
Peary caribou	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Plains bison	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Spring pygmy sunfish	90-day petition finding.
Bay skipper	90-day petition finding.
Unsilvered fritillary	90-day petition finding.
Texas kangaroo rat	90-day petition finding.
Spot-tailed earless lizard	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
Prairie chub	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
Golden-winged warbler [4]	90-day petition finding.
Sand-verbena moth	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly) [4]	90-day petition finding.
American eel [4]	90-day petition finding.
Gila monster (Utah population) [4]	90-day petition finding.
Arapahoe snowfly [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
High-Priority Listing Actions [3]	
19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9)	Proposed listing.
19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
Dune sagebrush lizard (formerly Sand dune lizard) [3] (LPN = 2)	Proposed listing.
2 Arizona springsnails [2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2))	Proposed listing.
New Mexico springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
2 mussels [2] (rayed bean (LPN = 2), snuffbox No LPN)	Proposed listing.
2 mussels [2] (sheepnose (LPN = 2), spectaclecase (LPN = 4),)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)).	Proposed listing.
Umtanum buckwheat (LPN = 2) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN =2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The Sonoran desert tortoise will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this DPS as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for the Sonoran desert tortoise will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the Arizona Ecological Services Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 23, 2010.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–31000 Filed 12–13–10; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
December 14, 2010

Part VI

The President

Proclamation 8616—Human Rights Day, Bill of Rights Day, and Human Rights Week, 2010

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Presidential Documents

Title 3—

The President

Proclamation

Human Rights Day, Bill of Rights Day, and Human Rights Week, 2010

By the President of the United States of America

A Proclamation

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. More than 60 years later, the Declaration reflects the world's commitment to the idea that "all human beings are born free and equal in dignity and rights." As Americans, this self-evident truth lies at the heart of our Declaration of Independence, our Constitution, and our Bill of Rights. It is a belief that, while every nation pursues a path rooted in the culture of its own citizens, certain rights belong to all people: freedom to live as they choose, to speak openly, to organize peacefully, to worship freely, and to participate fully in the public life of their society with confidence in the rule of law.

Freedom, justice, and peace for the world must begin with basic security and liberty in the lives of individual human beings. Today, we continue the fight to make universal human rights a reality for every person, regardless of race, gender, religion, nationality, sexual orientation, or circumstance. From the freedom to associate or criticize to the protection from violence or unlawful detention, these inherent civil rights are a matter of both pragmatic and moral necessity.

The challenges of a new century call for a world that is more purposeful and more united. The United States will always speak for those who are voiceless, defend those who are oppressed, and bear witness to those who want nothing more than to exercise their universal human rights. Our Bill of Rights protects these fundamental values at home, and guides our actions as we stand with those who seek to exercise their universal rights, wherever they live. Countries whose people choose their leaders and rely on the rule of law are more likely to be peaceful neighbors and prosperous partners in the world community.

Part of the price of our own blessings of freedom is standing up for the liberty of others. As we observe Human Rights Day, Bill of Rights Day, and Human Rights Week, let us recommit to advancing human rights as our common cause and moral imperative. Let us continue to stand with citizens, activists, and governments around the world who embrace democratic reforms and empower free expression. Together, we can advance the arc of human progress toward a more perfect Union and a more perfect world—one in which each human being lives with dignity, security, and equality.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 10, 2010, as Human Rights Day; December 15, 2010, as Bill of Rights Day; and the week beginning December 10, 2010, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–31566
Filed 12–13–10; 11:15 am]
Billing code 3195–W1–P

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