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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 12, 2006
9:00 a.m.-Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Presidential Determination No. 2006–22 of August 28, 2006

The President

Transfers of Defense Articles and Services in Support of Sudan Security Sector Transformation (SST) Program**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 40(g) of the Arms Export Control Act (AECA), I hereby:

- Determine that the transaction, encompassing transfers of defense articles and services, funded by United States Government assistance, necessary for an SST program for the Government of Southern Sudan that will support transformation of the Sudan People's Liberation Army from a guerrilla force into a smaller, conventional force is essential to the national security interests of the United States. Such transfers include the provision of vehicles and communications equipment; power generation; facilities construction/renovation; training and technical assistance; recommendations for force structure, training, equipment, infrastructure, and resource management; and other defense articles and services in support of military reform in Southern Sudan, including support to the Sudan People's Liberation Movement;
- Waive the prohibitions in section 40 of the AECA related to such transaction; and
- Assign to you the functions under section 40(g)(2) of the AECA to consult with and submit reports to the Congress for proposed specific exports or transfers, 15 days prior to permitting them to proceed, that are necessary for and within the scope of this determination and the transaction referred to herein.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 28, 2006.

Rules and Regulations

Federal Register

Vol. 71, No. 176

Tuesday, September 12, 2006

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206-AK85

Examining System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as a final rule, without changes, an interim rule that amended its direct-hire authority regulations to allow non-Department of Defense agencies to recruit and appoint highly-qualified individuals for certain Federal acquisition positions deemed a shortage category under the Services Acquisition Reform Act of 2003.

DATES: This rule is effective October 12, 2006.

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

SUPPLEMENTARY INFORMATION: On August 4, 2005, OPM published an interim rule at 70 FR 44847, to amend its regulation to allow non-Department of Defense (DoD) agencies to determine whether a shortage of highly-qualified individuals exists for Federal acquisition positions covered under section 433(g)(1)(A) of title 41, United States Code (U.S.C.).

As background, this action implements section 1413 of Public Law 108-136 which allows department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in 41 U.S.C. 433(g)(1)(A).

When determining the existence of a shortage of highly-qualified individuals, non-DoD agencies are required to use the supporting evidence prescribed in section 337.204(b) of title 5, Code of Federal Regulations (CFR). The supporting evidence must be kept on file for documentation and reporting purposes.

When filling Federal acquisition positions, agencies must comply with public notice requirements as prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G. Agencies must post a job announcement on OPM's USAJOBS Web site when filling jobs under direct-hire authority procedures to be in compliance with public notice requirements.

The direct-hire authority for Federal acquisition positions under the provisions of section 1413 of Public Law 108-136 will terminate on September 30, 2007. Agencies may not appoint any individual to a position of employment using this authority after September 30, 2007.

Section 1413(c) requires OPM to submit to Congress a report on the implementation and effectiveness of the direct-hire authority in attracting employees with unusually high qualifications to the acquisition workforce and to make any appropriate recommendations regarding whether to extend the authority. Non-DoD agencies are required to submit a report to OPM on their implementation and use of section 1413 of Public Law 108-136 by December 31, 2006.

During the comment period, OPM received ten comments from the general public. Of the comments received, five comments claim that agencies are using outdated acquisition qualification standards and are applying the OPM qualification standards for acquisition positions incorrectly. These comments also included requests for assistance in obtaining an acquisition position in the Federal Government. Under direct-hire authority, agencies are required to use the approved qualification standards in OPM's Operating Manual: Qualification Standards for General Schedule Positions which is located at <http://www.opm.gov/qualifications/index.asp>. It is the responsibility of each agency to ensure that the proper qualification standard is applied and individuals who are appointed under direct-hire authority meet these qualifications. We

did not make any changes to the interim regulation based on these comments.

OPM was commended by an individual for granting direct-hire authority for Federal acquisition positions to agencies. The same individual stated a concern that agencies will use this authority to bypass and ignore veterans' preference eligibles. The Chief Human Capital Officers Act of 2002 (Pub. L. 107-296; 116 Stat. 2290), gives direct-hire authority to agencies to appoint individuals, without regard to the veterans' preference provisions of 5 U.S.C. 3309-3318, when OPM determines there is a severe shortage of candidates or critical hiring need. The Services Acquisition Reform Act gives direct-hire authority to non-DoD agencies for acquisition positions provided they meet the criteria in 5 CFR 337.204. We did not make any changes to the interim regulation based on this comment.

A comment was received asking where an individual can find an acquisition position covered under direct-hire authority. The interim regulation follows the same rules as other direct-hire authorities prescribed in 5 CFR part 337, subpart B. Agencies are required to announce their positions on OPM's Governmentwide list of vacant positions at <http://www.usajobs.opm.gov>. This requirement is clearly stated in 5 CFR 337.203, Public notice requirements. We did not make any changes to the interim regulation based on this comment.

One commenter requested a list of agencies that are hiring for Federal acquisition positions which OPM has deemed a shortage category under the Services Acquisition Reform Act. The purpose of the interim regulation was to amend OPM's regulation to allow non-DoD agencies to determine on their own whether a shortage of highly-qualified individuals exists for Federal acquisition positions covered under 41 U.S.C. 433(g)(1)(A). We did not adopt the suggestion to develop a list of agencies with Federal acquisition direct-hire authority. It is outside the scope of this regulation. However, information on OPM-approved Governmentwide direct-hire authorities can be obtained by visiting OPM's Web site at http://www.opm.gov/employ/direct_hire/index.asp.

One commenter commended OPM for allowing non-DoD agencies to determine their own direct-hire authority for Federal acquisition positions because it reduces the red tape in the hiring process. However, the commenter suggested different assessment methods and tools for hiring good individuals for acquisition positions. We did not adopt this suggestion. It is outside the scope of this regulation.

The last comment did not involve acquisition positions; therefore, it is outside the scope of this amendment.

We are therefore adopting the interim regulation as a final regulation without changes.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 337

Government employees.

Office of Personnel Management.

Linda M. Springer,
Director.

■ Accordingly, the interim rule amending 5 CFR part 337, which was published at 70 FR 44847 on August 4, 2005, is adopted as a final rule without changes.

[FR Doc. E6-15016 Filed 9-11-06; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2006-0116]

Gypsy Moth Generally Infested Areas; Addition of Counties in Ohio and West Virginia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding Delaware and Franklin Counties in Ohio and Monroe County in West Virginia to the

list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: This interim rule is effective September 12, 2006. We will consider all comments that we receive on or before November 13, 2006.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0116 to submit or view public comments and to view supporting and related materials available electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to APHIS-2006-0116, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to APHIS-2006-0116.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-5705.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45

through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding two counties in Ohio and one county in West Virginia to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the States of Ohio and West Virginia, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Delaware and Franklin Counties, OH, and in Monroe County, WV. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and

shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), the entries for Ohio and West Virginia are amended by adding new counties in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a)	*	*	*	*	*
	*	*	*	*	*
Ohio					
*	*	*	*	*	*
	<i>Delaware County.</i> The entire county.				
*	*	*	*	*	*
	<i>Franklin County.</i> The entire county.				
*	*	*	*	*	*
West Virginia					
*	*	*	*	*	*
	<i>Monroe County.</i> The entire county.				
*	*	*	*	*	*

Done in Washington, DC, this 6th day of September 2006.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.
[FR Doc. E6–15059 Filed 9–11–06; 8:45 am]
BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AD01

Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is finalizing its interim rule, with changes, that amended regulations to implement deposit insurance revisions made by the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005.

DATES: The final rule is effective on October 12, 2006.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Counsel, (202) 898–7349, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The FDIC issued an interim rule, effective April 1, 2006, to implement the deposit-insurance revisions in the Federal Deposit Insurance Reform Act of 2005 (Pub. L. 109–171) (“Reform Act”) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Pub. L. 109–173). The comment period on the interim rule ended on May 22, 2006, 71 FR 14629 (Mar. 23, 2006) (“Interim Rule”).

The Reform Act made three substantive changes to the insurance coverage provisions of the Federal Deposit Insurance Act (12 U.S.C. 1813–1835a). Those changes are discussed in detail in the preamble to the Interim Rule. Summarizing: first, section 2103(a) of the legislation provides for an inflation index to be applied to the current maximum deposit insurance amount of \$100,000, defined in the Reform Act as the “standard maximum deposit insurance amount” (“SMDIA”). Beginning April 1, 2010, and every succeeding five years, subject to approval by the Board of Directors of the FDIC and the National Credit Union Administration Board, the current SMDIA could be increased by a cost-of-living adjustment.

Second, section 2103(c) of the Reform Act increases the deposit insurance limit for “certain retirement accounts” from \$100,000 to \$250,000, also subject to the inflation adjustment described above. The types of accounts that come within this provision are detailed below. And, third, section 2103(b) of the Reform Act provides per-participant coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits. The Reform Act eliminates the former requirement that an insured depository institution meet prescribed capital requirements before employee benefit plan deposits accepted by that institution would be eligible for per-participant coverage.

II. Comments on the Interim Rule

The FDIC received three written comments on the Interim Rule. Each of the comments was from a national banking industry trade association. The first trade association simply stated its support for the Interim Rule. The second association stated its support for

the Interim Rule and commended the FDIC for issuing the interim regulations and making them effective within two months of the passage of the Reform Act. The comment endorsed the FDIC's approach in amending its regulations to implement the deposit insurance revisions to the FDI Act.

The third banking industry trade group also expressed support for the Interim Rule and commended the FDIC for moving quickly to put the provisions into effect. In addition, this trade group suggested that the FDIC clarify through the use of examples the types of deposit accounts that are and are not eligible for the increased insurance coverage. In particular, the trade group noted that bankers have questions concerning some types of defined contribution plan accounts and that the nomenclature used in the FDIC's retirement account regulations might not match the terminology used and understood by bankers and depositors. The association also suggested that the FDIC provide a more detailed explanation of the term "self-directed" in connection with the eligibility of certain Keogh plan accounts and defined contribution plan accounts for the increased coverage of \$250,000.

The FDIC agrees with the trade group's comments and, therefore, has provided below a discussion more clearly specifying the types of retirement accounts that are, and are not, eligible for coverage up to \$250,000. We also provide a more detailed explanation of the term "self-directed." The FDIC intends to include this clarifying information in its educational materials to bankers and the public on deposit insurance coverage.

III. The Final Rule

A. Overview

The final rule makes no substantive changes to the Interim Rule. The only revisions to the regulation text are the technical changes explained below. As noted, the following discussion is in response to the suggestion made by one of the commenters that the FDIC be more specific about the types of retirement accounts eligible for the new \$250,000 coverage limit.

B. Types of Retirement Accounts Eligible for the Increased Coverage Limit of \$250,000

As specified in the FDI Act (12 U.S.C. 1821(l)), the types of accounts within this category of coverage continue to be comprised of: (1) Individual retirement accounts described in section 408(a) of the Internal Revenue Code ("IRC") (26 U.S.C. 408(a)) ("IRAs"); (2) eligible

deferred compensation plan accounts described in section 457 of the IRC (26 U.S.C. 457) ("Section 457 Plan Accounts"); and (3) individual account plans defined in section 3(34) of the Employee Retirement Income Security Act ("ERISA") (29 U.S.C. 1002) ("Defined Contribution Plan Accounts") and any plan described in section 401(d) of the IRC ("Keogh Plan Accounts"), to the extent that participants and beneficiaries under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans. Each of these types of retirement accounts is discussed below.

IRAs

Section 408(a) of the IRC defines an IRA as a "trust created or organized in the United States for the exclusive benefit of an individual or his or her beneficiaries, but only if the written governing instrument creating the trust meets [specified] requirements."¹ For purposes of deposit insurance coverage, IRAs include: *traditional* IRAs (into which individuals may make tax-deductible contributions, within prescribed dollar limitations, on which the earnings are tax-deferred); Roth IRAs² (into which individuals may make contributions (within prescribed dollar limitations) the earnings on which are tax-free; *Simplified Employee Pension* ("SEP") IRAs³ (into which employers may make contributions to traditional IRAs established by employees); and *Savings Incentive Match Plans for Employees* ("SIMPLE") IRAs⁴ (into which employers of eligible small companies are required to make either matching contributions to the plan or non-elective contributions paid to eligible employees regardless of whether the employee makes salary-reduction contributions to the plan).

¹ During the pendency of the Interim Rule a Puerto Rico resident asked whether IRAs issued by FDIC-insured banks in Puerto Rico would be eligible for the \$250,000 maximum insurance coverage provided under the Reform Act. The person expressed concern that such IRAs might not meet the definition of IRAs in the applicable provision of the FDI Act, 12 U.S.C. 1821(a)(3) ("Section 11(a)(3)"). Section 11(a)(3) encompasses IRAs "described in section 408(a) of [the Internal Revenue Code]" ("Section 408(a)"). In answer to the person's inquiry, the FDIC deems IRAs issued by banks in Puerto Rico to qualify as IRAs described in Section 408(a) because the IRA provisions of the Puerto Rico tax code are sufficiently similar to the provisions of Section 408(a). 13 L.P.R.A. 8569 (2005). This treatment of IRAs at FDIC-insured institutions in Puerto Rico is the same as the treatment of IRAs at credit unions in Puerto Rico insured by the National Credit Union Share Insurance Fund. 12 CFR 745.9-2.

² 26 U.S.C. 408A.

³ 26 U.S.C. 408(k).

⁴ 26 U.S.C. 408(p).

Like the other retirement accounts, all IRA products must be held in the form of deposits at FDIC-insured depository institutions to be eligible for FDIC deposit insurance coverage. An individual's interests in all these types of IRAs are combined with his or her interests in any of the other retirement accounts (eligible for the \$250,000 coverage limit) and insured to a limit of \$250,000. For example, if an individual has \$75,000 in a traditional IRA, \$100,000 in a Roth IRA and a \$100,000 interest in a self-directed Defined Contribution Plan Account, \$250,000 of the combined amount of the accounts would be insured and \$25,000 would be uninsured.

The increased coverage of \$250,000 for IRAs applies irrespective of whether an IRA is "self-directed," a subject more fully discussed below.

Section 457 Plan Accounts

Section 457 plans are defined in section 457 of the IRC to include eligible deferred compensation plans provided by state and local governments, as well as not-for-profit organizations. As provided under the applicable provisions of the FDI Act, deposit accounts held at FDIC-insured institutions in connection with Section 457 Plans are eligible for insurance coverage up to \$250,000 per plan participant. This coverage applies irrespective of whether the Section 457 Plan is "self-directed."

Self-Directed Defined Contribution Plan Accounts

A Defined Contribution Plan Account is defined in ERISA as a "pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains losses, and any forfeiture of accounts of other participants which may be allocated to such participant's account."⁵ As provided for in the applicable provisions of the FDI Act (as revised by the Reform Act), Defined Contribution Plan Accounts held in the form of deposits at FDIC-insured institutions are eligible for coverage up to \$250,000 per participant's interest; however, the FDI Act specifies that this coverage is provided only if the participants under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans. This means that only "self-directed" Defined Contribution Plan Accounts come within the "certain retirement account" category of

⁵ 29 U.S.C. 1002(34).

coverage. As indicated in the Interim Rule and discussed in more detail below, the FDIC continues to define the term “self-directed” to mean that the plan participants have the right to direct how their funds are invested, including the ability to direct that the funds be deposited at an FDIC-insured institution.

The most common type of Defined Contribution Plan Account is the popular section 401(k) plan, established under section 401(a) and 401(k) of the IRC (26 U.S.C. 401(a) and 401(k)). Self-directed Savings Incentive Match Plans for Employees held in the form of 401(k) plans (referred to as SIMPLE 401(k)s) qualify under this account category as well as self-directed defined contribution money purchase plans (in which employer contributions are fixed) and self-directed defined contribution profit-sharing plans (in which employer contributions are based on company profits).

Self-Directed Keogh Plan Accounts

Section 401(d) of the IRC describes a “trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees.” These so-called “Keogh” (or “H.R. 10”) plan accounts are designed for self-employed individuals. As provided for in the applicable provisions of the FDI Act (as revised by the Reform Act), “self-directed” Keogh plan accounts held in the form of deposits at FDIC-insured institutions are eligible for coverage up to \$250,000 per participant’s interest.

C. The Meaning of “Self-Directed”

As indicated in the Interim Rule and reiterated above, the FDIC continues to define the term “self-directed” to mean that plan participants have the right to direct that their funds be deposited into a specific FDIC-insured institution. One question the FDIC received on the Interim Rule was whether an open-ended plan, in which the participants could choose any investment, would be considered “self-directed.” A related question involved a feature of a plan where, if the employee does not make any other selection, he or she will be deemed to have chosen to invest funds in a deposit account. In response to the comment on an open-ended investment plan, as long as the participant has the right to choose a particular depository institution’s deposit as an investment, the FDIC would consider the account to be “self-directed.” Also, if a plan has as its “default” investment option deposits of a particular FDIC-insured institution, the FDIC would deem the plan to be

self-directed for deposit insurance purposes because, by inaction, the participant has directed that the funds be placed at an FDIC-insured institution. As explained in an FDIC advisory opinion, if a plan’s only investment vehicle is the deposits of a particular bank, so that participants have no choice of investments, the plan would not be deemed “self-directed” for deposit insurance purposes. FDIC Adv. Op. 93–65 (Sept. 17, 1993). If, however, a plan consists only of a single employer/employee, because the employer establishes the plan with a single-investment option of plan assets, the plan would be considered “self-directed.” Hence, single employer/employee defined contribution plans which limit the options of fund investments to deposits of a particular insured depository institution would be self-directed for deposit insurance purposes.

D. Accounts Not Qualifying for the Increased Coverage

In response to questions received during the comment period, it is important to emphasize that only the types of retirement accounts specified in the FDI Act are eligible for the increased retirement account insurance limit of \$250,000. Thus, accounts such as Coverdell education savings accounts, Health Savings Accounts and Medical Savings Accounts are not eligible for the increased coverage limit. Also, accounts established under section 403(b) of the IRC (annuity contracts for certain employees of public schools, tax-exempt organizations and ministers) do not come within the retirement account category.

Notably, defined-benefit plans (in which benefits are predetermined by an employee’s compensation, years of service and age) are not within the category of retirement accounts. For deposit insurance purposes, they are treated as employee benefit plans eligible for pass-through coverage up to \$100,000 per participant’s interest. 12 CFR 330.14(a). Defined contribution plan accounts and Keogh plan accounts that are not “self-directed” also would not be insured under the retirement account category. Instead, they would be insured as employee benefit plan accounts.

E. Technical Revisions

In the Interim Rule the FDIC inadvertently retained Section 457 accounts in the category of employee benefit plans under section 330.14(a) eligible for per-participant coverage of \$100,000. As noted, Section 457 Plan Accounts are eligible for the increased

coverage of \$250,000. The final rule corrects these technical errors.

IV. Paperwork Reduction Act

The final rule will implement statutory changes to the FDIC’s deposit insurance regulations. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when an agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). Because the revisions to part 330 were published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a “major rule” within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation adopts as a final rule the interim final rule amending 12 CFR part 330, which was published at 71 FR 14629 on March 23, 2006, with the following changes:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819 (Tenth), 1820(f), 1821(a), 1822(c).

■ 2. In section 330.14, revise paragraph (a); redesignate (b)(2)(A), (b)(2)(B), (b)(2)(C) as (b)(2)(i), (b)(2)(ii) and (b)(2)(iii), respectively; and revise newly designated (b)(2)(ii) to read as follows:

§ 330.14 Retirement and other employee benefit plan accounts.

(a) “Pass-through” insurance. Any deposits of an employee benefit plan in an insured depository institution shall be insured on a “pass-through” basis, in the amount of up to the SMDIA for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied. Deposits eligible for coverage under paragraph (b)(2) of this section that also are deposits of an employee benefit plan or deposits of an deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457) in an insured depository institution shall be insured on a “pass-through” basis in the amount of \$250,000 for the non-contingent interest of each plan participant, provided the rules in § 330.5 are satisfied.

(b) * * *

(2) * * *

(ii) Any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986 (26 U.S.C. 457); and

* * * * *

By order of the Board of Directors.

Dated at Washington DC, this 5th day of September 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6-15065 Filed 9-11-06; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25773; Directorate Identifier 2006-SW-16-AD; Amendment 39-14758; AD 2006-19-01]

RIN 2120-AA64

Airworthiness Directives; Eurocopter Model AS350B, B1, B2, B3, BA, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter helicopters. This action requires, within 10 hours time-in-service (TIS), inspecting the tapered housing of each main servo-control (MSC) for a crack. If no crack is found, this AD requires, before further flight, retorquing the upper ball-end attachment nut of the MSC. If a crack is found, this AD requires, before further flight, replacing the MSC with an airworthy MSC. This amendment is prompted by the discovery of cracks in the tapered housings of MSCs. The actions specified in this AD are intended to detect a crack in the MSC tapered housing and to prevent loss of the attachment of the MSC to the upper attachment yoke, loss of the main rotor control, and subsequent loss of control of the helicopter.

DATES: Effective September 27, 2006.

Comments for inclusion in the Rules Docket must be received on or before November 13, 2006.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

- Fax: (202) 493-2251; or

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the Docket

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

the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified Eurocopter helicopters. This AD applies to MSCs not modified per MOD 073343 and on which the tightening torque of the attachment nut that secures the upper ball end has been increased by following MOD 073191 or complying with MET Work Card 67.30.00.402 since MET Revision 04-06 for Model AS350 helicopters and Revision 04.08 for Model AS355 helicopters. This action requires, within 10 hours TIS, inspecting the tapered housing of the MSC for a crack. If no crack is found, this AD requires before further flight, adjusting the torque of the upper ball-end attachment nut of the MSC to between 177-199 in-lbs (2-2.25 decanewton meters (daN·m)). If a crack is found, before further flight, this AD also requires replacing the MSC with an airworthy MSC. This amendment is prompted by the discovery of cracks in the tapered housings of MSCs. The condition, if not detected, could result in the loss of the attachment of the MSC to the upper attachment yoke, loss of main rotor control, and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on Eurocopter Model AS 350 and AS 355 helicopters. EASA advises of the discovery of cracks in the tapered housings of MSCs during scheduled inspections. EASA also advises that a very long crack in the tapered housing of an MSC can lead to loss of the attachment of the MSC concerned (sic) to the nonrotating swashplate and consequently loss of the helicopter.

Eurocopter has issued Alert Service Bulletin (ASB) Nos. 05.00.51 for Model AS350B, BA, BB, B1, B2, B3, and D helicopters, and 05.00.48 for Model AS355E helicopters, both dated February 27, 2006. The ASBs specify inspecting for a crack in the tapered housing of the MSC. The ASBs apply to all part numbers not modified per MOD 073343 and on which the tightening torque of the attachment nut that secures the upper ball end has been increased by following MOD 073191 or complying with MET Work Card 67.30.00.402 since MET Revision 04-06 for Model AS350 helicopters and Revision 04.08 for Model AS355

helicopters. The ASBs also specify replacing an MSC if you find a vertical crack 20 millimeters or more in length. The EASA has classified this ASB as mandatory and issued Emergency AD No. 2006-0055-E, dated March 1, 2006, to ensure the continued airworthiness of these helicopters in France. Although EASA's AD allows flight with certain cracks, this AD requires that you replace any cracked MSC with an airworthy MSC. This AD does not allow flight with any cracks on the MSC tapered housing.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral agreement. Under this agreement, EASA has kept the FAA informed of the situation described above. We have examined EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, we are issuing this AD to detect a crack in the tapered housing of an MSC and to prevent loss of the attachment of the MSC to the nonrotating swash plate (upper attachment yoke), loss of main rotor control, and subsequent loss of control of the helicopter. This AD requires the following actions:

- Within 10 hours TIS:
 - Disconnect the MSC from the servo-control distributor and the upper attachment yoke.
 - Cut the safety wire and remove it from the upper ball end of the attachment nut.
 - Loosen the nut to allow lifting of the positioning lock washer so the edge below the washer at the top of the tapered housing is visible around the entire periphery.
 - Visually inspect each MSC tapered housing for a crack using a 10-power or higher magnifying glass pay particular attention to certain areas.
 - Do not modify the length of the visible section of the upper ball end of the MSC.
- If you do not find a crack, before further flight:
 - Adjust the tightening torque on the attachment nut on the upper ball end of the MSC to between 177–199 in-lbs (2–2.25 decanewton meters (daN·m)).
 - Reattach the MSC to the servo control distributor and the upper attachment yoke.

- If you find any crack (oblique, horizontal, or vertical), before further flight, replace the MSC with an airworthy MSC and adjust the tightening torque of the attachment nut to between 177–199 in-lbs (2–2.25 decanewton meters (daN·m)).

One-time adjusting the tightening torque on the upper ball-end attachment nut of a non-cracked MSC or replacing a cracked MSC with an airworthy MSC with proper tightening torque applied to the upper ball-end attachment nut is terminating action for the requirements of this AD.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of parts installed on the helicopter. Inspecting the MSC tapered housing for a crack is required within 10 hours TIS. If no crack is found, the AD requires adjusting the tightening torque on the attachment nut on the upper ball end of the MSC before further flight. If a crack is found, the AD requires replacing the MSC with an airworthy MSC before further flight, and this AD must be issued immediately.

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

We estimate that this AD will affect 616 helicopters. We estimate that it will take about 1 hour per helicopter to inspect for a crack and about 4 work hours to replace an MSC at an average labor rate of \$80 per work hour. Required parts will cost about \$9,000 per MSC. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$5,790,400, assuming 1 MSC is replaced on each helicopter.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2006-25773; Directorate Identifier 2006-SW-16-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-19-01 Eurocopter: Amendment 39-14758. Docket No. FAA-2006-25773; Directorate Identifier 2006-SW-16-AD.

Applicability

Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, with a main servo control (MSC), all part numbers, installed, on which the tightening torque of the attachment nut that secures the upper ball end has been increased by following MOD 073191 or MET Work Card 67.30.00.402 since Revision 04-06 for the AS350 models and since Revision 04-08 for the AS355 models, but not modified per MOD 073343, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To detect a crack in the MSC tapered housing and to prevent loss of the attachment of the MSC to the upper attachment yoke, loss of main rotor control, and subsequent

loss of control of the helicopter, do the following:

(a) Within 10 hours time-in-service (TIS):
 (1) Disconnect each MSC from the servo-control distributor and the upper attachment yoke.

(2) Cut the safety wire and remove it from the upper ball end of the attachment nut.

(3) Loosen attachment nut "a" shown in Figure 1 of this AD and lift the positioning lock washer under the attachment nut so the edge below the lock washer at the top of the tapered housing is visible around the entire periphery.

(4) Visually inspect each MSC tapered housing for a crack using a 10-power or higher magnifying glass paying particular attention to area "L" and to the edge of the tapered housing located under the lock washer under attachment nut "a" as depicted in Figure 1 of this AD.

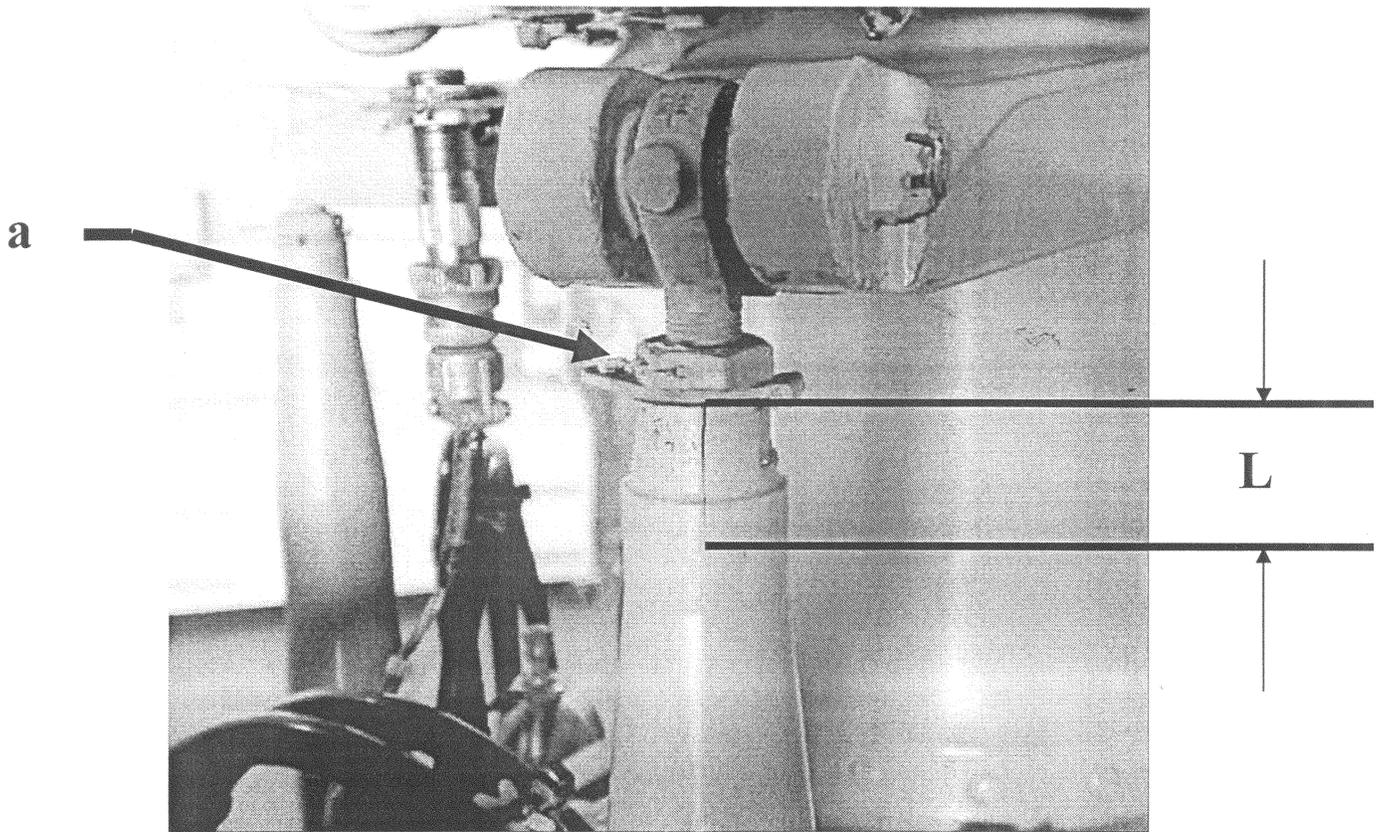


Figure 1

(5) Do not modify the length of the visible section of the upper ball end of the MSC.

Note 1: MET Work Card 67.30.00.402, paragraph 5.2, provides information concerning the positioning of the upper ball end of the MSC.

(b) If you do not find a crack, before further flight:

(1) Adjust the tightening torque on the attachment nut that secures the upper ball end of the MSC to between 177-199 in-lbs (2-2.25 decanewton meters (daN·m)).

(2) Install safety wire and apply sealant to the upper ball end by running a sealant bead on the attachment per the applicable maintenance work card(s).

(3) Reattach the MSC to the servo control distributor and the upper attachment yoke.

(c) If you find any crack (oblique, horizontal, or vertical), before further flight, replace the MSC with an airworthy MSC and adjust the tightening torque of the attachment nut to between 177-199 in-lb (2-2.25 daN·m)).

Note 2: Eurocopter ASBs 05.00.51 and 05.00.48 dated February 27, 2006, pertain to the subject of this AD.

Note 3: This AD differs from the European ASBs and the EASA AD in that we do not permit flight with known cracks in the MSC tapered housing.

(d) Adjusting the tightening torque on the upper ball-end attachment nut of a non-cracked MSC or replacing a cracked MSC with an airworthy MSC with 177–199 in-lb (2–2.25 daN-m) tightening torque applied to the upper ball-end attachment nut is terminating action for the requirements of this AD.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Uday Garadi, Aviation Safety Engineer, Regulations and Guidance Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on September 27, 2006.

Note 4: The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2006–0055–E, dated March 1, 2006.

Issued in Fort Worth, Texas, on September 1, 2006.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 06–7560 Filed 9–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24639; Directorate Identifier 2005–NM–171–AD; Amendment 39–14761; AD 2006–19–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell RCZ–833J/K, –851J/K, and –854J Communication (COM) Units, Equipped with XS–852E/F Mode S Transponders; and Honeywell XS–856A/B and –857A Mode S Transponders; Installed on But Not Limited to Certain Transport Category Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Honeywell COM units and transponders, installed on but not limited to certain transport category airplanes. This AD requires a revision to the Normal Procedures section of the

airplane flight manual to advise the flightcrew to check the status of the transponder after changing the air traffic control (ATC) code. This AD also requires replacing certain identification plate(s) with new plate(s), testing certain COM units or transponders as applicable, and corrective action if necessary. For certain airplanes, this AD requires replacing the transponders of certain COM units with new or modified transponders. For certain other airplanes, this AD requires installing a modification into certain transponders. This AD results from the transponder erroneously going into standby mode if the flightcrew takes longer than five seconds when using the rotary knob of the radio management unit to change the ATC code. We are issuing this AD to prevent the transponder of the COM unit from going into standby mode, which could increase the workload on the flightcrew and result in improper functioning of the traffic alert and collision avoidance system.

DATES: This AD becomes effective October 17, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 17, 2006.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Go to <https://pubs.cas.honeywell.com/> or contact Honeywell International, Inc., Commercial Electronic Systems, 21111 North 19th Avenue, Phoenix, Arizona 85027–2708, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Honeywell RCZ–833J/K, –851J/K, and –854J communication (COM) units, equipped with XS–852E/F mode S transponders; and Honeywell XS–856A/B and –857A mode S transponders; installed on but not limited to certain transport category airplanes. That NPRM was published in the **Federal Register** on May 3, 2006 (71 FR 25984). That NPRM proposed to require a revision to the Normal Procedures section of the airplane flight manual (AFM) to advise the flightcrew to check the status of the transponder after changing the air traffic control (ATC) code. That NPRM also proposed to require replacing certain identification plate(s) with new plate(s), testing certain COM units or transponders as applicable, and corrective action if necessary. For certain airplanes, that NPRM proposed to require replacing the transponders of certain COM units with new or modified transponders. For certain other airplanes, that NPRM proposed to require installing a modification into certain transponders.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for NPRM

The Air Line Pilots Association supports the NPRM.

Request To Revise Applicability

Dassault Falcon Jet (DFJ) requests that we delete Dassault Model Mystere-Falcon 900 airplanes and Model Falcon 2000 airplanes from the applicability of the NPRM. DFJ states that none of the discrepant communication units or transponders are installed on these model airplanes. According to DFJ, the discrepant parts are installed only on Model Falcon 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and subsequent; and Model Falcon 2000EX airplanes, S/N 6 and S/Ns 28 and subsequent.

We agree and have revised paragraph (c) of this AD accordingly.

Request To Revise Compliance Time

Empresa Brasileira de Aeronautica S.A. (EMBRAER) requests that we extend the compliance time for the AFM revision from 5 to 30 days. EMBRAER asserts that the loss of the transponder does not pose so great of a hazard to justify such an urgent compliance time.

As justification for extending the compliance time, EMBRAER states that some of the affected airplanes might be on international trips, where it may not be possible to return an airplane to a convenient location and accomplish the AFM revision within 5 days after the effective date of this AD.

We agree that the compliance times can be extended somewhat. We have determined that extending the compliance time to 14 days will not adversely affect safety. Therefore, we have revised paragraph (f) of this AD accordingly.

Request To Revise Address of Part Manufacturer

Honeywell states that its address, as provided in the NPRM, is no longer valid. Therefore, the commenter requests that we include the following address to acquire service information pertaining to this AD: 21111 North 19th Avenue, Phoenix, Arizona 85308.

We agree and have verified with the United States Postal Service that the correct zip code for the address given above is 85027-2708. We have updated the commenter's address in the ADDRESSES section and in paragraph (n) of this AD.

Request To Revise Requirements

Honeywell disagrees with the proposed corrective action to reinstall MOD V into the transponder of the COM unit if the COM unit fails the test described in paragraph (g) of the NPRM. (We proposed to accomplish this corrective action in accordance with Honeywell Alert Service Bulletin

7517400-23-A6015, Revision 001, dated July 29, 2005.) The commenter states that Honeywell Alert Service Bulletin 7510700-23-A0048, dated January 27, 2006, recommends only to verify that MOD AT has been installed and update the part number (P/N) of the COM unit for tracking purposes. Honeywell believes that it would be preferable to have operators inspect the COM unit to determine if MOD AT (transponder MOD V) has been installed. Honeywell adds that if MOD AT is installed, the airplane should be allowed to keep flying even if the COM unit P/N has not been updated. Honeywell's justification is that the airplane has already received the fix and that updating the COM unit P/N adds no value. The commenter further proposes that the NPRM should advise operators that if a COM unit is returned to a shop for any reason, the replacement part must have the new P/N (with MOD AT) before it can be returned to the original equipment manufacturer (OEM) or operator. As justification, Honeywell states that a purge of all old P/Ns will take place once all OEMs have allowed the new P/Ns.

We disagree. Honeywell proposes an alternative action only if a COM unit is inspected and determined to have MOD AT installed. However, the commenter offers no alternative if a COM unit is determined to not have MOD AT installed (i.e., fails the test described in paragraph (g) of this AD). MOD AT is accomplished by installing an XS-852E/F mode S transponder having MOD V into the COM unit. Therefore, if a COM

unit fails the test described in paragraph (g) of this AD, we have determined that the corrective action is to reinstall MOD V into the transponder of the COM unit, thereby ensuring that MOD AT has been installed properly. Further, we do not find it acceptable to allow some COM units to remain in service without updated P/Ns, even if MOD AT has been installed. This would create a high rate of confusion among OEMs, operators, and other end users in determining which COM units are in compliance with this AD. We have not revised this AD in this regard.

Conclusion

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

Costs of Compliance

There are about 1,365 airplanes of the affected design in the worldwide fleet. This AD affects about 1,023 airplanes of U.S. registry. Of those airplanes, about 603 airplanes are equipped with RCZ-833J/K, -851J/K, or -854J COM units, and about 420 airplanes are equipped with XS-856A/B or -857A mode S transponders. The following table provides the estimated costs, at an average labor rate of \$80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	None ...	\$80	1,023	\$81,840.
Part identification, testing, and replacement for RCZ-833J/K, -851J/K, and -854J COM units.	3	\$35	\$275	603	\$165,825.
Part identification, testing, and installation of software for XS-856A/B and -857A mode S transponders.	3 to 8, depending on test procedure.	\$175	\$415 to \$815, depending on testing procedure.	420	\$174,300 to \$342,300, depending on testing procedure.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII,

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

products identified in this rulemaking action.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006-19-04 Honeywell International, Inc.: Amendment 39-14761. Docket No. FAA-2006-24639; Directorate Identifier 2005-NM-171-AD.

Effective Date

(a) This AD becomes effective October 17, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Honeywell parts identified in paragraphs (c)(1) and (c)(2) of this AD, approved under Technical Standard Order TSO-C112, installed on but not limited to Bombardier Model BD-700-1A10 and BD-700-1A11 airplanes; Cessna Model 550 and 560 airplanes; Cessna Model 650 airplanes; Dassault Model Falcon 900EX airplanes, serial number (S/N) 97 and S/Ns 120 and subsequent; Dassault Model Falcon 2000EX airplanes, S/N 6 and S/Ns 28 and subsequent; EMBRAER Model EMB-135BJ, -135ER, -135KE, -135KL, and -135LR airplanes; EMBRAER Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP airplanes; Learjet Model 45

airplanes; Lockheed Model 282-44A-05 (C-130B) airplanes; Lockheed Model 382G series airplanes; Raytheon Model Hawker 800 (including variant U-125A), 800XP, and 1000 airplanes; certificated in any category.

(1) Communication (COM) unit RCZ-833J part numbers (P/Ns) 7510700-763 and -863; RCZ-833K P/Ns 7510700-765 and -875; RCZ-851J P/N 7510700-813; RCZ-851K P/N 7510700-815; and RCZ-854J P/Ns 7510700-725 and -825.

(2) Mode S transponder XS-856A P/Ns 7517400-865 and -885; XS-856B P/Ns 7517400-866 and -886; and XS-857A P/Ns 7517400-876 and -896.

Unsafe Condition

(d) This AD results from the transponder erroneously going into standby mode if the flightcrew takes longer than five seconds when using the rotary knob of the radio management unit to change the air traffic control code. We are issuing this AD to prevent the transponder of the COM unit from going into standby mode, which could increase the workload on the flightcrew and result in improper functioning of the traffic alert and collision avoidance system.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) For all airplanes: Within 14 days after the effective date of this AD, revise the Normal Procedures section of the applicable AFM to include the following statement: "After completion of any 4096 ATC Code change (also referred to as Mode A Code), check the status of the transponder. If the transponder indicates that it is in standby mode, re-select the desired mode (i.e., the transponder should be in the active mode)."

This may be done by inserting a copy of this AD in the AFM. Accomplishing the actions specified in paragraph (h) or (j), as applicable, of this AD terminates the requirement of this paragraph.

Replacement of Identification Plates for Certain COM Units

(g) For airplanes equipped with any COM unit identified in paragraph (c)(1) of this AD: Within 18 months after the effective date of this AD, replace the product signature plate, identification plate, and MOD plate of the COM unit with new plates and test the COM unit, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510700-23-A0048, dated January 27, 2006. If the COM unit fails the test, before further flight, reinstall MOD V into the transponder of the COM unit in accordance with Honeywell Alert Service Bulletin 7517400-23-A6015, Revision 001, dated July 29, 2005.

Replacement of Certain Transponders

(h) For airplanes equipped with any COM unit identified in paragraph (c)(1) of this AD: Before or concurrently with the actions required by paragraph (g) of this AD, replace the XS-852E/F mode S transponder of the COM unit with a new or modified XS-852E/

F mode S transponder that has MOD V installed, in accordance with Honeywell Alert Service Bulletin 7510700-23-A0047, Revision 001, dated July 29, 2005. After accomplishing the replacement required by this paragraph, the AFM revision required by paragraph (f) of this AD may be removed from the AFM.

Note 1: Honeywell Alert Service Bulletin 7510700-23-A0047, Revision 001, dated July 29, 2005, refers to Honeywell Alert Service Bulletin 7517400-23-A6015, Revision 001, dated July 29, 2005, as an additional source of service information for installing MOD V into an XS-852E/F mode S transponder.

Replacement of Identification Plate for Certain Transponders

(i) For airplanes equipped with any transponder identified in paragraph (c)(2) of this AD: Within 18 months after the effective date of this AD, replace the modification plate of the transponder with a new plate and test the transponder, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7517400-23-A0017, dated January 23, 2006. If the transponder fails the test, before further flight, reinstall MOD Y into the transponder as specified in paragraph (j) of this AD.

Installation of MOD Y Into Certain Transponders

(j) For airplanes equipped with any transponder identified in paragraph (c)(2) of this AD: Before or concurrently with the actions required by paragraph (i) of this AD, install MOD Y into the applicable mode S transponder, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7517400-23-A6016, dated August 30, 2005. After accomplishing the replacement required by this paragraph, the AFM revision required by paragraph (f) of this AD may be removed from the AFM.

Parts Installation

(k) For all airplanes: As of the effective date of this AD, no person may install any part identified in paragraph (c)(1) or (c)(2) on any airplane, unless the applicable software modification has been installed in the transponder in accordance with paragraph (h) or (j) of this AD, as applicable.

No Reporting Requirement

(l) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference the actions that are required by this AD, unless the AD specifies otherwise.
 (n) You must use the service information identified in Table 1 of this AD to perform

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Honeywell Alert Service Bulletin 7510700-23-A0047	001	July 29, 2005.
Honeywell Alert Service Bulletin 7510700-23-A0048	Original	January 27, 2006.
Honeywell Alert Service Bulletin 7517400-23-A6015	001	July 29, 2005.
Honeywell Alert Service Bulletin 7517400-23-A6016	Original	August 30, 2005.
Honeywell Alert Service Bulletin 7517400-23-A0017	Original	January 23, 2006.

(Only the first and second pages of Honeywell Alert Service Bulletin 7510700-23-A0047 and Honeywell Alert Service Bulletin 7517400-23-A6015 contains the revision level of the document.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Go to <https://pubs.cas.honeywell.com/> or contact Honeywell International, Inc., Commercial Electronic Systems, 21111 North 19th Avenue, Phoenix, Arizona 85027-2708, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on August 31, 2006.

Kalene C. Yanamura,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
 [FR Doc. E6-14940 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-24787; Directorate Identifier 2006-NM-043-AD; Amendment 39-14760; AD 2006-19-03]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-10-10 and DC-10-10F Airplanes; Model DC-10-15 Airplanes; Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) Airplanes; Model DC-10-40 and DC-10-40F Airplanes; Model MD-10-10F and MD-10-30F Airplanes; and Model MD-11 and MD-11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This AD requires fabrication and installation of a wire harness guard in the right wheel well of the main landing gear (MLG), and related investigative and corrective actions as necessary. For certain airplanes, this AD also requires replacement of the electrical connectors of the auxiliary hydraulic pumps with improved electrical connectors and related investigative and corrective actions. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent damage to the wire support bracket and wiring of the auxiliary hydraulic pump and, for certain airplanes, water intrusion through the electrical connectors of the auxiliary hydraulic pump. These conditions could lead to a potential ignition source in the right wheel well of the MLG around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective October 17, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 17, 2006.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM-150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5353; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model DC-10-10 and DC-10-10F airplanes; Model DC-10-15 airplanes; Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes; Model DC-10-40 and DC-10-40F airplanes; Model MD-10-10F and MD-10-30F airplanes;

and Model MD-11 and MD-11F airplanes. That NPRM was published in the **Federal Register** on May 17, 2006 (71 FR 28622). That NPRM proposed to require fabrication and installation of a wire harness guard in the right wheel well of the main landing gear (MLG), and related investigative and corrective actions as necessary. For certain airplanes, that NPRM also proposed to require replacement of the electrical connectors of the auxiliary hydraulic pumps with improved electrical connectors and related investigative and corrective actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

Two private citizens support the NPRM.

Request To Allow Replacement With FAA-Approved Equivalent Parts

The Modification and Replacement Parts Association (MARPA) requests that we append the language in paragraph (f)(2) of the NPRM to add the following words, “or FAA-approved equivalent part number.” MARPA contends that the addition of those words would remove any possible conflict with 14 CFR 21.303 that may be raised with respect to the unmodified text in paragraph (f)(2) of the NPRM.

We infer that the commenter would like the AD to permit installation of any equivalent parts manufacturer approval (PMA) parts so that it is not necessary for an operator to request approval of an alternative method of compliance (AMOC) in order to install an “equivalent” PMA part. Whether an alternative part is “equivalent” in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. The Transport Airplane Directorate’s policy is that, in order for operators to replace a part with one that is not

specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

In response to the commenter’s statement regarding a “possible conflict with 14 CFR 21.303,” under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.303), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7): “Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.” Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

Request for Agreement on Parts Replacement

MARPA also points out that another AD issued from a Directorate other than

the Transport Airplane Directorate does contain the wording that he has requested. The commenter contends that, “when two parallel departments of the same government agency maintain policies and practices that conflict one with the other, indeed even to opposite ends, there needs to evolve a solution that will remove the conflict.” MARPA further contends that “to harbor an inherent conflict in how an issue is treated is an invitation for the courts to remove that conflict and is [sic] so doing invalidates those orders based upon the interpretation found to be defective.” The commenter, therefore, requests that the FAA agree, in a timely manner, on how the matter is to be treated.

The FAA acknowledges that the Directorates are not consistent in their policies and practices on this issue. We recognize the need for standardization on this issue and currently are in the process of reviewing it at the national level.

The Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 627 airplanes of the affected design in the worldwide fleet. This AD affects about 303 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of \$80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Models	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F airplanes.	Fabrication and installation.	3	\$889	\$1,129	206	\$232,574
	Replacement	2	290	450	206	92,700
MD-11 and MD-11F airplanes	Fabrication and installation.	3	866	1,106	97	107,282

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–19–03 McDonnell Douglas:
Amendment 39–14760. Docket No. FAA–2006–24787; Directorate Identifier 2006–NM–043–AD.

Effective Date

(a) This AD becomes effective October 17, 2006.

Affected ADs

(b) None.

Applicability

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

(1) Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes; fuselage numbers (F/Ns) 1 through 446 inclusive.

(2) Model MD–11 and MD–11F airplanes; F/Ns 0447, 0448, 0449, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, and 0554 through 0646 inclusive.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent damage to the wire support bracket and wiring of the auxiliary hydraulic pump and, for certain airplanes, water intrusion through the electrical connectors of the auxiliary hydraulic pump. These conditions could lead to a potential ignition source in the right wheel well of the main landing gear (MLG) around the fuel tank, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Installation and Replacement for Certain Airplanes

(f) For Model DC–10–10 and DC–10–10F airplanes; Model DC–10–15 airplanes; Model DC–10–30 and DC–10–30F (KC–10A and KDC–10) airplanes; Model DC–10–40 and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes: Within 60 months after the effective date of this AD, do the actions specified in paragraph (f)(1) and (f)(2) of this AD.

(1) Fabricate a wire harness guard and install it in the right wheel well of the MLG, and do all related investigative and applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing

Alert Service Bulletin DC10–29A146, Revision 1, dated April 6, 2005; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. If any debris is found in the area around the wiring of the auxiliary hydraulic pump, before further flight, clean the area of the debris.

(2) Replace any electrical connector having part number (P/N) DC62E24–10SN or FC6DE24–10S of the auxiliary hydraulic pumps at the right wheel well of the MLG with improved electrical connectors having P/N DC62F24–10SN, and do the related investigative action before further flight, by accomplishing all of actions specified in the Accomplishment Instructions of McDonnell Douglas DC–10 Service Bulletin 29–135, dated September 8, 1993. If the auxiliary hydraulic system fails the test, before further flight, repair the auxiliary hydraulic system according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 29–20–00 of the Boeing DC–10 Aircraft Maintenance Manual is one approved method.

Installation for Other Certain Airplanes

(g) For Model MD–11 and MD–11F airplanes: Within 60 months after the effective date of this AD, fabricate and install a wire harness guard in the right wheel well of the MLG, and do all related investigative and applicable corrective actions, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–29A060, dated April 30, 2001; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. If any debris is found in the area around the wiring of the auxiliary hydraulic pump, before further flight, clean the area of the debris. Rivet P/N MS20470AD5–7, shown in the parts and material table in paragraph 2.C.2 of the service bulletin, is not a valid P/N; the correct P/N that must be used is P/N MS20470AD6–7.

Exception to Service Bulletins

(h) Where the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–29A146, Revision 1, dated April 6, 2005; and Boeing Alert Service Bulletin MD11–29A060, dated April 30, 2001, specify doing a visual inspection of the wiring installations of the auxiliary hydraulic pump in the right main wheel well at station Y=1381 for chafing, do a general visual inspection.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Credit for Original Issue of Service Bulletin

(i) For Model DC-10-10 and DC-10-10F airplanes; Model DC-10-15 airplanes; Model DC-10-30 and DC-10-30F (KC-10A and KDC-10) airplanes; Model DC-10-40 and DC-10-40F airplanes; and Model MD-10-10F and MD-10-30F airplanes: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin DC10-29A146, dated April 30, 2001,

are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

- (j)(1) The Manager, Los Angeles ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.
- (2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

- (k) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin DC10-29A146	1	April 6, 2005.
Boeing Alert Service Bulletin MD11-29A060	Original	April 30, 2001.
McDonnell Douglas DC-10 Service Bulletin 29-135	Original	September 8, 1993.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on September 1, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-14939 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25047; Directorate Identifier 2006-NM-028-AD; Amendment 39-14759; AD 2006-19-02]

RIN 2120-AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A300-600 series airplanes. That AD currently requires repetitive eddy current inspections to detect cracks of the outer skin of the fuselage at certain frames, and repair or reinforcement of the structure at the frames, if necessary. That AD also requires eventual reinforcement of the structure at certain frames, which, when accomplished, terminates the repetitive inspections. This new AD requires, for airplanes that were previously reinforced but not repaired in accordance with the existing AD, a one-time inspection for cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, and repair if necessary. This AD results from a report that the previously required actions were not sufficient to correct cracking before the structural reinforcement was installed. We are issuing this AD to prevent such fatigue cracking, which could result in reduced structural integrity, and consequent rapid decompression of the airplane.

DATES: This AD becomes effective October 17, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 17, 2006.

On August 4, 1997 (62 FR 35072, June 30, 1997), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300-53-6045, dated March 21, 1995, as revised by Change Notice No. O.A., dated June 1, 1995; and Airbus Service Bulletin A300-53-6037, dated March 21, 1995.

ADDRESSES: You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street,

SW., Nassif Building, Room PL-401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1622; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 97-14-02, amendment 39-10059 (62 FR 35072, June 30, 1997). The existing AD applies to certain Airbus Model A300-600 series airplanes. That NPRM was published in the **Federal Register** on June 15, 2006 (71 FR 34563). That NPRM proposed to continue to require repetitive eddy current inspections to detect cracks of the outer skin of the fuselage at certain frames, and repair or reinforcement of the structure at the frames, if necessary. That NPRM also proposed to continue to require eventual reinforcement of the structure at certain frames, which, when accomplished, terminates the repetitive inspections. That NPRM also proposed

to require, for airplanes that were previously reinforced but not repaired in accordance with the existing AD, a one-time inspection for cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, and repair if necessary.

Comments

We provided the public the opportunity to participate in the

development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 53 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is \$80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Inspection (required by AD 97-14-02)	1	None	\$80, per inspection cycle	\$4,240, per inspection cycle.
Reinforcement (required by AD 97-14-02)	93	\$7,200	\$14,640	\$775,920.
Inspection (new required action)	1	None	\$80	\$4,240.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-10059 (62 FR 35072, June 30, 1997) and by adding the following new airworthiness directive (AD):

2006-19-02 Airbus: Amendment 39-14759. Docket No. FAA-2006-25047; Directorate Identifier 2006-NM-028-AD.

Effective Date

(a) This AD becomes effective October 17, 2006.

Affected ADs

(b) This AD supersedes AD 97-14-02.

Applicability

(c) This AD applies to Airbus Model A300 B4-601, B4-603, B4-620, B4-622, B4-605R, B4-622R, F4-605R, F4-622R, and C4-605R Variant F airplanes, certificated in any category, except those on which Airbus Modification 8683 has been done.

Unsafe Condition

(d) This AD results from a report that the previously required actions were not sufficient to correct cracking before the structural reinforcement was installed. We are issuing this AD to prevent fatigue cracking of the outer skin of the fuselage at certain frames, which could result in reduced structural integrity, and consequent rapid decompression of the airplane.

Compliance

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

Restatement of the Requirements of AD 97-14-02

(f) Prior to the accumulation of 14,100 total flight cycles, or within 12 months after August 4, 1997 (the effective date of AD 97-14-02), whichever occurs later, conduct an eddy current inspection to detect cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6045, dated March 21, 1995, as revised by Change Notice No. O.A., dated June 1, 1995; or Airbus Service Bulletin A300-53-6045, Revision 03, dated October 28, 2004. After the effective date of this AD, only Revision 03 may be used. After the effective date of this AD, the initial eddy current inspection and all applicable repairs required by this paragraph must be done before doing the reinforcement specified in paragraph (g) of this AD.

(1) If no cracking is found, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 flight cycles.

(2) If any cracking is found that is within the limits specified in the service bulletin: Prior to further flight do the actions in paragraph (f)(2)(i) or (f)(2)(ii) of this AD. After the effective date of this AD, only Airbus Service Bulletin A300-53-6045, Revision 03, dated October 28, 2004, may be used for the repair specified in paragraph (f)(2)(i) of this AD; and the reinforcement option specified in paragraph (f)(2)(ii) of this AD is not allowed in accordance with this paragraph.

(i) Repair in accordance with paragraph 2.D. of the Accomplishment Instructions of Airbus Service Bulletin A300-53-6045, dated March 21, 1995, as revised by Change Notice No. O.A., dated June 1, 1995; or paragraph 3.C. of the Accomplishment Instructions of Airbus Service Bulletin A300-53-6045, Revision 03, dated October 28, 2004. After the repair, repeat the eddy current inspection thereafter at intervals not to exceed 4,500 flight cycles.

(ii) Reinforce the structure at frames 28 and 29, and at frames 30 and 31, between stringers 29 and 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6037, dated March 21, 1995; or Airbus Service Bulletin A300-53-6037, Revision 02, dated October 28, 2004. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD.

(3) If any cracking is found that is outside the limits specified in the service bulletin: Prior to further flight, reinforce the structure at frames 28 and 29, and at frames 30 and 31, between stringers 29 and 30, in

accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6037, dated March 21, 1995; or Airbus Service Bulletin A300-53-6037, Revision 02, dated October 28, 2004. After the effective date of this AD, only Revision 02 may be used. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD.

(g) Within 5 years after August 4, 1997: Reinforce the structure at frames 28 and 29, and at frames 30 and 31, between stringers 29 and 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6037, dated March 21, 1995; or Airbus Service Bulletin A300-53-6037, Revision 02, dated October 28, 2004. After the effective date of this AD, only Revision 02 may be used. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD. After the effective date of this AD, the initial eddy current inspection and all applicable repairs required by paragraph (f) of this AD must be done before doing the reinforcement.

New Requirements of This AD

Inspection and Corrective Action

(h) For airplanes that meet the conditions of both paragraphs (h)(1) and (h)(2) of this AD: Within 2,400 flight cycles or 18 months after the effective date of this AD, whichever occurs first, conduct an eddy current inspection to detect cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300-53-6045, Revision 03, dated October 28, 2004. If no cracking is found: No further action is required by this paragraph. If any cracking is found: Before further flight, repair the cracking using a method approved by either the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(1) Airplanes that were reinforced before the effective date of this AD in accordance with any service bulletin specified in Table 1 of this AD.

TABLE 1.—REINFORCEMENT SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A300-53-6037	Original	March 21, 1995.
	1	February 3, 1999.
	02	October 28, 2004.

(2) Airplanes that were not inspected and repaired in accordance with any service bulletin specified in Table 2 of this AD.

TABLE 2.—INSPECTION AND REPAIR SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A300-53-6045	Original	March 21, 1995.
	01	August 25, 1997.
	02	May 2, 1999.
	03	October 28, 2004.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) French airworthiness directive F-2005-002, dated January 5, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use the service information identified in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300-53-6037	Original	March 21, 1995.
A300-53-6037	02	October 28, 2004.
A300-53-6045	03	October 28, 2004.
A300-53-6045, as revised by Change Notice No. O.A., dated June 1, 1995	Original	March 21, 1995.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300-53-6037, Revision 02, dated October 28, 2004; and Airbus Service Bulletin A300-53-6045, Revision 03, dated October 28, 2004; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 4, 1997 (62 FR 35072, June 30, 1997), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300-53-6045, dated March 21, 1995, as revised by Change Notice No. O.A., dated June 1, 1995; and Airbus Service Bulletin A300-53-6037, dated March 21, 1995.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on September 1, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-14942 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-25746; Directorate Identifier 2006-NM-151-AD; Amendment 39-14750; AD 2006-18-11]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-200, -300, -400, and -500 Series Airplanes Equipped With an Auxiliary Fuel System Installed in Accordance With Supplemental Type Certificate (STC) SA83NE, SA1078NE, SA725NE, ST00040NY, or ST01337NY

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737-200, -300, -400, and -500 series airplanes equipped with an

auxiliary fuel system installed in accordance with STC SA83NE, SA1078NE, SA725NE, ST00040NY, or ST01337NY. This AD requires a one-time deactivation of the auxiliary fuel system, repetitive venting of the auxiliary fuel tanks, and revising the Limitations section of the airplane flight manual to limit the maximum cargo weight. This AD results from a re-evaluation of the floor structure and cargo barriers conducted by the STC holder. We are issuing this AD to prevent structural overload of the auxiliary fuel tank support structure, which could cause the floor beams to fail and resultant damage to the primary flight controls and the auxiliary power unit fuel lines that pass through the floor beams, and consequent loss of control of the airplane. We are also issuing this AD to prevent structural overload of the cargo barriers, which could cause the barriers to fail, allowing the cargo to shift, resulting in possible damage to the auxiliary fuel tanks, residual fuel leakage, and consequent increased risk of a fire.

DATES: This AD becomes effective September 27, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 27, 2006.

We must receive comments on this AD by November 13, 2006.

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

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact PATS Aircraft, LLC, Product Support, 21652 Nanticoke Avenue, Georgetown, Delaware 19947, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA,

New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7323; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

PATS Aircraft (holder of Supplemental Type Certificates (STC) SA83NE, SA1078NE, SA725NE, ST00040NY, and ST01337NY) notified us that it has determined that Boeing Model 737-200, -300, -400, and -500 series airplanes equipped with an auxiliary fuel tank system installed by STC SA83NE, SA1078NE, SA725NE, ST00040NY, or ST01337NY, have insufficient structural strength in the auxiliary fuel tank support structure. The STC holder has also determined that the cargo barriers have insufficient structural strength if subjected to emergency landing loads with the cargo load weights listed in the existing airplane flight manual (AFM) supplements. These determinations were based on a new structural analysis resulting from a re-evaluation of the floor structure and cargo barriers conducted by the STC holder. Structural overload of the auxiliary fuel tank support structure could cause the floor beams to fail, resulting in damage to the primary flight controls and the auxiliary power unit (APU) fuel lines that pass through the floor beams, and consequent loss of control of the airplane. Structural overload of the cargo barriers could cause the barriers to fail, allowing the cargo to shift, resulting in possible damage to the auxiliary fuel tanks, residual fuel leakage, and consequent increased risk of a fire.

Relevant Service Information

We have reviewed the PATS Aircraft service bulletins listed in the table below. These service bulletins describe procedures for deactivating the auxiliary fuel system, which, for certain airplanes, includes installing new cargo loading weight limit and "INOP" placards, depending on the airplane configuration. The service bulletins also describe procedures for venting any residual air pressure from the auxiliary fuel tanks following each flight. For certain airplanes, paragraph I.D. ("Description") of the service bulletins describes limiting the maximum cargo weight (as specified on the new cargo weight placards) in the forward and aft cargo compartments, as applicable, depending on the STC configuration of the airplane.

TABLE—APPLICABLE SERVICE BULLETINS

For model—	Having serial number(s) (S/N)—	STC—	Use PATS aircraft service bulletin—
737–200 series airplanes	22431 and 22628	SA83NE	SA83NE–28–SB–002_IR, dated June 7, 2006.
737–200 series airplanes	22600	SA1078NE ..	SA1078NE–28–SB–005_A, Revision A, dated June 21, 2006.
737–200, –300, –400, and –500 series airplanes.	23800, 22620, 23124, 23468, 26333, 26307, 27456, 27426, and 27906.	SA725NE	SA725NE–28–SB–007_B, Revision B, dated July 27, 2006.
737–500 series airplanes	24970	ST00040NY	ST00040NY–28–SB–003_IR, dated June 7, 2006.
737–500 series airplanes	28866	ST01337NY	ST01337NY–28–SB–002_IR, dated June 7, 2006.

We have also reviewed the PATS Aircraft AFM supplements to the Limitations section of the applicable

Boeing AFMs, which are listed in the following table. These AFM

supplements provide revised maximum cargo weight limits.

TABLE—AFM SUPPLEMENTS FOR REVISED MAXIMUM CARGO WEIGHT LIMITS

For model—	Having S/N(s)—	STC—	STC configuration(s)—	Use PATS aircraft AFM Supplement—
737–200 series airplanes	23124	SA725NE	2	148, dated May 31, 2006.
737–200 series airplanes	22620 and 23468	SA725NE	3 and 8	149, Revision A, dated August 11, 2006.
737–200 series airplanes	22600	SA1078NE ..	3 Tank forward	152, dated May 31, 2006.
737–200 series airplanes	22431 and 22628	SA83NE	2	155, dated May 31, 2006.
737–300 series airplanes	27456, 26307, and 26333	SA725NE	1 and 6	147, dated May 31, 2006.
737–300 series airplanes	23800	SA725NE	7	151, dated May 31, 2006.
737–400 and –500 series airplanes.	27906 and 27426	SA725NE	4 and 5	150, dated May 31, 2006.
737–500 series airplanes	28866	ST01337NY	Aft 3-tank	153, Revision A, dated August 3, 2006.
737–500 series airplanes	24970	ST00040NY	7	154, dated May 31, 2006.

FAA’s Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to prevent structural overload of the auxiliary fuel tank support structure, which could cause the floor beams to fail and resultant damage to the primary flight controls and the APU fuel lines that pass through the floor beams, and consequent loss of control of the airplane. We are also issuing this AD to prevent structural overload of the cargo barriers, which could cause the barriers to fail, allowing the cargo to shift, resulting in possible damage to the auxiliary fuel tanks, residual fuel leakage, and consequent increased risk of a fire. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under “Difference Between the AD and the Service Bulletins.”

Difference Between the AD and the Service Bulletins

The PATS Aircraft service bulletins do not specify a compliance time for

deactivating the auxiliary fuel system or implementing the new cargo weight limits. In developing an appropriate compliance time for those actions in this AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the deactivation (3 work hours) and AFM revision. In light of all of these factors, we find that a 30-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking then.

FAA’s Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include “Docket No. FAA–2006–25746; Directorate Identifier 2006–NM–151–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT’s complete

Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit <http://dms.dot.gov>.

Examining the Docket

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–11 Boeing: Amendment 39–14750. Docket No. FAA–2006–25746; Directorate Identifier 2006–NM–151–AD.

Effective Date

(a) This AD becomes effective September 27, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–200, –300, –400, and –500 series airplanes, certificated in any category; equipped with an auxiliary fuel system installed in accordance with Supplemental Type Certificate (STC) SA83NE, SA1078NE, SA725NE, ST00040NY, or ST01337NY; having serial numbers (S/N) listed in Table 1 of this AD.

TABLE 1.—APPLICABILITY

For model—	Having S/N(s)—	As identified in PATS aircraft service bulletin—
737–200 series airplanes	22431 and 22628	SA83NE–28–SB–002–IR, dated June 7, 2006.
737–200 series airplanes	22600	SA1078NE–28–SB–005–A, Revision A, dated June 21, 2006.
737–200, –300, –400, and –500 series airplanes	23800, 22620, 23124, 23468, 26333, 26307, 27456, 27426, and 27906.	SA725NE–28–SB–007–B, Revision B, dated July 27, 2006.
737–500 series airplanes	24970	ST00040NY–28–SB–003–IR, dated June 7, 2006.
737–500 series airplanes	28866	ST01337NY–28–SB–002–IR, dated June 7, 2006.

Unsafe Condition

(d) This AD results from a re-evaluation of the floor structure and cargo barriers conducted by the STC holder. We are issuing this AD to prevent structural overload of the auxiliary fuel tank support structure, which could cause the floor beams to fail and resultant damage to the primary flight controls and the auxiliary power unit fuel lines that pass through the floor beams, and consequent loss of control of the airplane. We are also issuing this AD to prevent structural overload of the cargo barriers, which could cause the barriers to fail, allowing the cargo to shift, resulting in possible damage to the

auxiliary fuel tanks, residual fuel leakage, and consequent increased risk of a fire.

Compliance

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

Service Bulletin References

(f) The term “service bulletin,” as used in this AD, means the Part IV “Accomplishment Instructions,” and Part V “Maintenance Requirements,” of the applicable PATS Aircraft service bulletin identified in Table 1 of this AD.

Deactivate the Auxiliary Fuel System/Revise the Maximum Cargo Weight Limits

(g) Within 30 days after the effective date of this AD: Do the actions in paragraphs (g)(1) and (g)(2) of this AD.

(1) Deactivate the auxiliary fuel system by doing all of the actions specified in Part IV of the applicable service bulletin.

(2) Revise the Limitations section of the applicable Boeing airplane flight manual (AFM) to include revised maximum cargo weight limits specified in the applicable PATS Aircraft AFM supplement identified in Table 2 of this AD. Operate the airplane

according to the limitations in the applicable AFM supplement.

TABLE 2.—AFM SUPPLEMENTS FOR REVISED MAXIMUM CARGO WEIGHT LIMITS

For model—	Having S/N(s)—	STC—	STC configura- tion(s)—	Use PATS aircraft AFM supple- ment—
737–200 series airplanes	23124	SA725NE	2	148, dated May 31, 2006.
737–200 series airplanes	22620 and 23468	SA725NE	3 and 8	149, Revision A, dated August 11, 2006.
737–200 series airplanes	22600	SA1078NE ..	3 Tank forward	152, dated May 31, 2006.
737–200 series airplanes	22431 and 22628	SA83NE	2	155, dated May 31, 2006.
737–300 series airplanes	27456, 26307, and 26333	SA725NE	1 and 6	147, dated May 31, 2006.
737–300 series airplanes	23800	SA725NE	7	151, dated May 31, 2006.
737–400 and –500 series air- planes.	27906 and 27426	SA725NE	4 and 5	150, dated May 31, 2006.
737–500 series airplanes	28866	ST01337NY	Aft 3-tank	153, Revision A, dated August 3, 2006.
737–500 series airplanes	24970	ST00040NY	7	154, dated May 31, 2006.

Repetitive Venting of the Built-Up Pressure in the Auxiliary Fuel Tanks

(h) After deactivating the auxiliary fuel system as specified in paragraph (g) of this AD: Following each flight, vent the auxiliary fuel tanks by doing all of the actions specified in paragraph A. of Part V of the applicable service bulletin.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the airplane can be modified, provided the airplane is operated with the auxiliary fuel tanks empty of useable fuel.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use the PATS Aircraft service bulletins specified in Table 3 of this AD and the PATS Aircraft airplane flight manual supplements specified in Table 4 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—SERVICE BULLETINS INCORPORATED BY REFERENCE

PATS aircraft service bulletin—	Revision level—	Dated—
SA1078NE–28–SB–005–A	A	June 21, 2006.
SA725NE–28–SB–007–B	B	July 27, 2006.
SA83NE–28–SB–002–IR	Original	June 7, 2006.
ST00040NY–28–SB–003–IR	Original	June 7, 2006.
ST01337NY–28–SB–002–IR	Original	June 7, 2006.

TABLE 4.—AIRPLANE FLIGHT SUPPLEMENTS INCORPORATED BY REFERENCE

PATS aircraft airplane flight manual supple- ment—	Revision level—	Dated—	To the—
147	Original	May 31, 2006	Boeing 737–300 Airplane Flight Manual.
148	Original	May 31, 2006	Boeing 737–200 Airplane Flight Manual.
149	A	August 11, 2006	Boeing 737–200 Airplane Flight Manual.
150	Original	May 31, 2006	Boeing 737–400/500 Airplane Flight Manual.
151	Original	May 31, 2006	Boeing 737–300 Airplane Flight Manual.
152	Original	May 31, 2006	Boeing 737–200 Airplane Flight Manual.
153	A	August 3, 2006	Boeing 737–500 Airplane Flight Manual.
154	Original	May 31, 2006	Boeing 737–500 Airplane Flight Manual.
155	Original	May 31, 2006	Boeing 737–200 Airplane Flight Manual.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact PATS Aircraft, LLC, Product Support, 21652 Nanticoke Avenue, Georgetown, Delaware 19947, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington,

DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. E6–14618 Filed 9–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 30511 Amdt. No. 3182]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 12, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2006.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

*For Purchase—*Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, 8260-5 and 8260-15A. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on August 25, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 28 September 2006

Cordova, AK, Merle K. (Mudhole) Smith, NDB/DME–A, Amdt 1A, CANCELLED
 Kenai, AK, Kenai Muni, DF RWY 19R, Orig, CANCELLED
 Kotzebue, AK, Ralph Wien Memorial, DF RWY 08, Orig, CANCELLED
 Kotzebue, AK, Ralph Wien Memorial, DF RWY 26, Orig, CANCELLED
 Port Heiden, AK, Port Heiden, DF RWY 13, Orig, CANCELLED
 Sitka, AK, Sitka Rocky Gutierrez, NDB–A, Amdt 1, CANCELLED
 Camden, AR, Harrell Field, NDB RWY 18, Amdt 11, CANCELLED
 Forrest City, AR, Forrest City Muni, NDB RWY 36, Amdt 4B, CANCELLED
 Harrison, AR, Boone County, NDB–B, Amdt 3A, CANCELLED
 Mountain Home, AR, Ozark Regional, VOR/DME RNAV RWY 5, Amdt 1C, CANCELLED
 Newport, AR, Newport Muni, NDB RWY 36, Amdt 7A, CANCELLED
 West Memphis, AR, West Memphis Muni, NDB–B, Amdt 3A, CANCELLED
 Phoenix, AZ, Phoenix Sky Harbor Intl, VOR/DME–A, Orig, CANCELLED
 Phoenix, AZ, Phoenix Sky Harbor Intl, VOR/DME RWY 25R, Amdt 1B, CANCELLED
 Phoenix, AZ, Phoenix Sky Harbor Intl, LOC BC RWY 25R, Amdt 9B, CANCELLED
 Prescott, AZ, Ernest A. Love Field, VOR/DME RNAV RWY 21L, Amdt 3A, CANCELLED
 Tucson, AZ, Ryan Field, NDB OR GPS–D, Amdt 1A, CANCELLED
 Tucson, AZ, Tucson Intl, VOR OR TACAN RWY 11L, Amdt 1
 Apple Valley, CA, Apple Valley, RNAV (GPS) Y RWY 18, Amdt 1
 Apple Valley, CA, Apple Valley, RNAV (GPS) Z RWY 18, Orig

Concord, CA, Buchanan Field, NDB RWY 19R, Amdt 1, CANCELLED
 Lincoln, CA, Lincoln Regional, VOR RWY 15, Amdt 4, CANCELLED
 Marysville, CA, Yuba County, VOR RWY 14, Amdt 9D, CANCELLED
 Merced, CA, Merced Muni-MacReady Field, VOR RWY 12, Amdt 7B, CANCELLED
 Merced, CA, Merced Muni-MacReady Field, VOR RWY 30, Amdt 18B, CANCELLED
 Modesto, CA, Modesto City-Co-Harry Sham Fld, VOR RWY 28R, Amdt 11, CANCELLED
 Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 29, Amdt 1, CANCELLED
 Ontario, CA, Ontario Intl, VOR/DME RWY 8L, Amdt 1, CANCELLED
 Ontario, CA, Ontario Intl, VOR OR TACAN RWY 26R, Amdt 10A, CANCELLED
 San Jose, CA, Norman Y. Mineta San Jose Intl, NDB/DME RWY 30L, Amdt 6, CANCELLED
 Santa Ana, CA, John Wayne-Orange County, RNAV (GPS) RWY 19R, Amdt 1
 Fort Pierce, FL, St. Lucie County Intl, NDB RWY 9, Orig–A, CANCELLED
 Perry, FL, Perry-Foley, NDB RWY 36, Amdt 4, CANCELLED
 Tampa, FL, Tampa Intl, NDB OR GPS RWY 36L, Amdt 13B, CANCELLED
 Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 28; ILS RWY 28 (CAT II), Orig–A
 Rome, GA, Richard B. Russell, NDB OR GPS–A, Amdt 6A, CANCELLED
 Agana, GU, Guam International, RNAV (GPS) Y RWY 6L, Amdt 1
 Agana, GU, Guam International, RNAV (RNP) Z RWY 6L, Orig
 Agana, GU, Guam International, RNAV (GPS) Z RWY 6L, Orig–C, CANCELLED
 Agana, GU, Guam International, RNAV (RNP) Z RWY 6R, Orig
 Agana, GU, Guam International, RNAV (GPS) Y RWY 24L, Amdt 1
 Agana, GU, Guam International, RNAV (GPS) Y RWY 24R, Amdt 1
 Agana, GU, Guam International, RNAV (RNP) Z RWY 24L, Orig
 Lewiston, ID, Lewiston-Nez Perce County, VOR RWY 8, Amdt 6
 Alton/St. Louis, IL, St. Louis Regional, NDB RWY 29, Amdt 11, CANCELLED
 Belleville, IL, Scott AFB/MIDAMERICA, NDB RWY 32L, Orig, CANCELLED
 Chicago/Aurora, IL, Aurora Muni, VOR/DME RNAV RWY 27, Amdt 1, CANCELLED
 Chicago/Waukegan, IL, Waukegan Regional, NDB RWY 23, Amdt 3, CANCELLED
 Chicago/Waukegan, IL, Waukegan Regional, VOR/DME RNAV RWY 5, Amdt 3, CANCELLED
 Joliet, IL, Joliet Regional, VOR/DME RNAV RWY 12, Amdt 12A, CANCELLED
 Kankakee, IL, Greater Kankakee, VOR/DME RNAV RWY 22, Amdt 3A, CANCELLED
 Macomb, IL, Macomb Muni, NDB RWY 27, Amdt 3, CANCELLED
 Moline, IL, Quad City, VOR/DME RNAV RWY 31, Amdt 10, CANCELLED
 Peoria, IL, Greater Peoria Regional, VOR/DME RNAV RWY 4, Amdt 6A, CANCELLED
 Peoria, IL, Greater Peoria Regional, VOR/DME RNAV RWY 22, Amdt 8, CANCELLED

Springfield, IL, Abraham Lincoln Capital, NDB RWY 4, Amdt 19, CANCELLED
 Springfield, IL, Abraham Lincoln Capital, NDB RWY 22, Amdt 1, CANCELLED
 Auburn, IN, De Kalb County, RNAV (GPS) RWY 9, Orig
 Auburn, IN, De Kalb County, RNAV (GPS) RWY 27, Orig
 Auburn, IN, De Kalb County, GPS RWY 9, Orig, CANCELLED
 Auburn, IN, De Kalb County, GPS RWY 27, Orig–A, CANCELLED
 Auburn, IN, De Kalb County, Takeoff Minimums and Textual DPs, Amdt 1
 Columbus, IN, Columbus Muni, NDB RWY 23, Amdt 11, CANCELLED
 Elkhart, IN, Elkhart Muni, VOR/DME RNAV OR GPS RWY 18, Amdt 3, CANCELLED
 Lafayette, IN, Purdue University, VOR/DME RNAV RWY 28, Amdt 6, CANCELLED
 Muncie, IN, Delaware County-Johnson Field, NDB RWY 32, Amdt 12A, CANCELLED
 South Bend, IN, South Bend Regional, NDB RWY 27L, Amdt 29, CANCELLED
 Valparaiso, IN, Porter County Muni, VOR/DME RNAV RWY 9, Amdt 4, CANCELLED
 Augusta, KS, Augusta Muni, VOR/DME RNAV RWY 36, Orig–A, CANCELLED
 Emporia, KS, Emporia Muni, VOR/DME RNAV RWY 19, Amdt 8, CANCELLED
 Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, LOC BC RWY 4L, Amdt 6D, CANCELLED
 Hammond, LA, Hammond Northshore Regional, NDB OR GPS RWY 18, Amdt 2B, CANCELLED
 Houma, LA, Houma-Terrebonne, NDB RWY 18, Amdt 4B, CANCELLED
 College Park, MD, College Park, VOR/DME RNAV RWY 15, Amdt 3A, CANCELLED
 Cumberland, MD, Greater Cumberland Regional, NDB–A, Amdt 8B, CANCELLED
 Ann Arbor, MI, Ann Arbor Muni, VOR/DME RNAV RWY 24, Amdt 6A, CANCELLED
 Bellaire, MI, Antrim County, NDB RWY 2, Amdt 2B, CANCELLED
 Boyne Falls, MI, Boyne Mountain, VOR/DME RNAV OR GPS–B, Amdt 3, CANCELLED
 Cadillac, MI, Wexford County, VOR/DME RNAV RWY 7, Amdt 8, CANCELLED
 Cadillac, MI, Wexford County, VOR/DME RNAV RWY 25, Amdt 7, CANCELLED
 Detroit, MI, Willow Run, NDB RWY 5R, Amdt 12, CANCELLED
 Grand Haven, MI, Grand Haven Meml Airpark, VOR/DME RNAV RWY 27, Amdt 6, CANCELLED
 Holland, MI, Tulip City, VOR/DME RNAV RWY 8, Amdt 2B, CANCELLED
 Holland, MI, Tulip City, VOR/DME RNAV RWY 26, Amdt 5B, CANCELLED
 Marquette, MI, Sawyer Intl, VOR/DME RWY 1, Orig, CANCELLED
 Canby, MN, Myers Field, RNAV (GPS) RWY 12, Orig, CANCELLED
 Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom, NDB RWY 34, Amdt 7, CANCELLED
 Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS PRM RWY 12L, Amdt 4B, CANCELLED (Simultaneous Close Parallel)
 Minneapolis, MN, Minneapolis-St Paul Intl/Wold Chamberlain, ILS PRM RWY 30R, Amdt 6C, CANCELLED (Simultaneous Close Parallel)

- Minneapolis, MN, Minneapolis-St Paul Intl/
Wold Chamberlain, ILS PRM RWY 30L,
Amdt 5C, CANCELLED (Simultaneous
Close Parallel)
- Minneapolis, MN, Minneapolis-St Paul Intl/
Wold Chamberlain, ILS PRM RWY 12R,
Amdt 3B, CANCELLED (Simultaneous
Close Parallel)
- Redwood Falls, MN, Redwood Falls Muni,
VOR/DME RNAV RWY 30, Amdt 1A,
CANCELLED
- Warroad, MN, Warroad Intl-Swede Carlson
Field, VOR/DME RNAV RWY 31, Amdt 4,
CANCELLED
- Kansas City, MO, Charles B Wheeler
Downtown, ILS OR LOC RWY 19, Amdt 21
- Lebanon, MO, Floyd W Jones Lebanon, NDB
RWY 36, Amdt 6A, CANCELLED
- Monett, MO, Monett Muni, VOR/DME RNAV
RWY 18 Amdt 1, CANCELLED
- Clarksdale, MS, Fletcher Field, NDB-A,
Amdt 2, CANCELLED
- Kosciusko, MS, Kosciusko-Attala County,
NDB RWY 14, Amdt 6, CANCELLED
- Kosciusko, MS, Kosciusko-Attala County,
NDB RWY 32, Amdt 5, CANCELLED
- Missoula, MT, Missoula International, VOR-
C, Amdt 2, CANCELLED
- Oak Island, NC, Brunswick County, NDB-A,
Orig, CANCELLED
- Plymouth, NC, Plymouth Muni, NDB RWY 3,
Amdt 3, CANCELLED
- Wilson, NC, Wilson Industrial Air Center,
NDB RWY 3, Amdt 6A, CANCELLED
- Wilson, NC, Wilson Industrial Air Center,
NDB RWY 21, Amdt 1C, CANCELLED
- Beatrice, NE, Beatrice Municipal, NDB-A,
Amdt 3B, CANCELLED
- Omaha, NE, Millard, VOR/DME RNAV RWY
12, Amdt 6A, CANCELLED
- Atlantic City, NJ, Atlantic City International,
ILS OR LOC RWY 13, Amdt 7
- Buffalo, NY, Buffalo Niagara Intl, ILS OR
LOC RWY 5, Amdt 14
- Buffalo, NY, Buffalo Niagara Intl, ILS OR
LOC RWY 23, Amdt 29
- Buffalo, NY, Buffalo Niagara Intl, NDB RWY
5, Amdt 11
- Buffalo, NY, Buffalo Niagara Intl, RNAV
(GPS) RWY 5, Amdt 1
- Buffalo, NY, Buffalo Niagara Intl, RNAV
(GPS) RWY 23, Amdt 1
- Buffalo, NY, Buffalo Niagara Intl, Takeoff
Minimums and Textual DP, Amdt 4
- Wellsville, NY, Wellsville Muni Arprt,
Tarantine Fld, NDB OR GPS RWY 28,
Amdt 6B, CANCELLED
- Circleville, OH, Pickaway County Memorial,
NDB RWY 19, Orig-A, CANCELLED
- Cleveland, OH, Cleveland-Hopkins Intl, NDB
RWY 6R, Amdt 6, CANCELLED
- Cleveland, OH, Cleveland-Hopkins Intl,
VOR/DME RNAV OR GPS RWY 10, Amdt
12A, CANCELLED
- Dayton, OH, Dayton-Wright Brothers, RNAV
(GPS) RWY 2, Orig
- Dayton, OH, Dayton-Wright Brothers, RNAV
(GPS) RWY 20, Orig
- Dayton, OH, Dayton-Wright Brothers, NDB-
A, Amdt 2
- Dayton, OH, Dayton-Wright Brothers, LOC/
DME RWY 20, Orig
- Dayton, OH, Dayton-Wright Brothers, LOC
RWY 20, Amdt 5, CANCELLED
- Dayton, OH, Dayton-Wright Brothers, Takeoff
Minimums and Textual DPs, Amdt 3
- Findlay, OH, Findlay, NDB RWY 36, Amdt
11, CANCELLED
- Newark, OH, Newark-Heath, VOR/DME
RNAV RWY 27, Amdt 6A, CANCELLED
- Toledo, OH, Toledo Express, VOR/DME
RNAV RWY 16, Amdt 5B, CANCELLED
- Altus, OK, Altus/Quartz Mountain Regional,
VOR/DME RNAV RWY 17, Amdt 2B,
CANCELLED
- Alva, OK, Alva Regional, NDB RWY 35,
Amdt 4A, CANCELLED
- Ardmore, OK, Ardmore Downtown
Executive, VOR/DME RNAV RWY 17,
Amdt 7, CANCELLED
- Ardmore, OK, Ardmore Downtown
Executive, VOR/DME RNAV RWY 35,
Amdt 5B, CANCELLED
- Bristow, OK, Jones Meml, NDB RWY 35,
Amdt 2, CANCELLED
- Chickasha, OK, Chickasha Muni, VOR/DME
RNAV RWY 35, Amdt 2, CANCELLED
- Oklahoma City, OK, Sundance Airpark, VOR/
DME RNAV RWY 35, Amdt 1A,
CANCELLED
- Ponca City, OK, Ponca City Rgnl, NDB RWY
35, Amdt 4A, CANCELLED
- Ponca City, OK, Ponca City Rgnl, VOR/DME
RNAV RWY 35, Amdt 2B, CANCELLED
- Klamath Falls, OR, Kingsley Field, NDB OR
GPS RWY 32, Amdt 1, CANCELLED
- Galeton, PA, Cherry Springs, VOR/DME-A,
Orig-A, CANCELLED
- Galeton, PA, Cherry Springs, Takeoff
Minimums and Textual DP, Amdt 1,
CANCELLED
- Harrisburg, PA, Capital City, RNAV (GPS)
RWY 26, Orig
- Harrisburg, PA, Capital City, GPS RWY 26,
Orig-B, CANCELLED
- Philadelphia, PA, Wings Field, NDB RWY 6,
Amdt 9A, CANCELLED
- St Marys, PA, St Marys Muni, RNAV (GPS)
RWY 10, Amdt 1
- St Marys, PA, St Marys Muni, RNAV (GPS)
RWY 28, Amdt 1
- State College, PA, University Park, VOR/DME
RNAV OR GPS RWY 6, Amdt 6C,
CANCELLED
- State College, PA, University Park, RNAV
(GPS) RWY 6, Orig
- Ponce, PR, Mercedita, RNAV (GPS) RWY 30,
Orig
- Charleston, SC, Charleston Executive, VOR/
DME RNAV RWY 9, Amdt 5B,
CANCELLED
- Laurens, SC, Laurens County, NDB RWY 8,
Amdt 1B, CANCELLED
- Orangeburg, SC, Orangeburg Muni, Takeoff
Minimums and Textual DP, Amdt 3
- Chattanooga, TN, Lovell Field, NDB RWY 20,
Amdt 31, CANCELLED
- Jacksboro, TN, Campbell County, NDB RWY
23, Amdt 5, CANCELLED
- Lewisburg, TN, Ellington, VOR/DME RNAV
RWY 20, Orig, CANCELLED
- Lexington, TN, Franklin Wilkins, VOR OR
GPS RWY 33, Amdt 10A, CANCELLED
- Nashville, TN, Nashville Intl, NDB RWY 2L,
Amdt 7, CANCELLED
- Parsons, TN, Scott Field, VOR/DME OR GPS-
A, Amdt 2, CANCELLED
- Parsons, TN, Scott Field, VOR/DME OR GPS-
B, Amdt 1, CANCELLED
- Baytown, TX, R W J Airpark, VOR/DME RWY
32, Amdt 5, CANCELLED
- Cleburne, TX, Cleburne Muni, VOR/DME-A,
Orig-A, CANCELLED
- Giddings, TX, Giddings-Lee County, VOR/
DME RNAV RWY 35, Amdt 1,
CANCELLED
- Greenville, TX, Majors, NDB RWY 17, Amdt
6, CANCELLED
- Greenville, TX, Majors, NDB RWY 35, Amdt
2, CANCELLED
- Houston, TX, Sugar Land Rgnl, VOR/DME
RNAV RWY 35, Amdt 8A, CANCELLED
- Kerrville, TX, Kerrville Muni/Louis
Schreiner Field, VOR/DME RNAV RWY
12, Amdt 3, CANCELLED
- Laredo, TX, Laredo Intl, NDB RWY 17R,
Amdt 10, CANCELLED
- Mesquite, TX, Mesquite Metro, NDB OR GPS
RWY 17 Amdt 5B, CANCELLED
- Rocksprings, TX, Edwards County, VOR
RWY 14, Amdt 5
- Rocksprings, TX, Edwards County, Takeoff
Minimums and Textual DP, Orig
- Wichita Falls, TX, Kikapoo Downtown,
NDB-A, Amdt 6A, CANCELLED
- Culpeper, VA, Culpeper Regional, NDB RWY
22, Amdt 1A, CANCELLED
- Norfolk, VA, Norfolk Intl, NDB RWY 5, Orig-
C, CANCELLED
- Norfolk, VA, Norfolk Intl, NDB/DME RWY
23, Orig-B, CANCELLED
- Winchester, VA, Winchester Regional, NDB
OR GPS-B, Amdt 1, CANCELLED
- Richland, WA, Richland, NDB RWY 19,
Amdt 6, CANCELLED
- Seattle, WA, Seattle-Tacoma Intl, RNAV
(GPS) RWY 16C, Orig-D
- Shelton, WA, Sanderson Field, Takeoff
Minimums and Textual DP, Amdt 4
- Wenatchee, WA, Pangborn Memorial, ILS Y
RWY 12, Orig
- Delavan, WI, Lake Lawn, NDB RWY 18, Orig,
CANCELLED
- Marshfield, WI, Marshfield Muni, NDB RWY
34, Orig, CANCELLED
- Platteville, WI, Platteville Municipal, VOR/
DME RNAV OR GPS RWY 25, Amdt 6A,
CANCELLED
- Sturgeon Bay, WI, Door County Cherryland,
NDB RWY 2, Amdt 11, CANCELLED
- Huntington, WV, Tri-State/Milton J. Ferguson
Field, NDB RWY 12, Amdt 18,
CANCELLED

The FAA published an Amendment in Docket No. 30508, Amdt No. 3180 to Part 97 of the Federal Aviation Regulations (Vol 161, FR No. 71, pages 48471 & 48473; dated Monday, August 21, 2006) under § 97.33 effective 28 SEP 2006, which is hereby rescinded:

Greeley, CO, Greeley-Weld County, NDB RWY 34, Orig, CANCELLED
Houston, TX, David Wayne Hooks Memorial, VOR/DME RNAV RWY 35L, Amdt 4, CANCELLED

The FAA published an Amendment in Docket No. 30498, Amdt No. 3170 to Part 97 of the Federal Aviation Regulations (Vol 71, FR 114, page 34247; dated Wednesday, June 14, 2006) under § 97.33 effective 28 SEP 2006, which is hereby rescinded:

Portland, OR, Portland-Hillsboro, NDB-B, Amdt 2, CANCELLED

Shelton, WA, Sanderson Field, NDB OR
GPS-A, Amdt 2, CANCELLED
[FR Doc. E6-14731 Filed 9-11-06; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

General Hospital and Personal Use Devices

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 800 to 1299, revised as of April 1, 2006, on page 410, in § 880.5950, paragraph (b) is corrected to read as follows:

§ 880.5950 Umbilical occlusion device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 880.9.

[FR Doc. 06-55527 Filed 9-11-06; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") is amending the Iranian Transactions Regulations, 31 CFR part 560, to revoke the authorizations contained in § 560.516 with respect to Bank Saderat and to except Bank Saderat from the scope of § 560.405 and § 560.532(b). These amendments effectively prohibit all transactions directly or indirectly involving Bank Saderat. In addition, OFAC is making a technical amendment to paragraph (a)(1) of § 560.516.

DATES: *Effective Date:* September 8, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director of Compliance Outreach & Implementation, tel.: 202/622-2490, Assistant Director of Licensing, tel.: 202/622-2480, Assistant Director of Policy, tel.: 202/622-4855, or Chief Counsel, tel.: 202/622-2410,

Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control ("OFAC") are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622-0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the "ITR"), implement a series of Executive orders, beginning with Executive Order 12957, issued on March 15, 1995, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"). In that order, the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, the President issued Executive Order 12959 imposing comprehensive trade sanctions to further respond to this threat, and on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

The Office of Foreign Assets Control ("OFAC") is amending the ITR to cut off Bank Saderat, one of the largest Iranian government-owned banks, from the U.S. financial system. Bank Saderat has been a significant facilitator of Hizballah's financial activities and has served as a conduit between the Government of Iran and Hizballah, Hamas, the Popular Front for the Liberation of Palestine-General Command, and Palestinian Islamic Jihad.

To cut off Bank Saderat from the U.S. financial system, OFAC is making three amendments to the ITR that effectively prohibit all transactions directly or indirectly involving Bank Saderat. OFAC is amending § 560.516, a general license authorizing payment and U.S. dollar clearing transactions involving Iran, to revoke its applicability to Bank Saderat. OFAC is also amending § 560.405, an interpretive section, and § 560.532(b), a statement of licensing policy, to exclude Bank Saderat from the scope of these provisions.

Section 560.516(a) authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account: (1) The transfer is by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a second non-Iranian foreign bank; (2) the transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to the ITR; (3) the transfer arises from an underlying transaction that is not prohibited by the ITR; or (4) the transfer arises from an underlying transaction that is exempted from regulation pursuant to § 203(b) of IEEPA. Section 560.516(b) authorizes U.S. registered brokers or dealers in securities to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the conditions set forth in (2)-(4) above and does not involve debiting or crediting an Iranian account. The term *Iranian account* is defined in § 560.320 to mean an account of a person located in Iran or of the Government of Iran maintained on the books of either a U.S. depository institution or a U.S. registered broker or dealer in securities.

OFAC is adding a new paragraph (f) to § 560.516 to revoke the applicability to Bank Saderat of the general licenses in paragraphs (a) and (b) of § 560.516. Effective September 8, 2006, transactions directly or indirectly involving Bank Saderat are excluded from the scope of these authorizations. OFAC is also including an exception in this amendment to provide 90 days to wind down or complete performance of transactions involving Bank Saderat that are described in paragraphs (a)(2) through (4) or (b) of § 560.516 and that were entered into before September 8, 2006, except for specific licenses issued pursuant to § 560.532(b) that were being used before September 8, 2006 to obtain letters of credit issued by Bank Saderat, for which OFAC is providing a 180-day wind-down period.

Section 560.405 is an interpretive section providing that transactions ordinarily incident to licensed transactions and necessary to give them effect are also authorized, with certain exceptions. OFAC is adding a new exception to § 560.405 for transactions directly or indirectly involving Bank Saderat. Effective September 8, 2006, such transactions will not be authorized

as transactions ordinarily incident to a licensed transaction. As with § 560.516, OFAC is providing 90 days to wind down or complete performance of all transactions involving Bank Saderat that were entered into before September 8, 2006, except for specific licenses issued pursuant to § 560.532(b) that were being used before September 8, 2006 to obtain letters of credit issued by Bank Saderat, for which OFAC is providing a 180-day wind-down period.

Section 560.532 of the ITR deals with payment for and financing of commercial sales and exportation or reexportation of agricultural commodities and products, medicine, and medical devices that are licensed pursuant to § 560.530. Section 560.532(a) sets forth a general license authorizing certain payment terms. Section 560.532(b) provides that specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a). Pursuant to § 560.532(b), OFAC has issued specific licenses authorizing the use of letters of credit issued by Iranian banks to pay for authorized agricultural and medical sales. OFAC is adding a new sentence to § 560.532(b) providing that, effective September 8, 2006, specific licenses that have been or will be issued pursuant to this paragraph will not authorize any transactions involving Bank Saderat. However, with respect to specific licenses that were being used as of September 8, 2006 to obtain letters of credit issued by Bank Saderat, OFAC is further amending § 560.532(b) to provide a 180-day wind-down period to complete performance on any letters of credit issued by Bank Saderat or to obtain a letter of credit from a different issuing bank.

In addition to the amendments relating to Bank Saderat, OFAC is also making a technical amendment to § 560.516. Paragraph (a)(1) of § 560.516 authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a second non-Iranian foreign bank. OFAC is amending this paragraph by deleting the word "second" to clarify that U.S. depository institutions are authorized to make transfers between accounts held by different branches of the same non-Iranian foreign bank.

Public Participation

Because the amendments of the ITR involve a foreign affairs function, the

provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

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

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation of part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995, Comp., 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—Interpretations

■ 2. In § 560.405, republish the introductory text, redesignate paragraphs (a) through (e) as paragraphs (b) through (f), respectively, and add a new paragraph (a) to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) Effective September 8, 2006, transactions directly or indirectly involving Bank Saderat, except that transactions involving Bank Saderat that were entered into before September 8,

2006 may be performed according to their terms until December 7, 2006.

Note to paragraph (a): But see § 560.532(b), which provides a 180-day wind-down period for specific licenses that were being used before September 8, 2006 to obtain letters of credit issued by Bank Saderat.

* * * * *

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

■ 3. In § 560.516, revise paragraph (a)(1) and add a new paragraph (f) to read as follows:

§ 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) * * *

(1) The transfer is by order of a foreign bank which is not an Iranian entity from its own account in a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) to an account held by a domestic bank (directly or through a foreign branch or subsidiary of a domestic bank) for a foreign bank which is not an Iranian entity. For purposes of this section, "foreign bank" includes a foreign subsidiary, but not a foreign branch of a domestic bank;

* * * * *

(f) Effective September 8, 2006, this section does not authorize transactions directly or indirectly involving Bank Saderat, except that transactions described in paragraphs (a)(2) through (a)(4) or (b) of this section involving Bank Saderat that were entered into before September 8, 2006 may be performed according to their terms until December 7, 2006.

Note to paragraph (f): But see § 560.532(b), which provides a 180-day wind-down period for specific licenses that were being used before September 8, 2006 to obtain letters of credit issued by Bank Saderat.

■ 4. In § 560.532, revise paragraph (b) to read as follows:

§ 560.532 Payment for and financing of exports and reexports of commercial commodities, medicine, and medical devices.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. Effective September 8, 2006, specific licenses that have been or will be issued pursuant to this paragraph will not authorize any payment terms or trade financing involving Bank Saderat, except that, in the case of specific licenses that were

being used before September 8, 2006 to obtain letters of credit issued by Bank Saderat, such letters of credit may continue to be performed according to their terms until March 7, 2007. See § 501.801(b) of this chapter for specific licensing procedures.

* * * * *

Dated: September 7, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 06-7620 Filed 9-8-06; 3:20 pm]

BILLING CODE 4811-37-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-36

[FMR Amendment 2006-06; FMR Case 2006-102-4

RIN 3090-AI27

Federal Management Regulation; Disposition of Excess Personal Property

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by correcting references to outdated or superceded provisions of law or regulation; correcting text to be in conformance with revised laws, regulation, or Federal agency responsibilities; and clarifying text where the intended meaning could be updated or made clearer.

DATES: Effective Date: October 12, 2006.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), at (202) 501-3828, or e-mail at Robert.Holcombe@gsa.gov. Please cite Amendment 2006-06, FMR case 2006-102-4.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is in the process of revising the Federal Property Management Regulations (FPMR) and transferring most of the content into a new, streamlined Federal Management Regulation (FMR). Consequently, FMR part 102-36 (41 CFR part 102-36)

contains references to FPMR sections that no longer exist. Also, Public Law 107-217 revised and restated certain provisions of the Federal Property and Administrative Services Act of 1949 (Property Act). For example, the Property Act provisions found at 40 U.S.C. 471-514 will now generally be found at 40 U.S.C. 101-705. This final rule updates the title 40 U.S.C. citations to reflect the changes made by Public Law 107-217. Finally, updating or clarifying revisions were made where the revisions are seen as administrative or clerical in nature. This includes a revised definition of "Foreign excess personal property."

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102-36

Government property management, Surplus government property.

Dated: April 14, 2006.

David L. Bibb,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102-36 as set forth below:

PART 102-36—DISPOSITION OF EXCESS PERSONAL PROPERTY

■ 1. The authority citation for 41 CFR part 102-36 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise § 102-36.5 to read as follows:

§ 102-36.5 What is the governing authority for this part?

Section 121(c) of title 40, United States Code, authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under subtitle I of title 40. Section 521 of title 40 authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

§ 102-36.10 [Amended]

■ 3. Amend § 102-36.10 by removing "the Commonwealth of Puerto Rico, and the Commonwealth of" and adding "Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and" in its place.

§ 102-36.35 [Amended]

■ 4. Amend § 102-36.35 by removing from paragraph (b) "The Property Act" and adding "Title 40 of the United States Code" in its place; and by removing from paragraph (c) "part 101-45 of this title" and adding "part 102-38 of this chapter" in its place.

■ 5. Amend § 102-36.40 by—

■ a. Removing from the definition "Exchange/sale property," "means" and adding "is" in its place; and removing "part 101-46 of this title" and adding "part 102-39 of this chapter" in its place;

■ b. Removing from the definition "Foreign excess personal property," "the Commonwealth of Puerto Rico, and the Commonwealth of" and adding "Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and" in its place;

■ c. Removing the definitions "Federal Disposal System (FEDS)" and "Property Act"; and

■ d. Adding the definition "GSAXcess®" to read as follows:

§ 102-36.40 What definitions apply to this part?

* * * * *

GSAXcess® is GSA's website for reporting, searching and selecting excess personal property. For information on using GSAXcess®, access <http://www.gsaxcess.gov>.

* * * * *

§ 102-36.50 [Amended]

■ 6. Amend § 102-36.50 by removing "the Property Act" and adding "title 40 of the United States Code" in its place.

§ 102-36.55 [Amended]

■ 7. Amend § 102-36.55 by removing from paragraph (e) "FEDS" and adding "GSAXcess®" in its place.

§ 102–36.65 [Amended]

■ 8. Amend § 102–36.65 by removing “FEDS” and adding “GSAXcess®” in its place.

■ 9. Amend § 102–36.90 by revising paragraphs (a) and (c) to read as follows:

§ 102–36.90 How do we find out what personal property is available as excess?

* * * * *

(a) Check GSAXcess®, GSA’s website for searching and selecting excess personal property. For information on GSAXcess®, access <http://www.gsaxcess.gov>.

* * * * *

(c) Check any available holding agency websites.

* * * * *

§ 102–36.125 [Amended]

■ 10. Amend § 102–36.125 by removing from paragraph (a) “(FEDS)” and adding “(GSAXcess®)” in its place.

§ 102–36.190 [Amended]

■ 11. Amend § 102–36.190 by removing from paragraph (d) “part 101–44 of this title” and adding “part 102–37 of this chapter” in its place.

§ 102–36.225 [Amended]

■ 12. Amend § 102–36.225 by removing “part 101–47 of this title” and adding “part 102–75 of this chapter” in its place.

§ 102–36.230 [Amended]

■ 13. Amend § 102–36.230 by removing from paragraph (a) “the Federal Disposal System (FEDS)” and adding “GSAXcess®” in its place.

§ 102–36.295 [Amended]

■ 14. Amend § 102–36.295 by removing the last sentence.

§ 102–36.300 [Amended]

■ 15. Amend § 102–36.300 by—
 ■ a. Removing from paragraph (a) “Personal Property Management Policy Division (MTP)” and adding “Office of Travel, Transportation, and Asset Management (MT)” in its place; and
 ■ b. Removing from paragraph (a) “the Commonwealth of Puerto Rico, and the Commonwealth of” and adding “Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and” in its place.

§ 102–36.320 [Amended]

■ 16. Amend § 102–36.320, by removing “part 101–44 of this title” each time it appears and adding “part 102–37 of this chapter” in its place.

§ 102–36.325 [Amended]

■ 17. Amend § 102–36.325 by removing “part 101–45 of this title” and adding

“part 102–38 of this chapter” in its place.

§ 102–36.340 [Amended]

■ 18. Amend § 102–36.340 by—
 ■ a. Removing from paragraph (a)(4) the first “DOD” and adding “the Department of Defense (DOD)” in its place;
 ■ b. Removing from paragraph (b) “dataplate to GSA Property Management Branch, San Francisco, California” and adding “data plate to GSA Property Management Branch (9FBP), San Francisco, CA 94102–3434” in its place;
 ■ c. Removing from paragraph (c) “Aircraft Management Policy Division (MTA)” and adding “Office of Travel, Transportation, and Asset Management (MT)” in its place; and
 ■ d. Removing from paragraph (c) “FAIRS see part 101–37 of this title” and adding “FAIRS, see part 102–33 of this chapter” in its place.

§ 102–36.345 [Amended]

■ 19. Amend § 102–36.345 by removing “part 101–37, subpart 101–37.6, of this title” and adding “part 102–33, subpart D, of this chapter” in its place.

§ 102–36.360 [Amended]

■ 20. Amend § 102–36.360 by removing “part 101–37 of this title” and adding “part 102–33 of this chapter” in its place.

§ 102–36.365 [Amended]

■ 21. Amend § 102–36.365 by removing “Public Law 105–27 (111 Stat. 244)” and adding “40 U.S.C. 555” in its place.

§ 102–36.370 [Amended]

■ 22. Amend § 102–36.370 by removing “Disaster Relief Act of 1974 (Public Law 93–288 (42 U.S.C. 5121) and Executive Orders 11795 (3 CFR, 1971–1975 Comp., p. 887) and” and adding “Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) and Executive Order” in its place.

§ 102–36.380 [Amended]

■ 23. Amend § 102–36.380 by removing “title IV of the Property Act” and adding “chapter 7 of title 40 of the United States Code” in its place.

§ 102–36.390 [Amended]

■ 24. Amend § 102–36.390 by removing from paragraph (e) “sec. 402(a) of the Property Act” and adding “40 U.S.C. 527” in its place.

§ 102–36.400 [Amended]

■ 25. Amend § 102–36.400 by removing “Sections 202 and 203 of the Property Act” and adding “40 U.S.C. 521–529, 549, and 551” in its place; and by

removing “receiving agency” and adding “Federal agency, State agency, or donee receiving the property” in its place.

§ 102–36.405 [Amended]

■ 26. Amend § 102–36.405 by removing “part 101–49 of this title” and adding “part 102–42 of this chapter” in its place.
 ■ 27. Revise § 102–36.420 to read as follows:

§ 102–36.420 How do we dispose of gifts from foreign governments or entities?

Report foreign gifts on a SF 120 to GSA, Property Management Division (FBP), Washington, DC 20406, for possible transfer, donation or sale in accordance with the provisions of part 102–42 of this chapter.

§ 102–36.440 [Amended]

■ 28. Amend § 102–36.440 by removing “North Capitol and H Streets, NW” and adding “732 North Capitol Street, NW” in its place.

§ 102–36.465 [Amended]

■ 29. Amend § 102–36.465 by removing “part 101–46 of this title” and adding “part 102–39 of this chapter” in its place.

§ 102–36.470 [Amended]

■ 30. Amend § 102–36.470, by removing from paragraph (b) “section 203(i) of the Property Act” and adding “40 U.S.C. 548” in its place; and by removing from paragraph (c) “and” and adding “or” in its place.

[FR Doc. E6–15042 Filed 9–11–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 575**

[Docket No. NHTSA–2006–25772]

RIN 2127–AJ76

New Car Assessment Program (NCAP); Safety Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: A provision of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users requires new passenger vehicles to be labeled with safety rating information published by the National Highway Traffic Safety Administration

under its New Car Assessment Program. NHTSA is required to issue regulations to ensure that the labeling requirements "are implemented by September 1, 2007." This final rule is issued to fulfill that mandate.

DATES: *Effective Date:* This final rule is effective November 13, 2006.

Compliance Date: This final rule applies to covered vehicles manufactured on or after September 1, 2007. Optional early compliance by vehicle manufacturers is permitted before that date.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than October 27, 2006.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket number set forth above and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. In addition, a copy of the petition should be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues regarding the information in this document, please contact Mr. Nathaniel Beuse at (202) 366-1740. For legal issues, please contact Ms. Dorothy Nakama (202) 366-2992. Both of these individuals may be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Overview of SAFETEA-LU Labeling Provisions and Final Rule

Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)¹ requires that each new passenger automobile that has been rated under the NHTSA's New Car Assessment Program (NCAP) must have those ratings displayed on a label on its new vehicle price sticker, known as the Monroney label.² SAFETEA-LU specifies detailed requirements for the label, including its content, size, location, and applicability, leaving the agency only limited discretion regarding the label.³ It also requires NHTSA (by

¹ P.L. 109-59 (August 10, 2005); 119 Stat. 1144.

² The Monroney label is required by the Automobile Information Disclosure Act (AIDA) Title 15, United States Code, Chapter 28, Sections 1231-1233. SAFETEA-LU amended AIDA to require that NCAP ratings be placed on each vehicle required to have a Monroney label.

³ "(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

"(1) Includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

"(2) refers to frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

"(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>; and

"(4) is presented in a legible, visible, and prominent fashion and covers at least—

"(A) 8 percent of the total area of the label; or

"(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

"(h) if an automobile has not been tested by the National Highway Traffic Safety Administration

delegation of authority from the Department of Transportation) to issue regulations to ensure that the new labeling requirements are implemented by September 1, 2007.

As required by SAFETEA-LU, the final rule provides that:

(1) New passenger automobiles manufactured on or after September 1, 2007 must display specified NCAP information on a safety rating label that is part of their Monroney label;

(2) The specified information must include a graphical depiction of the number of stars achieved by a vehicle for each safety test;

(3) Information describing the nature and meaning of the test data, and references to <http://www.safercar.gov> and NHTSA's toll-free hotline number for additional vehicle safety information, must be placed on the label;

(4) The label must be legible with a minimum length of 4½ inches and a minimum width of 3½ inches or 8 percent of the Monroney label, whichever is larger;

(5) Ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of NCAP ratings for those vehicles.

In its discretion, the agency decided to require that the label indicate the existence of safety concerns identified during NCAP testing, but not reflected in the resulting NCAP ratings. We have also required that the agency's toll-free hotline number appear on the label and adopted specifications for such matters as the wording and arrangement of some of the messages and the size of the font.

Given the extent to which the content of this rule is dictated by SAFETEA-LU, the final rule does not significantly differ from the proposed version of the rule. Nevertheless, in response to public comments, the final rule does differ from the proposal in several relatively minor respects. For example, it permits a smaller safety rating label for vehicles not tested by NHTSA and for which no safety ratings have been provided in any category of vehicle performance. In addition, it requires that, in addition to the agency's Web site, the agency's hotline number also appear on the label. Other changes include moving the safety concern information so that it is closer to the rating to which it applies.

II. Notice of Proposed Rulemaking

On January 30, 2006, NHTSA published in the **Federal Register** (71

under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect."

FR 4854) a notice of proposed rulemaking (NPRM) to implement the SAFETEA-LU labeling requirements. The agency described the proposed safety label requirements and provided rationales for them. NHTSA noted that, given the specificity of SAFETEA-LU, the agency had little discretion regarding most aspects of the proposed label.

In response to the NPRM, we received comments from: Advocates for Highway and Auto Safety (Advocates), Association of International Automobile Manufacturers, Inc. (AIAM), BMW, Competitive Enterprise Institute (CEI), DaimlerChrysler (DCX), U.S. Senator Mike DeWine of Ohio, Ford, General Motors (GM), Honda, Insurance Institute for Highway Safety (IIHS), National Automobile Dealers Association (NADA), National Mobility Equipment Dealers Association (NMEDA), Porsche, and Public Citizen. Several commenters urged that pickup trucks be labeled. Because of the specificity of the SAFETEA-LU provisions and because the NPRM was drafted in accordance with those provisions, the comments generally did not suggest labeling approaches that differed from that in the proposal. Among other things, they urged that labels for unrated vehicles be permitted to be smaller than the labels for rated vehicles, that a minimum font size be specified, that the provision of additional information on the labels of rated vehicles be permitted or required, and that the hotline phone number be placed on the labels. Comments were also offered on NHTSA's administration of the NCAP Program. The comments of each commenter are discussed below on an issue by issue basis.

III. The Final Rule

In this section, we describe the proposal⁴ and the public comments, and explain our response to the comments and our selection of the final rule language.

A. Vehicles Covered by This Final Rule

Per SAFETEA-LU, this final rule applies to all vehicles required to have Monroney labels. Those labels are required on new "automobiles" by the Automobile Information Disclosure Act (AIDA) and derive their name from the primary author of AIDA, former Senator Mike Monroney. The Department of Justice (DOJ), which generally administers AIDA, interprets the term "automobiles," by definition, to include passenger vehicles and station wagons,

and, by extension, passenger vans. However, it does not include pickup trucks, as explained in AIDA's legislative history.⁵ Also per SAFETEA-LU, the new safety labeling requirements apply to the included vehicles, whether or not they have been rated by the agency.

Accordingly, we proposed to require all new passenger cars, multipurpose passenger vehicles (sport utility vehicles and vans) and buses with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or less to have a section for NCAP ratings on the Monroney label, whether or not they have been rated by NHTSA. Vehicles under 10,000 lbs GVWR generally comprise the light passenger vehicle fleet. Although NCAP ratings have thus far normally been conducted following the respective Federal motor vehicle safety standard (FMVSS) vehicle applicability,⁶ the NCAP testing is not constrained by the FMVSS and could be changed in the future. For example, a Notice of Proposed Rulemaking for FMVSS No. 214, "Side impact protection," has proposed application for vehicles up to 10,000 lbs GVWR. Additionally, the agency posts information about the safety features of these vehicles on its Web site. SAFETEA-LU also directed the agency to provide rollover ratings for 15-passenger vans that have a GVWR of more than 8,500 lbs.

1. Comment Requesting Narrower Coverage—In response to the NPRM, the AIAM recommended that NHTSA revise the proposed applicability section (Section 575.301(b)) to establish a narrower scope by using the vehicle class definitions in 49 CFR Section 571.3 for the FMVSSs, or by adding language at the end of the definition that simply references the AIDA. AIAM cited the language from DOJ that NHTSA referred to in the NPRM, and argued that the proposed rule "would extend the scope of the NCAP labeling requirement even further to include multipurpose passenger vehicles and buses up to 10,000 gross vehicle weight, a level much higher than passenger cars and station wagons of the late 1950's when the AIDA was enacted." AIAM argued that the MPV class includes passenger and cargo vans as well as two- and four-wheel drive utility vehicles and potentially even certain pure trucks.

⁵ See <http://www.usdoj.gov/civil/ocl/monograph> and click on "Automobile Information Disclosure." See discussion of pickup trucks in congressional debates on AIDA: 104 CONG. REC. H12387 (daily ed. June 26, 1958).

⁶ Frontal and rollover rating have been done for vehicles under 8,500 lbs GVWR, and side impact ratings for vehicles under 6,000 lbs.

As noted above, we sought in the proposal to follow the guidance provided by DOJ, while also providing a clear definition of the vehicles covered by the proposed regulation. As indicated above, the term "automobile" is a statutory term used in AIDA. The statute is administered by DOJ, which has provided guidance on the meaning of "automobile" in light of current vehicles. DOJ has explained on its Web site that "(a)utomobiles, by definition, include passenger vehicles and station wagons, and by extension passenger vans and recreational vehicles. Not included, as explained in the legislative history, are pickup trucks."

We note that multipurpose passenger vehicles are, as the name implies, passenger vehicles, and small buses are passenger vans. We used these terms in the proposed applicability section because they are well understood terms. We also explained why vehicles up to 10,000 pounds GVWR were intended to be covered under SAFETEA-LU.

We did not include trucks in the proposed applicability section. Therefore, "pure trucks" were not covered. Moreover, since cargo vans are generally classified by the manufacturer as trucks, they were also not covered.

For purposes of the final rule, however, we have decided to express the applicability section of the regulation by reference to AIDA and language based on the DOJ guidance, rather than referring to terms as used in Part 571.3 for safety standards. Specifically, the regulatory text states that the section applies to "automobiles with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 2007, that are required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to have price sticker labels (Monroney labels), e.g., passenger vehicles, station wagons, passenger vans, sport utility vehicles, and recreational vehicles."

We are adopting this approach because Congress made the applicability of the NCAP labeling requirement dependent on whether a vehicle is an "automobile" required to have a Monroney label under AIDA, and because it is DOJ, rather than NHTSA, that administers and issues authoritative interpretations of that part of AIDA. Thus, while we want our regulation to be as clear as possible, we recognize that it is DOJ, rather than NHTSA, that would make any necessary interpretations under AIDA as to the meaning of "automobile."

We specified a 10,000 pound GVWR limit in the applicability section since that represents the highest weight rating that we currently anticipate might

⁴ For a complete discussion of the issues raised in the NPRM, please refer to the January 30, 2006 NPRM (71 FR 4854).

receive NCAP ratings. The examples of covered vehicles are generally taken from the DOJ guidance. However, we added the term "sport utility vehicle" because it is a commonly used term and because we were advised by DOJ that it considered sport utility vehicles to be recreational vehicles under its guidance. We also confirmed with DOJ that 15-passenger vans are regarded as passenger vans.

In the NPRM, we discussed the fact that, as explained by DOJ, AIDA does not require Monroney labels for pickup trucks. Since Congress did not require NCAP information on vehicles not required to have a Monroney label, we did not propose to require any NCAP information on pickup trucks. However, because manufacturers routinely include labels essentially the same as Monroney labels on this class of vehicle, we stated that we anticipate that manufacturers will voluntarily include the NCAP information on them.

2. Comments on Pickup Trucks— Advocates, Public Citizen, and Senator Mike DeWine expressed the view that NHTSA had statutory authority independent of SAFETEA-LU to require NCAP ratings on pickup trucks. They cited 49 U.S.C. 30117(a), which states:

(a) Providing information and notice. [NHTSA] may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

NHTSA notes that in their public comments, Ford and GM stated that they would voluntarily place NCAP ratings on their pickup trucks.

For the following reasons, NHTSA is not adopting a requirement requiring manufacturers to provide NCAP ratings on new pickup trucks.

First, the purpose of this rulemaking is to implement SAFETEA-LU's requirements for labeling automobiles with NCAP ratings. Congress selected the approach of using the Monroney labels to convey the NCAP ratings to consumers at the point of sale. The statute that requires those labels, AIDA,

does not, according to DOJ, apply to pickup trucks.

Second, we believe that the availability of authority under section 30117(a) of the Vehicle Safety Act to conduct a rulemaking to supplement the SAFETEA-LU is unclear. That Act authorizes NHTSA to require vehicle manufacturers to provide the agency "technical information related to performance and safety" and also to require manufacturers to provide such information to prospective purchasers at dealerships in a way that the agency decides is appropriate. This authority dates back to 1970 and before.

The specific language and structure of current section 30117(a), as well as that of the pre-codification version of that section, indicate that it is referring to information that is generated by the vehicle manufacturer. A natural reading of the language would not extend to test information and ratings generated by the government. The information that the Secretary may require manufacturers to provide is logically limited to information that the Secretary did not generate, as it would serve no purpose for the Secretary to require manufacturers to provide him/her with information that he/she has generated and thus already possesses.

Moreover, section 32302 (formerly in Title II of the Cost Savings Act, enacted in 1972), which authorized the NCAP program, includes an express provision providing that the agency may require passenger motor vehicle *dealers* to distribute the information to prospective buyers. The fact that Congress specifically spoke in this later enacted statute as to the nongovernmental avenue by which the agency could provide for dissemination of NCAP information is an added reason not to read section 30117(a) in an unusual manner as applying to this information.⁷

Third, since we anticipate that the vehicle manufacturers will voluntarily label their pickup trucks with NCAP ratings, we believe that a supplementary requirement is unnecessary in any event. As noted above, Ford and GM stated that they would voluntarily place NCAP ratings on new pickup trucks.

Finally, if Congress wants the provision of that information on pickup trucks to be mandatory, we believe that

⁷ We note that in 1994, the agency published two notices in the **Federal Register** in which it claimed authority to require vehicle manufacturers to provide safety performance information developed through testing by NHTSA. However, the agency did not address in those notices the fact that the relevant provision of the Cost Savings Act provides that the agency may require passenger motor vehicle *dealers*, rather than manufacturers, to distribute the information to prospective buyers.

the best course of action would be to provide for that in legislation.

*3. Vehicles manufactured in more than one stage—*Raising an issue not expressly addressed in the NPRM, several commenters asked whether the NCAP ratings would apply to vehicles manufactured in more than one stage. We note that neither Section 10307 of SAFETEA-LU nor AIDA limit their requirements to vehicles manufactured in a single stage. However, NHTSA also notes that vehicles manufactured in more than one stage (which are manufactured in relatively small volumes) have never been the subject of NCAP testing, which tests only those passenger vehicles that are sold in high volumes.

SAFETEA-LU states: "(h) If an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobiles have not been assigned in one or more rating categories, a statement to that effect" must be provided on the safety rating label. Thus, although NCAP labeling requirements will apply to vehicles built in more than one stage, it is expected that manufacturers of those vehicles will only need to apply the shorter, smaller NCAP label (to be discussed subsequently in "Smaller Labels for Vehicles With No Ratings"), with the statement: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk."

Finally, we note that any issue as to whether a specific multi-stage vehicle will be required under AIDA to have a Monroney label would need to be resolved by DOJ.

*4. Altered Vehicles—*The National Mobility Equipment Dealers Association (NMEDA) asked that "the proposed labeling requirements not apply to * * * altered vehicles, including those that have been altered in such a manner as to render void any previous NCAP results." NMEDA is an association "dedicated to providing safe and quality adaptive transportation and mobility for consumers with disabilities." To accommodate special needs drivers, NMEDA members (and others) may make vehicle alterations that require affixing an alterers' label to the vehicle pursuant to 49 CFR Part 567.7, "Requirements for persons who alter certified vehicles." NHTSA agrees that in such cases, the continuing applicability of ratings on the safety rating label may be at issue. Therefore, in this final rule, if an alterer places a Part 567.7 alterers' label on a vehicle with a safety rating label, the alterer will

be required to place another label (adjacent to the Monroney label) stating: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable."

B. Size of the Safety Rating Label

In the NPRM, we noted that SAFETEA-LU limits the space for the NCAP label to 8 percent of the total area of the existing label or to an area with a minimum length of 4½ inches and a minimum height of 3½ inches. The relevant SAFETEA-LU language (paragraph (g)(4)) states that the NCAP safety rating label

is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches.

In its comments, Public Citizen stated that SAFETEA-LU requires a minimum, not maximum, space for the label; therefore, NHTSA is free to require automakers to place a larger label on the vehicle if it better facilitates consumer comprehension. In contrast, the National Automobile Dealers' Association urged NHTSA to specify 8 percent as the minimum label size, not the 4½ by 3½ (inches) minimum size. NADA stated that manufacturers should be urged to minimize the size of Monroney labels in order to limit field-of-view obstructions. It noted that new motor vehicles are often operated before first sale or lease during prospective test drives. Because of this, and AIDA's mandate that dealers maintain Monroney labels on vehicles until they are delivered to first purchasers, the labels are usually posted on side windows. NADA expressed concerns about field-of-vision obstructions posed by the Monroney labels.

NHTSA disagrees with Public Citizen that NHTSA can specify a larger minimum size for the safety rating label than the minimum sizes specified in SAFETEA-LU. As indicated above, the statute provides that the NCAP safety rating information must be presented in a legible, visible, and prominent fashion that "covers at least—(A) 8 percent of total area of the label; or (B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches." We read this language as a determination by Congress as to the appropriate minimum size for the label, as opposed to delegating that decision to the discretion of the agency.

We recognize, however, that the language is potentially ambiguous. For example, one could read the language as providing manufacturers the option of selecting either (A) or (B), regardless of

the size of the label. A second reading would be that the relevant area for NCAP information must be at least 4½ inches by 3½ inches (15.75 square inches). If 8 percent of the total area of the label is larger than 15.75 inches, the information area must be at least 8 percent of the label.

Given the overall language of paragraph (g)(4), we believe the second reading is the better reading. As indicated above, this paragraph specifies that the NCAP information must be presented in "a legible, visible, and prominent fashion," and then specifies the minimum size for the area of the label that must be devoted to the information. The requirement that the area be at least 8 percent of the total area of the label helps ensure that the information will be prominent. We believe that the requirement that the area be at least 4½ inches by 3½ inches is necessary, in the case of very small Monroney labels where 8 percent of the total area would be less than 15.75 square inches, to ensure that the information will be legible. We believe that this should be readily evident to anyone who examines current Monroney labels. For this reason, while we appreciate the concerns expressed by NADA relating to possible field-of-vision obstructions posed by the Monroney labels, we believe that these minimum area requirements are statutorily required and necessary to accomplish Congress' purposes. We are therefore specifying in the regulatory text that the minimum area for the NCAP information must be 4½ by 3½ inches or 8 percent of the Monroney label, whichever is larger.

General Motors noted that SAFETEA-LU requires that the label be wider than it is high. GM noted that NHTSA's sample label in the NPRM appeared to be higher than it was wide. NHTSA agrees with GM's comment. SAFETEA-LU specifies that the label have an "area with a minimum length of 4½ inches and a minimum height of 3½ inches." Accordingly, the agency is revising the safety rating label example. In this final rule, we will provide length (4½ inches) and height (3½ inches) dimensions with the sample label example.

C. Smaller Labels for Vehicles With No Ratings

DaimlerChrysler and Porsche recommended that NHTSA permit a smaller label for vehicles with no ratings. NHTSA notes that it has never rated any Porsche vehicle, nor has it rated many Mercedes-Benz vehicles under NCAP. SAFETEA-LU states: "(h) if an automobile has not been tested by the National Highway Traffic Safety

Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect" must be provided on the safety rating label.⁸

To avoid the redundancy of stating "Not Rated" five times, statements that would not provide customers and potential customers with additional information, NHTSA is permitting manufacturers of automobiles that are not rated in any NCAP category the option of using a smaller safety rating label in lieu of the full size label. This smaller label is permitted for automobiles with no ratings, automobiles not selected for NCAP testing, and automobiles selected for, but not yet rated for, front, side, or rollover risk. The option for the smaller safety rating label is not available for an automobile if NHTSA has provided at least one safety rating for the automobile. The smaller labels may also be used on automobiles to which NCAP tests do not apply (*i.e.*, because they are over the weight rating limit).

The smaller safety rating label is described as follows:

(1) The minimum size of this label is 4½ inches in width and 1½ inch in height.

(2) The label will have the same header, footer, and font size requirements as the 8 percent/4½ inches by 3½ inches label.

(3) The label will state: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk" and "Source: National Highway Traffic Safety Administration (NHTSA)."

These specifications for the smaller safety label requirements provide information for customers who want additional information on why an automobile is not rated, and will identify the statement that the vehicle has not been rated as coming from a government agency, with at least the same header and footer information (with the NCAP Web site and NHTSA toll-free number) as the 8 percent/4½ inches by 3½ inches label.

We note that manufacturers should be aware that for vehicles that are

⁸ We note that the size of the safety rating label is specified at paragraph (g)(4) of 15 U.S.C. 1232 (Automobile Information Disclosure Act). Paragraph (g) applies "if one or more safety ratings for such automobile have been assigned or formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program." A separate paragraph (h) applies to automobiles not tested under NCAP or not assigned safety ratings in one or more categories. Paragraph (h) includes no size specifications for the labels for non-rated automobiles.

subsequently rated by the agency, they will still have 30 days to post new ratings in the proper format for a vehicle with one or more ratings. The agency is not providing additional time to a manufacturer that must modify the Monroney label to make room for the larger 8 percent/4½ inches by 3½ inches label. This is necessary to ensure that agency's providing the opportunity to use a smaller label does not result in delaying the labeling of vehicles once they have been assigned one or more NCAP ratings.

D. No Additional Information May Be Provided in the Safety Rating Label

In the NPRM, NHTSA stated its belief that Congress intended to limit the NCAP label information to that specified in SAFETEA-LU. Thus, NHTSA proposed that no additional information of any kind, other than the same information provided in a language other than English, may be voluntarily provided in the NCAP label area. NHTSA does not construe the same information provided in a language other than English to be additional information. In response to the NPRM, NADA stated that the option of safety ratings labels in languages other than English should not be permitted, since nothing in AIDA, as amended "suggests the authority or discretion to do so." NHTSA notes that providing NCAP in a language other than English is entirely at the manufacturer's discretion.

Ford suggested that the safety rating label allow for the inclusion of additional footnotes or information on the label indicating the presence of safety features (such as electronic stability control), the www.safercar.gov reasons for no ratings and other information as listed on www.safercar.gov, and certification label language to indicate compliance with all applicable FMVSSs. The Advocates, BMW, IIHS, and Public Citizen suggested adding IIHS and *Consumer Reports* ratings and Web addresses. The CEI suggested adding language stating that large cars usually offer more protection in a crash than do small cars. Senator DeWine provided the following comments:

My statements on the Senate Floor on March 8, 2005, and May 12, 2005, reinforce the requirement that frontal, side impact, and rollover testing information be included. Neither of these statements refer to inclusion of any other safety data, and an explanatory diagram utilized on the Senate Floor did not include information other than the three types of ratings previously mentioned. In this sense, the NPRM accurately reflects congressional intent by restricting the

"Government Safety Ratings" portion of the label to only those ratings identified in SAFETEA-LU, plus any foreign language interpretations of the same.

In this final rule, NHTSA adopts as final its NPRM language, and is not permitting any information on the safety rating label other than that specified in SAFETEA-LU. The safety rating label is not intended to provide all of NHTSA's Web-based information, but to provide consumers with certain important point-of-sale information about a specific vehicle's star ratings, and to encourage consumers to visit www.safercar.gov or to call NHTSA's hotline for more specific information regarding vehicle safety. NHTSA does not see a feasible way to permit the suggested additional information in a meaningful way without detracting from or creating confusion about either information specified by SAFETEA-LU or the additional information regarding safety concerns, which NHTSA considers pertinent consumer information. Further, including the suggested additional information could adversely affect the visibility, legibility and prominence of the mandated information, especially if minimum size labels were used.

The AIAM noted that the proposed regulatory text did not prohibit additional information in the safety rating label area. NHTSA agrees with this comment. In Section 575.301(e)(10) of the final rule, the agency has included a prohibition against additional information. The specified NCAP information provided in a language other than English is not construed to be "additional information."

In addition, NHTSA will not require that information that is already provided on vehicle certification labels be placed on the safety rating label. Providing certification label information in two places provides no additional information to the consumer. The presence of additional information on the NCAP label would detract from the required information.

In his comments, Senator DeWine also stated the following:

It is worth noting, however, that automakers have included various forms of safety data on Monroney labels in the past, including selected NCAP results, ratings from the Insurance Institute for Highway Safety, and so on. Given the intent of the legislation to improve consumers' ability to make safety-conscious choices at the point of sale, I do not suggest that the final rule include a restriction on placement of additive safety data elsewhere on the Monroney label, so long as inclusion of additive data is legal under all applicable statutes and regulations, does not mislead consumers or contradict the

information required pursuant to the AIDA amendment, and presents a meaningful improvement on the safety data included inside the "Government Safety Information" box.

Consistent with Senator DeWine's comments, nothing in this final rule prevents any manufacturer from providing the suggested additional information on the Monroney label, outside of the NCAP safety rating area. However, since authority to regulate the Monroney label outside of the safety rating label resides with DOJ, NHTSA is not amending its regulatory text of the final rule to address the placing of additional information outside of the safety rating label.

E. Content of the Label

SAFETEA-LU requires that the safety label include "a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating" for front, side, and rollover testing conducted by the agency. The statute further specifies that the label must be legible, visible, and prominent, and that it contain "information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>," the NHTSA safety rating Web site. Finally, with regard to content, SAFETEA-LU specifies that "if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect" must appear. The following sections describe the proposed contents of the safety rating label, the public comments, and NHTSA's response to the comments.

1. Use of Solid Stars—Since 1994, the agency has used solid stars to communicate vehicle test results to consumers. NHTSA has conducted a substantial amount of research, and has found that consumers easily understand the stars.

Based on that research, NHTSA stated in the NPRM its belief that using solid stars is the most effective way to display a vehicle's star rating to consumers. Therefore, the agency proposed that the label use solid stars to represent a vehicle's star rating in a particular rating category. We also proposed to require the label to include a statement that "Star ratings range from 1 to 5 stars (★★★★) with 5 being the highest". This proposed approach would fulfill

the statutory requirement that the graphic depiction of the vehicle rating be displayed in a clearly differentiated fashion while also indicating the maximum possible rating.

Senator DeWine wrote in support of the use of solid stars “[i]n light of [NHTSA’s] research, and the legislative intent of maximizing consumer awareness of safety factors.” In this final rule, solid stars are specified. NHTSA also received comments on the proposed statement. These comments, and NHTSA’s response, are addressed in the section on “General Area.”

2. “Not Rated”—In the NPRM, NHTSA explained that new models selected for testing by NHTSA cannot be tested simultaneously and, therefore, not all ratings can be available at the same time. We rely on <http://www.safercar.gov> to keep consumers informed of the status of vehicles that will be tested and availability of new ratings as soon as they are available. Since the agency understood that manufacturers will not be able to keep information on the safety rating label as current as NHTSA can on a Web site, we proposed that “Not Rated” be used in the appropriate rating category until a rating has been released by the agency. NHTSA proposed “Not Rated” rather than “Not Tested” to prevent any consumer misconception that a vehicle has not been tested to ensure compliance with NHTSA’s Federal Motor Vehicle Safety Standards.

In response to the NPRM, AIAM suggested use of the phrases “to be tested” and/or “no seat,” in addition to or in place of “Not Rated.” NADA stated that it “objects” to using “not rated” as it would confuse consumers, and suggested that for vehicles without rear seats, manufacturers be permitted to use the phrase “not applicable” in the test results section of the label where rear seat ratings would have been posted had the vehicle had a rear seat.

For this final rule, NHTSA has decided to let manufacturers have the option of using the phrase “to be rated,” if the manufacturer has received documentation from NHTSA that the vehicle will be tested. This option applies to any vehicle otherwise required to be labeled “Not Rated.” For vehicles with very small or no rear seats, the final rule maintains that the label state “Not Rated.” NHTSA has decided to specify “Not Rated” rather than “Not Applicable” to minimize confusion. NHTSA is concerned that a “Not Applicable” designation for the rear seat area may be misunderstood to mean that the FMVSSs or NCAP testing do not apply to the rear seat area. Further, this is consistent with the

terminology we use on <http://www.safercar.gov>.

3. *Safety Concerns on the Safety Rating Label*—For the past several years, NHTSA has informed consumers of test occurrences resulting in safety concerns that are not reflected in the star rating. Examples of such safety concerns are high likelihoods of thigh injury, pelvic injury, or head injury; fuel leakage; and door openings. When asked about how safety concerns would influence their decision, most respondents responded that “having information about crash test anomalies is important and they would use the information to assist them in making a decision to purchase one vehicle over another”.⁹ Furthermore, the agency stated its belief that consumers would be misled if, when shopping for a vehicle, the NHTSA Web site indicated that there was a safety concern but none appeared on the label at the point of sale. On the NHTSA Web site, information describing the safety concern and any remedy taken by the manufacturer is described by clicking on the hypertext. Given the space constraints for safety information and for the Monroney label in general, NHTSA recognizes that requiring manufacturers to include the same level of information on the label as appears on the NHTSA Web site could easily result in the text’s being so small as to be illegible. NHTSA believed it important that the label show consumers how to find more information on the safety concern.

For these reasons, NHTSA proposed that when testing identifies a safety concern associated with a vehicle, the symbol



be placed in the appropriate rating category positioned as a superscript to the right of the right-most star in the rating category.¹⁰ NHTSA also proposed to require the text “Safety Concern: Visit <http://www.safercar.gov>.”

NADA stated that it “objects to the idea of requiring the use of the exclamation point concern symbol,” stating that several dealers suggested that the symbol would “raise unnecessary questions for prospective purchasers.” NADA suggested that in lieu of the safety warning, the proposed reference to <http://www.safercar.gov> be revised to read: “Visit <http://www.safercar.gov> for more detailed vehicle safety information.”

⁹ “Focus Groups Regarding Presentations of Crash Test Anomalies” NHTSA–2004–19104–1.

¹⁰ Detailed information concerning the specific safety rating will be published in a NHTSA press release as well as posted on the [safercar.gov](http://www.safercar.gov) Web site

While we have considered NADA’s comment, we continue to believe, for the reasons stated above, that there is a need to alert prospective purchasers to test occurrences resulting in safety concerns that are not included in the star rating. With the inclusion of NHTSA’s toll-free hotline number in the footer area, prospective purchasers who wish further information about the safety concern can either visit <http://www.safercar.gov> or call the toll-free number.

The AIAM commented that by convention, a superscript is proportional to the base text size. Therefore, NHTSA should clarify whether the safety concern icon, a superscript to the star rating, needs to be proportional to the font size of the base star rating. NHTSA agrees that this recommendation would make the size of the safety concern icon more objective. In this final rule, the safety concern icon is specified to make it proportional to the font size of the star ratings. Therefore, when placed next to a star as a superscript, the safety concern icon maintains a proportional ratio of 3:2, or 66 percent of the font size of the star(s). However, when used as an explanatory symbol (in the general area of the label), the safety concern symbol is not a superscript, and therefore, it should be the same font size as the explanatory text.

4. *No Specific Font Type*—After reviewing the literature, NHTSA concluded that there is no single “best” font type for readability. Therefore, in the NPRM, we did not propose a single font type for use on the label. NADA commented that NHTSA should specify a font type to “promote consistency,” but did not offer a suggestion for a font type. Other than this, NHTSA received no comments addressing the font type issue. Thus, this final rule specifies no font type for the safety rating label.

5. *Font Sizes of Text and Star Ratings*—In order to ensure that the label is readable, NHTSA proposed that the text “Frontal Crash,” “Side Crash,” “Rollover,” “Driver,” “Passenger,” “Front Seat,” “Rear Seat,” and “Not Rated,” and where applicable, the star graphic indicating each rating, as well as any text in the header and footer areas of the label have a minimum font size of 12 point. NHTSA noted that 12 point would make the safety rating label consistent with NHTSA’s Automobile Parts Content Label (49 CFR part 583) which is often placed on the Monroney label. NHTSA further proposed that all other text or symbols on the label have a minimum font size of 8 point.

In response to the NPRM, GM stated that it supports NHTSA’s proposed font

sizes. The Advocates and Public Citizen urged that all fonts on the safety rating label be a minimum of 12 point. Senator DeWine urged that the explanatory statements on the safety rating label be a minimum of 10 point. NADA recommended that the font size of the label be consistent with the 8 percent of the Monroney label standard, and not be a specific minimum font size.

In this final rule, NHTSA has decided to make final the font sizes that it proposed in the NPRM; 12-point font for the header and footer, 8 point font for the explanatory information, and 12 point font for everything else. NHTSA has decided not to provide all information in the same font size (12 point font) because to do so would detract from the star ratings themselves. Assuming that the labels are kept to the minimum size, use of the same font size would result in less open space on the safety rating label and could make the label appear crowded and confusing. Using a 10 point font for the explanatory notes makes the information on the safety rating label seem too uniform, with less focus on the star ratings themselves.

F. Layout of the Safety Rating Label

The agency proposed to require that the safety rating label portion of the Monroney label be surrounded by a dark line and be sub-divided into the following six areas: (1) A heading area; (2) frontal crash area; (3) side crash area; (4) rollover area; (5) general text area; and (6) footer area. The areas would be placed horizontally in the following descending order, and that each area would take up the entire horizontal area: the heading area is at the top, followed by the frontal, side, rollover, general, and footer area (at the bottom). NHTSA also proposed that the border of the label be surrounded by a dark line and that the frontal, side, rollover, and general areas be separated from each other by dark lines. All dark lines would have a minimum width of 3 points. We stated our belief that the dark lines would enable consumers to readily distinguish among and decipher the information on the safety rating label.

NHTSA received no comments on the overall format of the safety rating label or on the heading area and rollover area. For these areas, NHTSA adopts as final its proposed format for these areas. The format of each sub area is outlined below.

1. *Heading Area*—The heading area would help consumers find and identify the NHTSA safety rating information on the Monroney label. The agency proposed that the heading read “Government Safety Ratings” in white

lettering and that the heading area be printed with a dark background that easily contrasts with white lettering. NHTSA received no comments on the heading area and is adopting as final its proposal.

2. *Frontal Area*—Currently, NHTSA provides consumers with frontal crash ratings for two seating positions; the driver and the right front passenger. Ratings for each seating position are based on the combined chance of serious injury to the head and chest. The term “Frontal Crash” and “Frontal Star Rating” are used interchangeably to describe the frontal crash test results, while the driver and the right front passenger test positions are only referred to as “Driver” and “Passenger,” respectively. Consistent with these terms, NHTSA proposed that “Frontal Crash” be used to describe the frontal crash test ratings and that “Driver” and “Passenger” be used to describe the seating positions and the applicable star rating.

For the frontal area section, NHTSA also proposed to require that the statements: “Star ratings based on the risk of injury in a frontal impact” and “Frontal ratings should ONLY be compared to other vehicles of similar size and weight” be provided at the bottom of the frontal area to help explain to consumers the nature and meaning of the test.

In response to the NPRM, NADA expressed concern about the language making comparisons with vehicles of “similar size and weight.” NADA stated that since it may be “too presumptive” to assume that prospective purchasers know what is meant by “similar size or weight,” there should be reference to <http://www.safercar.gov> (which “does a good job of defining the NCAP vehicle classes”) or a footnote noting it in the frontal crash area of the label. The CEI made a similar suggestion about <http://www.safercar.gov> in the frontal crash area.

NHTSA is not adopting these suggestions because the reference to <http://www.safercar.gov> is repetitive. For these reasons, NHTSA will adopt as final its proposal.

3. *Side Area*—The agency currently conducts side impact tests that provide consumers with side ratings for the first and second row of a vehicle. For each of these positions, ratings are based on the chance of serious injury to the chest. The terms “Side Crash” and “Side Star Rating” are used interchangeably to describe the side crash test results. The first and second row test positions are referred to as “Front Seat” and “Rear Seat,” and “Front Passenger” and “Rear Passenger” interchangeably. Consistent

with this terminology, NHTSA proposed that “Side Crash” be used to describe the side crash test ratings, and that “Front Seat” and “Rear Seat” be used to describe the seating positions and the applicable star rating. For the side area, NHTSA also proposed that the statement “Star ratings based on the risk of injury in a side impact” be used at the bottom of this section to help explain to consumers the nature and meaning of the test.

NADA suggested that for vehicles without rear seats, manufacturers be permitted to use the phrase “Not Applicable” in the test results section of the label where rear seat ratings would have been posted had the vehicle had a rear seat. This issue was addressed above under the heading: “Not Rated.”

4. *Rollover Area*—The rollover resistance ratings currently provided by the agency estimate the risk that a vehicle will roll over if it is involved in a single-vehicle crash. Ratings are based on the combined result of the static measurement of certain vehicle properties and the results of a dynamic maneuver test. The terms “Rollover” and “Rollover Rating” are used interchangeably to describe the risk estimates. Consistent with this terminology, NHTSA proposed that “Rollover” be used to describe the rollover resistance ratings.

Some vehicles can have both a 4x2 and 4x4 version, each of which can have a different rollover rating. In the NPRM, the agency stated that it wants to make clear that the NCAP rollover rating that appears on a vehicle must be the rating that applies to the appropriate trim version of that vehicle, *i.e.*, 4x2 or 4x4. NHTSA also proposed that the statement “Star ratings based on the risk of rollover in a single-vehicle crash” be used at the bottom of the rollover area to explain to consumers the nature and meaning of the rollover tests. NHTSA received no comments on the rollover area and thus adopts as final its proposal.

5. *General Area*—By their very nature, rating systems have a highest and lowest scale. NHTSA has described its five-star rating system in terms such as “ratings range from one to five stars,” indicating to consumers that the maximum rating in each category is five stars.¹¹ In the NPRM, NHTSA stated its belief that the safety label should also contain similar wording which would be the first line in the general area. Therefore, NHTSA proposed that the text “Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest,” be in the general

¹¹ <http://www.safercar.gov>, Agency Press Releases, Buying a Safer Car Brochure.”

area to remind consumers that the maximum rating is five stars. We stated that in this way, the Congressional requirement that the graphic depiction of the vehicle rating be displayed in a clearly differentiated fashion while also indicating the maximum possible rating, would be fulfilled.

In response to the NPRM, Senator DeWine and Public Citizen suggested that NHTSA specify a blanket statement indicating that star ratings range from 1 star to 5 stars, with 5 being the highest, and that all vehicles receive at least one star. NHTSA notes that a statement largely to this effect was proposed for the general area on the safety rating label. NHTSA does not believe it necessary to emphasize the fact that any rated vehicle receives at least one star. Thus, in this final rule, NHTSA adopts as final the text proposed in the NPRM.

Finally, NHTSA proposed that the text "Source: National Highway Traffic Safety Administration (NHTSA)" appear as the last line in the general area. NHTSA stated its belief that placing this statement at the bottom of the general area would give consumers the added confidence that manufacturers are not supplying the ratings and that instead the ratings are from a government agency. NHTSA received no comments on the last line, and adopts as final the language it proposed.

6. Footer Area—A footer area would help consumers identify the agency's Web site where additional NHTSA safety information can be found. The agency proposed that the heading read "VISIT www.safercar.gov" in white lettering and that the footer area be printed with a dark background that easily contrasts with white lettering. This also would fulfill the mandate from Congress that the label contain reference to www.safercar.gov and additional vehicle safety resources, as the Web site provides other safety information.

In response to the NPRM, Senator DeWine and Public Citizen suggested that NHTSA's toll-free hotline number be specified on the safety rating label, in addition to <http://www.safercar.gov>. NHTSA concurs with this suggestion. Including the hotline number may make it easier for consumers without internet access to find out more about a particular vehicle's rating. Thus, in the final rule, the footer area will specify NHTSA's hotline number in addition to <http://www.safercar.gov>. To save space, the word "Visit" is removed. As discussed in the next section, in this final rule, NHTSA is also revising the regulatory text wording for the footer area to "a font that easily contrasts with a dark background."

7. Color of Font Must Contrast Easily With a Dark Background—NHTSA proposed to require that, unless otherwise noted, the background be in a color that contrasts easily with dark text and that dark text be used. This proposal sought to ensure a stark contrast so that the information can be easily read. In response to the NPRM, Ford noted that the regulatory text under the heading area specifies "a font that easily contrasts with a dark background," but the text under "footer area" specifies a white font on the dark background. Ford further noted that the regulatory text under "Footer Area" and "General Information" specifies that a black line be used, but that several sections of the text specify the use of a dark line within the label format. Public Citizen stated that NHTSA should require a background color of white or off-white.

After reviewing the public comments, in this final rule, NHTSA is revising the regulatory text in its final rule to specify a font/background that easily contrasts, rather than specifying colors. To do so will allow manufacturers to provide color safety rating labels if they wish to do so. Therefore, NHTSA revises the regulatory text wording for the footer area to "a font that easily contrasts with a dark background."

G. New Labeling and Re-Labeling Issues

In the NPRM, NHTSA explained the labeling procedure for newly introduced vehicles, carry-over vehicles,¹² and redesigned vehicles. In June of each year, NHTSA collects vehicle information from vehicle manufacturers to help the agency identify new vehicle models, redesigned vehicles, and carry-over vehicles. After it analyzes the information provided, NHTSA determines and announces at NHTSA's NCAP Web site: <http://www.safercar.gov>,¹³ which models are carry-over models, which new models are not being tested, and new models that are being tested. NHTSA also sends a letter to each manufacturer, indicating the manufacturer's vehicles that have been selected for NCAP testing.

In the NPRM, NHTSA stated its intent to maintain this current process. However, in addition to the letter sent to manufacturers indicating the models that have been selected for testing with the advent of the safety rating labels on the Monroney label, NHTSA now plans

to send a separate letter officially informing each manufacturer as to the models NHTSA has determined are carry-over models, and the NCAP star rating(s) of those models. NHTSA plans to provide these letters to the manufacturers as soon as a determination is made regarding the status of models (*i.e.*, carry-over or non-carryover) to ensure that the manufacturers can place NCAP star ratings on these models as soon as the new year of production is begun.

For newly tested vehicles, NHTSA stated that it will maintain its current quality control process and posting of results on www.safercar.gov. Once NHTSA has completed the quality control process, it plans to send a letter to the manufacturer of the tested model informing them of the model's NCAP rating. This letter will also inform the manufacturer of the agency's determination as to trim lines¹⁴ and corporate twin models to which the ratings will apply.

1. Optional Testing, Non-Carryover Vehicles and Redesigned Vehicles—Although it provides information on a significant portion of vehicles sold in the U.S., the agency does not rate every single vehicle nor is it able to retest vehicles that have undergone a significant safety improvement during the model year. Therefore, in 1987, the agency published a notice establishing an optional test program.¹⁵ The optional program serves to provide consumers with up-to-date safety information on new vehicles that have undergone a mid-model year production change, models with optional safety equipment that the agency had not selected for testing, or a make and model not selected for testing by the agency. The optional NCAP program operates according to the same guidelines and procedures as the regular NCAP. Further, in order for a vehicle that has already been tested by the agency to qualify for testing under the optional NCAP program, the vehicle's manufacturer must submit to NHTSA evidence that it has changed the vehicle in a way likely to improve significantly the NCAP test results for that vehicle. The agency then analyzes the manufacturer's submission and informs the manufacturer whether it has approved the vehicle for optional testing.

Every year, a number of tests are conducted under this program, with

¹² Carry-over vehicles are vehicles that have been tested under the NCAP program in previous years, and whose design has not changed, therefore retaining its safety rating.

¹³ Through carry-over vehicles and new testing, NCAP provides ratings for about 80 percent of the (non-motorcycle) passenger vehicle fleet each year.

¹⁴ Most car models come in more than one trim line, each of which has different standard equipment and available options.

¹⁵ Initial criteria published on August 21, 1987 (52 FR 31691), and then revised on February 5, 1988 (53 FR 3479).

many being mid-model year safety changes. For those vehicles that fall into this category, and whose ratings may no longer be accurate (because the production change has occurred prior to NHTSA granting the request), the agency proposed that when the agency grants an optional NCAP test request, a manufacturer may immediately begin to label those changed vehicles as "Not Rated." Upon completion of the optional NCAP testing, the manufacturer would be notified of the results. Thirty days after notification, it would then be required to display the ratings on the safety rating label.

A non-carryover vehicle is a vehicle whose safety rating would no longer apply when the vehicle is continued into the new model year. In most cases, the inapplicability results from the vehicle's having undergone significant changes between model years. Addressing the issue of non-carryover vehicles, Senator DeWine stated that NHTSA should maintain the previous NCAP ratings on non-carryover vehicles until NHTSA re-tests the new model and the manufacturer starts labeling with the "new" rating. Senator DeWine noted:

The language of the AIDA amendment is clear on this point and does not appear to give NHTSA the flexibility to rescind NCAP ratings once they have been published. Section 10307 of SAFETEA-LU states that "if one or more safety ratings * * * have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program," that information must be included on the Monroney label. Labeling a vehicle that has been rated as "not rated" may, in some cases, be a prima facie violation of the law.

Senator DeWine also stated that, on redesigned vehicles (a vehicle whose safety rating ceases to be applicable due to design changes made during the model year), the previous NCAP rating should be maintained, but the label should include a graphic notation and a short statement that a design change has been made, which may affect the displayed rating. Public Citizen stated that for vehicles that were redesigned during the year, the pre-model year score and any applicable safety concerns should be maintained, but the following text should also be on the label: "This model has been redesigned and is being retested. Prior test results may or may not apply. To check whether new test results are now available, call 1-800-XXXX." Public Citizen further commented that for redesigned vehicles, the term "unrated" is inaccurate and misleading to consumers. Advocates commented that

for vehicles that were redesigned mid-year, the previous NCAP ratings should be maintained until NHTSA performs an optional NCAP test of the new model.

The concern expressed by Advocates, Senator DeWine and Public Citizen appears to be that under the NPRM, once NHTSA approves optional NCAP testing for a vehicle model that has been redesigned during the model year, the safety ratings on the new production of that vehicle would be "Not Rated." Although manufacturers would have an incentive to redesign vehicles with poor safety ratings, Advocates noted that "there is no guarantee that a redesign will improve the vehicle safety ratings of the redesigned vehicle line." Even if the vehicle safety ratings turn out to be the same as they were before the redesign, the manufacturer gains by having "Not Rated" on the safety labels of the redesigned vehicles for the period before the vehicle is rated again.

In response, NHTSA notes that optional tests are carried out as soon as vehicles are available. There could be ratings as early as 14 days after vehicles become available. In addition, one of the purposes of NCAP rating is to provide an incentive for manufacturers to redesign vehicles with "poor safety ratings." The use of a "Not Rated" label in the interim period during which the vehicle is being tested and rated is worthwhile as the agency only grants permission for optional tests for vehicles that have undergone a safety improvement if the improvement is deemed likely to significantly increase one of the vehicles' NCAP ratings. Customers with a special interest in a particular vehicle and who are willing to wait to buy a redesigned vehicle, can be informed of updates about the vehicle's safety rating by visiting <http://www.safercar.gov>, or calling NHTSA's toll-free hotline number. Because there are many competing vehicles in the marketplace, those consumers unwilling to wait, and who may be wary of a "Not Rated" label, may decide to focus only on similar vehicles with high ratings.

After reviewing the comments, in this final rule, NHTSA has decided not to require the manufacturer to provide "old ratings" on redesigned vehicles or vehicles with NHTSA recognized safety changes. Specifying "old ratings" would be to require manufacturers to provide information that NHTSA has determined is no longer accurate for that vehicle.

Before a manufacturer may begin labeling redesigned or non-carryover vehicles as "Not Rated" and/or "To Be Rated," NHTSA must first conduct an engineering analysis on changes that

were made to the vehicle and then determine whether those changes will likely affect the vehicle's safety performance. Therefore, the vehicle must have had an engineering change that would affect the safety performance of the vehicle in an NCAP test. NHTSA will not perform a test on, allow an optional test on, or require a manufacturer to label as "Not Rated," a vehicle if the vehicle only has cosmetic changes. This policy is consistent with <http://www.safercar.gov>, which posts a "Not Rated" or "To Be Rated" on the Web site for redesigned vehicles and vehicles with significant safety changes.

Finally, BMW suggested that NHTSA should allow each manufacturer to apply the safety rating(s) to all model variants that the manufacturer believes should have that specific rating, without notifying NHTSA. NHTSA does not agree with this suggestion. SAFETEA-LU requires that manufacturers label vehicles with NCAP ratings that have been formally published or released. In the NPRM, NHTSA proposed that formal release of the NCAP ratings would occur when NHTSA sends a letter to the manufacturer informing it of the vehicles and trim lines, or variants of a vehicle, to which the ratings will apply. Allowing manufacturers to label vehicles without this NHTSA letter would not be consistent with SAFETEA-LU, as the ratings would not have been officially published or released by the agency. NHTSA believes it is important to review the manufacturers' test data that establish the trim lines or variants of a vehicle that have the same NCAP rating, to ensure legitimacy and customer confidence in the ratings program. The agency has also evaluated self-certification as an option for manufacturers to provide ratings. Of the new vehicles tested under the NCAP Program, a relatively small percentage (approximately 7 percent of the entire vehicle fleet) will arrive at dealers before ratings have been released and labels bearing those ratings can be placed on them. While the agency has evaluated many ways of reducing the number of tested vehicles without ratings, including buying vehicles directly from the manufacturer (as opposed to a dealer) and allowing the manufacturers to provide their own NCAP ratings, the agency has decided not to change its current procedures because it does not want the integrity of the program to be at issue and because manufacturer-provided ratings may not reveal potential safety concerns.

2. Re-Labeling of Vehicles Produced Before NHTSA Notifies Manufacturers of Safety Rating Information—NHTSA

did not propose to require manufacturers to re-label vehicles produced before NHTSA has notified them of safety rating information for those vehicles; the vehicles that are required to have the NCAP star rating will be determined based on the date of notification and on the date of vehicle manufacture. NHTSA tentatively determined that the cost and burden on manufacturers of a re-labeling requirement would have little benefit in a large number of cases. This is especially true since some vehicles would have already been sold. However, under NHTSA's proposal, manufacturers would be able to re-label vehicles voluntarily, should they choose, by replacing the entire Monroney label (not just the section with the NCAP information).

In response to the NPRM, Advocates commented that NHTSA should require re-labeling of all vehicles manufactured prior to an NCAP test if they have not yet been sold. Similarly, Senator DeWine stated that NHTSA should require re-labeling of all vehicles still at the plant, whether they have been labeled yet or not. Ford stated that manufacturers should have the option of re-labeling such vehicles, but it should not be mandatory. GM supported NHTSA's decision not to make re-labeling mandatory. NADA concurred with NHTSA's decision to allow manufacturers to send out replacement Monroney labels for those vehicles displaying old or no safety labels, once new test data are available.

After carefully considering the public comments, NHTSA is adopting the position it proposed in the NPRM and is not requiring re-labeling of vehicles that were manufactured prior to the labeling deadline (30 days after NCAP test results are provided to the manufacturer). Requiring manufacturers to re-label would result in significant costs to manufacturers both in re-labeling of vehicles and in potential delays in new vehicles' being shipped to dealers.

After consulting with DOJ, both DOJ and this agency believe that manufacturers may voluntarily re-label vehicles to reflect updated NCAP information by replacing the entire Monroney label (not just the section with the NCAP information). We note, however, that DOJ further advises that while this is permissible, the re-labeling must be done in a manner so that the consumers do not see the vehicle while it is without a Monroney label.

H. NCAP Rating Labels Are Placed Within 30 Days After Receipt of NHTSA Notification of Test Results

To reach as many consumers as possible, vehicles should have their ratings displayed as soon as possible. Therefore, NHTSA proposed to require vehicle manufacturers to place the NCAP ratings on the Monroney label of new vehicles 30 days after their receipt of NHTSA's notification of the test results. The agency indicated that it had tentatively concluded that this is a reasonable time frame since manufacturers know that they may need to add the NCAP rating, and can take that into account in designing the Monroney labels. The only change that would need to be made on the label is placing the number of stars and safety concern (if applicable) that the vehicle received in the appropriate area.

In response to the NPRM, both AIAM and GM wrote in support of the 30 day period for inclusion of ratings on the Monroney label. Senator DeWine and Public Citizen recommended that the 30 day period be shortened. Public Citizen recommended shortening the time period to 5, or at most, 10 days, since manufacturers receive advance notice of the test results from NHTSA. Ford and AIAM generally supported the 30 day period, but requested the possibility of an extension if technical concerns should arise. DaimlerChrysler suggested that NHTSA specify "30 business days" rather than "30 calendar days" because national and corporate holidays that occur throughout the year may interfere with the 30 day period, and may result in insufficient time to label vehicles if only "30 calendar" days are allowed. NHTSA notes that the term "business days" may differ depending on the company (since many companies have official shut down periods during the summer and/or around the end of the year), and may even differ depending on the national origin of the company since U.S. Federal holidays differ from the holidays of other nations.

In proposing "30 days," NHTSA meant "30 calendar days." NHTSA decided on "30 days" after considering the time needed to implement labeling of vehicles and taking national and corporate holidays into account, along with existing labeling procedures, manufacturing locations, and shipping, when it concluded that 30 calendar days provided enough time for manufacturers to label vehicles. Allowing a time period longer than 30 days would mean customers would have less timely information. No technical or other convincing reasons were offered to justify a longer time.

Advocates noted that under NHTSA's proposal, manufacturers would not be required to change the safety rating labels on any vehicle built before NHTSA notification of the safety ratings, *i.e.*, up to 30 days after the notification, even though the vehicles built pre-and-post 30 days after notification would be identical in terms of safety performance. Since re-labeling of vehicles built before the 30-day period would not be mandatory, if the safety ratings are not "impressive," Advocates stated: "Consumers who see the previously built vehicles will only see out-of-date information on the safety labels of these vehicles." NHTSA notes that consumers will be able to access the most current safety rating information about a vehicle by visiting the <http://www.safercar.gov> Web site or by calling NHTSA's toll-free hotline number.

Before issuing the NPRM, NHTSA considered whether to propose a time period shorter than 30 days. NHTSA concluded that a shorter time period does not allow sufficient time for labeling by some manufacturers, especially those manufacturing vehicles outside the United States. Factors that might result in delays in label production by manufacturers include labeling of imported vehicles at ports; the fact that in many cases, label production is contracted out to another company; and differences in printing processes and printing equipment among manufacturers.

Regarding Public Citizen's comment that manufacturers receive advance notice of the ratings, NHTSA notes that this statement is not fully accurate. While many manufacturers attend the tests and thus receive the preliminary test results, not every one does so. Thus, shortening the 30 day time period would put an undue burden on those manufacturers that do not. Even if a manufacturer were present at the NCAP test, the manufacturer would not have access to the final, official results until NHTSA releases the ratings simultaneously to them and to consumers. Before making a final determination on the rating, NHTSA performs a thorough quality control check of the data. During this quality control process and analysis, the lab test results could change from those preliminarily reported. The quality control process, which occurs between the test and the official release of the test results, is not included in the manufacturers' 30 day deadline to label vehicles with NCAP results. The 30-day requirement reflects the time needed by manufacturers to implement the labeling change upon official notification of ratings by the agency.

Finally, regarding Ford's comment that in the event of technical concerns, manufacturers may need an extension of the 30 day time period, NHTSA notes that technical concerns are resolved during the agency's quality control process. Once quality control of the test results is complete, manufacturers are notified of results and have 30 days to begin labeling the vehicles.

For the reasons explained above, the agency has clarified "30 days" so that it now reads "30 calendar days" in the regulatory text.

I. Other Issues

In response to the NPRM, commenters raised the following additional issues regarding the administration of the NCAP Program, but not with the safety rating labels. Since changes to the safety rating labels were not suggested, the raising of these issues did not result in changes to the final regulatory text. The issues, and NHTSA's response, are as follows.

Public Citizen stated that as an alternative to stars, NHTSA should use an A through F grading scale, "as in school grading systems." This is a suggestion to make a fundamental change to the NCAP star rating program, which has been in effect since 1994. Regarding the safety labeling rulemaking at issue, since the A through F grading scale was not proposed in the NPRM, it is outside the scope of the rulemaking, and therefore, will not be adopted in the final rule. Public Citizen also suggested that NHTSA upgrade its crash test criteria and add new tests for compatibility, handling or active safety, rollover crashworthiness and pedestrian safety. The Advocates similarly urged NHTSA to upgrade the NCAP Program by "providing consumers with more comparative safety information."

NHTSA notes that it is considering potential improvements to make it more effective. However, since these comments address the broader issue of NCAP program administration, not specifically safety rating labeling, they are outside the scope of this rulemaking.

Ford commented that when agency determines test dates for vehicle testing, NHTSA should "batch" (test the same class of vehicles during the same time period) NCAP tests to prevent manufacturers whose vehicles were rated first from having a competitive advantage. NHTSA is not adopting this recommendation. In view of the large number of vehicles that the agency tests annually, batching vehicles is inconsistent with providing consumers with safety ratings in a timely manner. For any one class of vehicles, models are introduced into the market

throughout the year, and not in "batches."

DaimlerChrysler recommended that NHTSA notify manufacturers by mid-March of each calendar year about the vehicles which NHTSA will consider as carryovers for the subsequent model year. DaimlerChrysler noted that introduction of carryover vehicles can begin as early as May in any calendar year. NHTSA notes that it annually issues request letters to manufacturers for new model year vehicles and sets a deadline of early June for manufacturers to provide NHTSA with this information. However, NHTSA notes that a manufacturer is free to provide NHTSA with carry-over information even earlier. We consistently review requests throughout the year, and have always provided a prompt response to the manufacturer.

Ford also suggested that NHTSA request information on new, redesigned, and carryover vehicles bi-annually since many new vehicles are introduced throughout the calendar year. NHTSA notes that since manufacturers are already free to submit information to NHTSA throughout the year, it sees no need to limit manufacturers to bi-annual submissions or to require such submissions. The present system, under which manufacturers provide information to the agency at their discretion, has made NHTSA aware of early vehicle launches (since manufacturers frequently provide this information in their June submissions). NHTSA has often included vehicles launched mid-year in its vehicle selections for NCAP testing. In addition, even if NHTSA does not select a vehicle for testing, the manufacturer can always request an optional NCAP test.

Senator DeWine commented that it is essential that the NCAP rollover ratings apply only to the trim line of the vehicle tested, be it 4x2 or 4x4. Along these lines, Ford suggested that NHTSA meet with each manufacturer individually to discuss which of its vehicles NHTSA plans to test and the trim lines or variants to which the rating will apply. NHTSA notes that manufacturers already provide trim line information when the information is requested in June. NHTSA then uses this information (and when necessary, test data) to make an engineering judgment as to the trim lines to which the rating will apply. In addition, in its annual request letter, NHTSA asks manufacturers for the names of trim lines and variants of each model vehicle. NHTSA reviews the provided information and promptly responds in a letter to the manufacturers, specifying the vehicles to which the NCAP rating applies,

before the vehicle is tested. This procedure prevents unnecessary delay in providing the results to customers (for certain trim variants) and prevents manufacturers from waiting until they receive notification of their NCAP test results before notifying NHTSA of sister vehicles and similar trim variants. NHTSA encourages manufacturers to review the letter promptly to make sure NHTSA's decision on the applicability of ratings to sister vehicles and any trim variants are accurate before a vehicle is tested and rated.

Ford recommended that NHTSA publish safety concern test procedures and criteria and establish a procedure for the agency to notify manufacturers of potential future safety concern items and criteria so that the manufacturers may evaluate them. In a press release dated April 18, 2002, NHTSA discussed the criteria used by the agency for safety concerns. In that press release, NHTSA stated that results that raise serious safety issues, but are not reflected in star ratings, would be noted as safety concerns. Because it cannot predict in advance all possible safety concerns, the agency does not believe that it is possible to generate an exhaustive list of all future safety concerns. Past safety concerns have included fuel leaks in excess of Federal Motor Vehicle Safety Standard No. 301, door openings greater than six inches, injury values (not reflected in the star ratings) that exceed thresholds set forth by corresponding FMVSSs, and structural failure or non-intended performance of vehicle components during testing. Further, NHTSA has already made manufacturers aware of the types of issues that occurred in the past and that NHTSA has deemed to be safety concerns. Therefore, NHTSA sees no reason to establish yet another review process.

Ford suggested that a consumer education program be established to help launch the addition of NCAP ratings to the Monroney label. Suggested information for consumers would include: Clear definitions of all ratings and terminology used on the NCAP label, the <http://www.safercar.gov> Web site, and the Buying a Safer Car Brochure; the vehicle selection process for vehicles scheduled for NCAP testing; and NCAP testing parameters and test timing. Many of these issues are already addressed at <http://www.safercar.gov>. Additionally, we will work with NADA and other interested parties to help educate dealers and consumers about the new safety label.

IV. Statutory Basis for the Final Rule

The statutory basis for the final rule is Section 10307 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (August 10, 2005; 119 Stat. 1144). That section requires each new passenger automobile that has been rated under NHTSA's New Car Assessment Program (NCAP) to have those ratings displayed on the Monroney label. SAFETEA-LU specifies a number of detailed requirements for the label, including content, format, and location. It also requires NHTSA (by delegation of authority from the Department of Transportation) to issue regulations to ensure that the new labeling requirements are implemented by September 1, 2007.

More specifically, section 10307 specifies that the label must:

(1) Include a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

(2) Refer to frontal impact crash tests, side impact crash tests, and rollover resistance tests;

(3) Contain information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://safercar.gov>; and

(4) Present its information in a legible, visible, and prominent fashion and cover at least—

(A) 8 percent of the total area of the label; or

(B) An area with a minimum length of 4½ inches and a minimum height of 3½ inches.

If an automobile has not been tested under the NCAP Program or safety ratings for such automobile have not been assigned in one or more categories, section 10307 requires a statement to that effect to be provided.

In this final rule, NHTSA implements the requirements of section 10307 of SAFETEA-LU by adding a new section to 49 CFR part 575, Consumer Information. Section 575.301, *Vehicle Labeling of Safety Rating Information*, provides that:

(1) New passenger automobiles manufactured on or after September 1, 2007 must display specified NCAP information on a safety rating label that is part of their Monroney label;

(2) The specified information must include a graphical depiction of the number of stars achieved by a vehicle for each safety test;

(3) Information describing the nature and meaning of the test data, and

references to <http://www.safercar.gov> and NHTSA's toll-free hotline number for additional vehicle safety information, must be placed on the label;

(4) The label must be legible with a minimum length of 4½ inches and a minimum width of 3½ inches or 8 percent of the Monroney label, whichever is larger;

(5) Ratings must be placed on new vehicles manufactured 30 or more days after the manufacturer receives notification from NHTSA of NCAP ratings for those vehicles.

As discussed above, in its discretion, the agency decided to require that the label indicate the existence of safety concerns identified during NCAP testing, but not reflected in the resulting NCAP ratings. It also decided to require that the agency's toll-free hotline number appear on the label and adopted specifications for such matters as the wording and arrangement of some of the messages and the size of the font. Section 575.301 permits a smaller safety rating label for vehicles not tested by NHTSA and for which no safety ratings have been provided in any category of vehicle performance.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures. The agency has concluded that the impacts of this rule are so minimal that preparation of a full regulatory evaluation is not required.

This final rule implements a statutory requirement for manufacturers to add NCAP rating information to the existing Monroney label. We have considered and concluded that the one-time design cost, the cost of redesign to replace "Not Rated" with stars each time a vehicle is rated, and the increase in cost of adding the NCAP safety information to the existing Monroney label all to be minor. No other NCAP procedures need to be modified as a result of this rulemaking.

We estimate that the cost of a label would be \$0.08 to \$0.14 per vehicle (in 2004 dollars). This estimate assumes that the size of the Monroney label is made larger to include this information. If the label is kept the same size and this information is just added to the label,

the cost would be about \$0.01 per vehicle. In either case, the costs are considered minimal.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). 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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. There are four small motor vehicle manufacturers in the United States building vehicles that will be affected by this rule. There are other small businesses involved in multistage manufacturing. Those small businesses that are final stage manufacturers of covered vehicles must label their vehicles with the abbreviated label specified in this final rule as "Not Rated." I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The statement for the factual basis for this certification is that this rule does not add a significant economic cost (estimated to be less than \$0.15 per vehicle) to the cost of a motor vehicle.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. For the following reasons, NHTSA concludes that this final rule will not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. As earlier described, this final rule will

require vehicle manufacturers to include on their Monroney labels the safety rating information published for NCAP. In the NPRM, we proposed how NHTSA would describe the appearance of the label, and specify to the manufacturers, in both individual letters to the manufacturers and on NHTSA's NCAP Web site (<http://www.safercar.gov>), the information specific to a particular motor vehicle model and make that the vehicle manufacturer must put on the Monroney label.

Because, in this final rule, NHTSA specifies the format of the label, and the information each manufacturer must include on the Monroney label, this "collection of information" falls within the exception described in 5 CFR Section 1320.3(c)(2) which states in part: "The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition."

NCAP ratings are created by NHTSA. This final rule requires vehicle manufacturers to take NHTSA's NCAP ratings (which NHTSA will supply to each manufacturer) and report them on Monroney labels, thus disclosing them to potential customers (*i.e.*, the public). For vehicles with no NCAP ratings, in this final rule, NHTSA specifies verbatim, an abbreviated label with the statement: "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk." Alterers of previously certified vehicles would include the following NHTSA-specified phrase on a label: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable." For these reasons, this final rule imposes a "collection of information" requirement for which 5 CFR part 1320 approval need not be obtained.

D. National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and has determined that it will not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule has no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and

responsibilities among the various local officials.

F. Civil Justice Reform

This rule will not have any retroactive effect. Parties are not required to exhaust administrative remedies before filing suit in court.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The agency searched for, but did not find any voluntary consensus standards relevant to this rule.

H. Unfunded Mandates Reform Act

This rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 575 is amended to read as follows:

PART 575—CONSUMER INFORMATION

■ 1. The authority citation for part 575 is revised to read as follows:

Authority: 49 U.S.C. 32302, 30111, 301115, 30117, 30166, and 30168, Pub. L. 104-414, 114 Stat. 1800, Pub. L. 109-59, 119 Stat. 1144, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

Subpart A—Regulations Issued Under Section 112(d) of the National Traffic and Motor Vehicle Safety Act; General

■ 2. The heading for subpart A is revised to read as set forth above.

■ 3. Subpart D is added to read as follows:

Subpart D—Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); Consumer Information

§ 575.301 Vehicle Labeling of Safety Rating Information.

(a) *Purpose and Scope.* The purpose of this section is to aid potential purchasers in the selection of new passenger motor vehicles by providing them with safety rating information developed by NHTSA in its New Car Assessment Program (NCAP) testing. Manufacturers of passenger motor vehicles described in paragraph (b) of this section are required to include this information on the Monroney label. Although NHTSA also makes the information available through means such as postings at <http://www.safercar.gov> and <http://www.nhtsa.dot.gov>, the additional Monroney label information is intended to provide consumers with relevant information at the point of sale.

(b) *Application.* This section applies to automobiles with a GVWR of 10,000 pounds or less, manufactured on or after September 1, 2007, that are required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to have price sticker labels (Monroney labels), *e.g.*, passenger vehicles, station wagons, passenger vans, sport utility vehicles, and recreational vehicles.

(c) *Definitions.* (1) *Monroney label* means the label placed on new automobiles with the manufacturer's suggested retail price and other consumer information, as specified at 15 U.S.C. 1231-1233.

(2) *Safety rating label* means the label with NCAP safety rating information, as specified at 15 U.S.C. 1232(g). The safety rating label is part of the Monroney label.

(d) *Required Label.* (1) Except as specified in paragraph (f) of this section, each vehicle must have a safety rating label that is part of its Monroney label, meets the requirements specified in paragraph (e) of this section, and conforms in content, format and sequence to the sample label depicted in Figure 1 of this section. If NHTSA has not provided a safety rating for any category of vehicle performance for a vehicle, the manufacturer may use the smaller label specified in paragraph (f) of this section.

(2) The label must depict the star ratings for that vehicle as reported to the vehicle manufacturer by NHTSA.

(3) Whenever NHTSA informs a manufacturer in writing of a new safety rating for a specified vehicle or the continued applicability of an existing safety rating for a new model year,

including any safety concerns, the manufacturer shall include the new or continued safety rating on vehicles manufactured on or after the date 30 calendar days after receipt by the manufacturer of the information.

(4) If, for a vehicle that has an existing safety rating for a category, NHTSA informs the manufacturer in writing that it has approved an optional NCAP test that will cover that category, the manufacturer may depict vehicles manufactured on or after the date of receipt of the information as "Not Rated" or "To Be Rated" for that category.

(5) The text "Frontal Crash," "Side Crash," "Rollover," "Driver," "Passenger," "Front Seat," "Rear Seat" and where applicable, "Not Rated" or "To Be Rated," the star graphic indicating each rating, as well as any text in the header and footer areas of the label, must have a minimum font size of 12 point. All remaining text and symbols on the label (including the star graphic specified in paragraph (e)(8)(i)(A) of this section, must have a minimum font size of 8 point.

(e) *Required Information and Format.*

(1) *Safety Rating Label Border.* The safety rating label must be surrounded by a solid dark line that is a minimum of 3 points in width.

(2) *Safety Rating Label Size and Legibility.* The safety rating label must be presented in a legible, visible, and prominent fashion that covers at least 8 percent of the total area of the Monroney label (*i.e.*, including the safety rating label) or an area with a minimum of 4½ inches in length and 3½ inches in height on the Monroney label, whichever is larger.

(3) *Heading Area.* The words "Government Safety Ratings" must be in boldface, capital letters that are light in color and centered. The background must be dark.

(4) *Frontal Crash Area.* (i) The frontal crash area must be placed immediately below the heading area and must have dark text and a light background. Both the driver and the right front passenger frontal crash test ratings must be displayed with the maximum star ratings achieved.

(ii) The words "Frontal Crash" must be in boldface, cover two lines, and be aligned to the left side of the label.

(iii) The word "Driver" must be on the same line as the word "Frontal" in "Frontal Crash," and must be aligned in the center of the label. The achieved star rating for "Driver" must be on the same line, aligned to the right side of the label.

(iv) If NHTSA has not released the star rating for the "Driver" position, the

text "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(v) The word "Passenger" must be on the same line as the word "Crash" in "Frontal Crash," below the word "Driver," and centered. The achieved star rating for "Passenger" must be on the same line, aligned to the right side of the label.

(vi) If NHTSA has not released the star rating for "Passenger," the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(vii) The words "Star ratings based on the risk of injury in a frontal impact," followed (on the next line) by the statement "Frontal ratings should ONLY be compared to other vehicles of similar size and weight," must be placed at the bottom of the frontal crash area.

(5) *Side Crash Area.* (i) The side crash area must be immediately below the frontal crash area, separated by a dark line that is a minimum of three points in width. The text must be dark against a light background. Both the driver and the rear seat passenger side crash test rating must be displayed with the maximum star rating achieved.

(ii) The words "Side Crash" must cover two lines, and be aligned to the left side of the label in boldface.

(iii) The words "Front Seat" must be on the same line as the word "Side" in "Side Crash" and be centered. The achieved star rating for "Front Seat" must be on the same line and aligned to the right side of the label.

(iv) If NHTSA has not released the star rating for "Front Seat," the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(v) The words "Rear Seat" must be on the same line as the word "Crash" in "Side Crash," below the words "Front Seat," and centered. The achieved star rating for "Rear Seat" must be on the same line, aligned to the right side of the label.

(vi) If NHTSA has not released the star rating for "Rear Seat," the text "Not Rated" must be used in boldface. However, as an alternative, the text "To Be Rated" (in boldface) may be used if

the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(vii) The words: "Star ratings based on the risk of injury in a side impact." must be placed at the bottom of the side crash area.

(6) *Rollover Area.* (i) The rollover area must be immediately below the side crash area, separated by a dark line that is a minimum of three points in width. The text must be dark against a light background. The rollover test rating must be displayed with the maximum star rating achieved.

(ii) The word "Rollover" must be aligned to the left side of the label in boldface. The achieved star rating must be on the same line, aligned to the right side of the label.

(iii) If NHTSA has not tested the vehicle, the words "Not Rated" must be used in boldface. However, as an alternative, the words "To Be Rated" (in boldface) may be used if the manufacturer has received written notification from NHTSA that the vehicle has been chosen for NCAP testing.

(iv) The words: "Star ratings based on the risk of rollover in a single vehicle crash." must be placed at the bottom of the rollover area.

(7) *Graphics.* The star graphic is depicted in Figure 3 and the safety concern graphic is depicted in Figure 4.

(8) *General Information Area.* (i) The general information area must be immediately below the rollover area, separated by a dark line that is a minimum of three points in width. The text must be dark and the background must be light. The text must state the following, in the specified order, on separate lines:

(A) "Star ratings range from 1 to 5 stars (★ ★ ★ ★ ★), with 5 being the highest." and

(B) "Source: National Highway Traffic Safety Administration (NHTSA)"

(9) *Footer Area.* The text "www.safercar.gov or 1-888-327-4236" must be provided in boldface letters that are light in color, and be centered. The background must be dark.

(10) *Safety Concern.* For vehicle tests for which NHTSA reports a safety concern as part of the star rating, the label must:

(i) Depict, as a superscript to the star rating, the related symbol, as depicted in Figure 4 of this section, at ⅔ the font size of the base star, and

(ii) Include at the bottom of the relevant area (*i.e.*, frontal crash area, side crash area, rollover area), as the last line of that area, the related symbol, as depicted in Figure 4 of this section, in

the same font size as the rest of the line, and the text "Safety Concern: Visit <http://www.safercar.gov> or call 1-888-327-4236 for more details."

(11) No additional information may be provided in the safety rating label area. The specified information provided in a language other than English is not considered to be additional information.

(f) *Smaller Safety Rating Label for Vehicles with No Ratings.* (1) If NHTSA has not released a safety rating for any category for a vehicle, the manufacturer may use a smaller safety rating label that meets paragraphs (f)(2) through (f)(5) of this section. A sample label is depicted in Figure 2.

(2) The label must be at least 4½ inches in width and 1½ inches in height.

(3) *Heading Area.* The text must read "Government Safety Ratings" and be in

12-point boldface, capital letters that are light in color, and be centered. The background must be dark.

(4) *General Information.* The general information area must be below the header area. The text must be dark and the background must be light. The text must state the following, in 8-point font, in the specified order:

(i) "This vehicle has not been rated by the government for frontal crash, side crash, or rollover risk."

(ii) "Source: National Highway Traffic Safety Administration (NHTSA)."

(5) *Footer Area.* The text "www.safercar.gov or 1-888-327-4236" must be provided in boldface letters that are light in color, and be centered. The background must be dark.

(6) No additional information may be provided in the smaller safety rating label area. The specified information

provided in a language other than English is not considered to be additional information.

(g) *Labels for alterers.* (1) If, pursuant to 49 CFR 567.7, a person is required to affix a certification label to a vehicle, and the vehicle has a safety rating label with one or more safety ratings, the alterer must also place another label on that vehicle as specified in this paragraph.

(2) The additional label (which does not replace the one required by 49 CFR 567.7) must read: "This vehicle has been altered. The stated star ratings on the safety rating label may no longer be applicable."

(3) The label must be placed adjacent to the Monroney label or as close to it as physically possible.

BILLING CODE 4910-59-P

Figure 1 to Sec. 575.301
Sample Label for a Vehicle with At Least One NCAP Rating

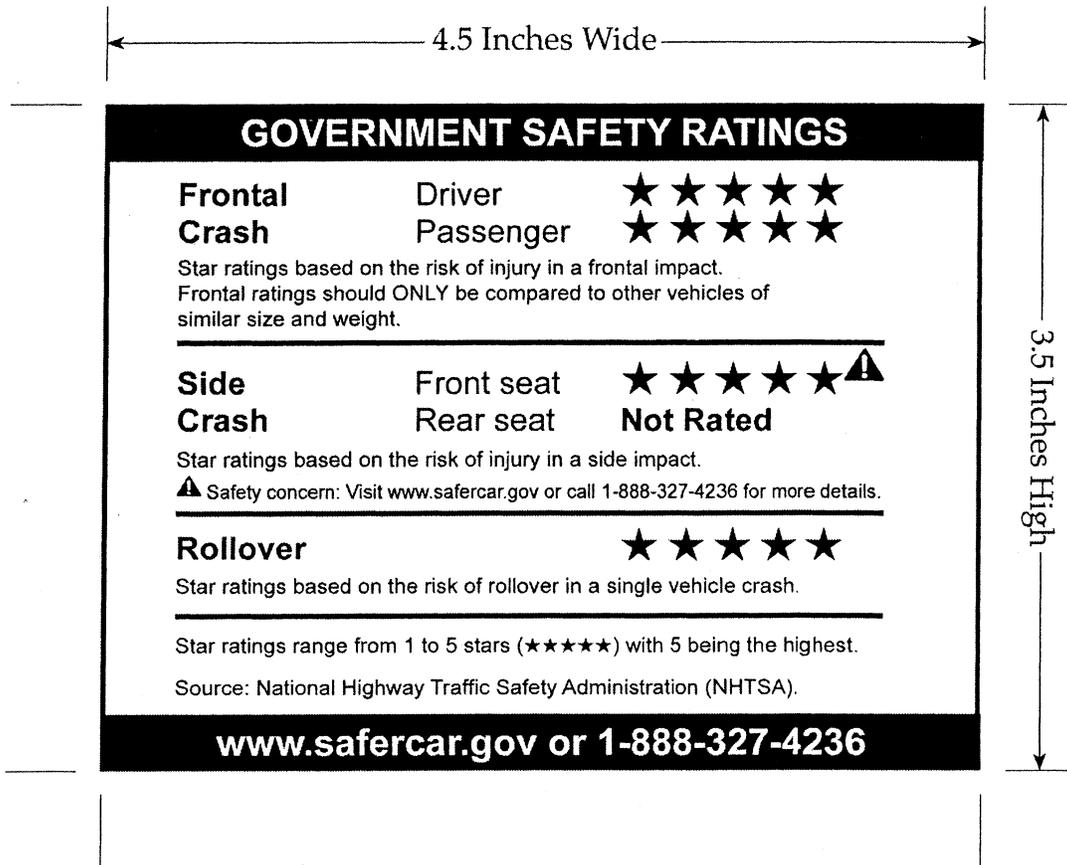


Figure 2 to Sec. 575.301
Sample Label for a Vehicle with No NCAP Ratings

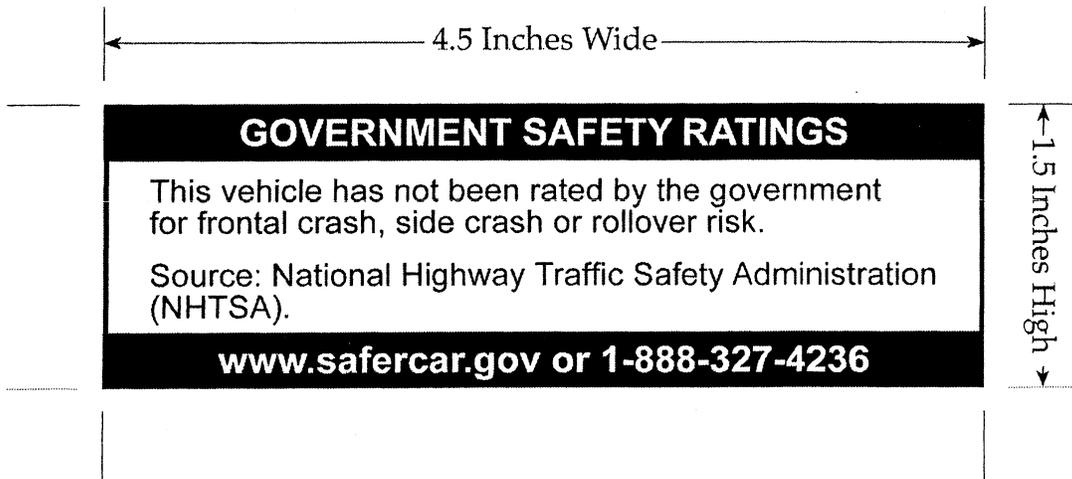


Figure 3 to Sec. 575.301
Sample Star Rating Graphic for Sec. 575.301



Figure 4 to Sec. 575.301
Sample Safety Concern Graphic for Sec. 575.301



Issued on: September 1, 2006.

Nicole R. Nason,
 Administrator.

[FR Doc. 06-7501 Filed 9-7-06; 10:00 am]

BILLING CODE 4910-59-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rota Bridled White-Eye (*Zosterops rotensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Rota Bridled White-eye (*Zosterops rotensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 3,958 acres (ac) (1,602 hectares (ha)) fall within the boundaries of the critical habitat designation on the Island of Rota, Commonwealth of the Northern Mariana Islands (CNMI).

DATES: This rule becomes effective on October 12, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Pacific Islands Fish and Wildlife Office,

U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3-122, Box 50088, Honolulu, HI 96850 (telephone 808-792-9400). The final rule and economic analysis will also be available on the Internet at <http://www.fws.gov/pacificislands>.

FOR FURTHER INFORMATION CONTACT:

Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone 808-792-9400; facsimile 808-792-9581). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under the Act section 4(b)(2), there are significant limitations on the regulatory effect of designation under the Act section 7(a)(2). In brief, (1) Designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not

prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004). In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully

manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a

defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; U.S.C. 4371 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

Our intent is to discuss only topics directly relevant to the designation of critical habitat in this final rule. For more information on the Rota bridled white-eye, refer to the final listing rule published in the **Federal Register** on January 22, 2004 (69 FR 3022).

Previous Federal Actions

On September 14, 2005, we published a proposed rule to designate critical habitat for the Rota bridled white-eye (70 FR 54335). The public comment period was open for 60 days until November 14, 2005. On May 4, 2006, we published a notice in the **Federal Register** and issued a press release announcing the reopening of the public comment period and the availability of the draft economic analysis for the proposed designation of critical habitat for the Rota bridled white-eye (71 FR 26315). The comment period was open for an additional 30 days until June 5, 2006. For more information on previous Federal actions concerning the Rota bridled white-eye, refer to the final rule listing this species as endangered, published in the **Federal Register** on January 22, 2004 (69 FR 3022), and the proposed critical habitat rule published in the **Federal Register** on September 14, 2005 (70 FR 54335).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation

of critical habitat for the Rota bridled white-eye that was published on September 14, 2005 (70 FR 54335). We also contacted appropriate Federal, Commonwealth, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

We received a total of 14 written comments during the 2 comment periods on the proposal published on September 14, 2005 (70 FR 54335), and the draft economic analysis published on May 4, 2006 (71 FR 26315). These included responses from eight designated peer reviewers, four individuals or organizations (one organization provided comments during both comment periods), and one from the CNMI Division of Fish and Wildlife. We did not receive comments from any Federal agencies. Ten commenters supported the proposed designation, two commenters provided information and expressed neither opposition nor support for the proposed designation, and one expressed concern regarding the size of the proposed designation. We reviewed all comments received for substantive issues and new information regarding critical habitat for the Rota bridled white-eye. Substantive comments were grouped into three general issues, are addressed in the following summary, and were incorporated into this final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 11 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from eight of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Comments Related to Life History, Habitat Characteristics, and Ecological Considerations

1. *Comment:* Three peer reviewers stated that there is limited evidence to support the statement that black drongo and rat predation are important threats to the Rota bridled white-eye. One peer reviewer also stated that there is limited evidence to indicate that habitat

fragmentation is a threat to the Rota bridled white-eye.

Our Response: We agree that the available information on the threats to the Rota bridled white-eye is limited and that there is not strong evidence to indicate whether rat and black drongo predation and habitat fragmentation are important threats to the Rota bridled white-eye. However, introduced species and habitat fragmentation have both been documented to be important threats to many species from the islands in the Pacific. In the recovery outline (USFWS 2004, p. 11) and draft recovery plan (USFWS 2006, p. 33–34) for the Rota bridled white-eye, we recommend that additional research be conducted on these potential threats and that appropriate management actions be undertaken based on the results of this research.

2. *Comment:* Three peer reviewers stated that on-the-ground conservation is needed, in addition to critical habitat designation, to conserve the Rota bridled white-eye.

Our Response: We agree that on-the-ground management of the threats and resource needs of the species is necessary for the long-term conservation of the species. Management activities are described in the recovery outline (USFWS 2004, p. 11) and draft recovery plan (USFWS 2006, pp. 39–51) for the species.

Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

3. *Comment:* One peer reviewer stated that the population recovery benchmark (16,000 Rota bridled white-eyes) may not be achievable because the native forest canopy and available acreage have decreased.

Our Response: We agree that the quality of Rota bridled white-eye habitat has diminished over the last several decades and currently may not be sufficient to support a population of 16,000 Rota bridled white-eyes. However, the amount of critical habitat designated was based on the assumption that it could support a population of 16,000 Rota bridled white-eyes with appropriate management activities, such as restoration of degraded forest areas (see “Special Management Considerations or Protections” section for details).

4. *Comment:* One peer reviewer noted that we did not utilize Rota bridled white-eye densities reported by Engbring *et al.* (1986, p. 44) to help identify the amount of land to designate as critical habitat and that some unanalyzed survey data collected by the CNMI in 1992 and 1993 may also be

available for estimating white-eye densities.

Our Response: We considered the density estimate provided by Engbring *et al.* (1986, p. 44) in the preparation of the proposed rule, but during development of the final rule, we determined that survey work by Fancy and Snetsinger (2001, p. 276) and Amidon (2000, p. 68) was the best available information for this purpose. The density estimate calculated by Engbring *et al.* (1986, p. 44) was for a large portion of Rota that included a wide variety of habitats of varying quality. We believe this density estimate is too broad and does not provide an accurate estimate of the number of Rota bridled white-eyes a forested area can support if the threats to the species are controlled.

We also reviewed the CNMI reports by Lusk (1993, pp. 235–236) and Worthington and Taisacan (1994, pp. 17–18) on Rota bridled white-eye research during the 2 years identified by the peer reviewer. Descriptions of the survey methodology in these two reports indicated that surveys for Rota bridled white-eyes were conducted along two transects. However, Rota bridled white-eye densities were not calculated along these transects and we were unable to obtain density data from these surveys. Therefore, we could not consider this information in our analysis.

5. *Comment:* One peer reviewer suggested that the designation of critical habitat for the Rota bridled white-eye and Mariana crow will lead to local hostility toward both species and their conservation. One commenter suggested that there is no basis for the concern described in the Draft Economic Analysis that designating critical habitat for the Rota bridled white-eye might result in harm to the species due to negative public sentiment.

Our Response: We acknowledge that, despite the Service’s outreach activities, considerable apprehension remains about the impacts of critical habitat on land use on Rota. Nevertheless, without documentation that the designation of critical habitat would increase the threat to the Rota bridled white-eye or Mariana crow, we have no basis for changing our prudence determination. The basis for disclosing negative public sentiment and its possible effect on the Rota bridled white-eye is presented in Section 1.2.3.3 of the Draft Economic Analysis (p. 1–7). Public sentiment was offered in meetings with various agencies, as cited in the Draft Economic Analysis, and determined to be information for additional consideration and appropriately labeled as such. This

information is not qualitatively or quantitatively defined in the economic impact section in Section 3.

6. *Comment:* One peer reviewer suggested that non-forested areas may also need to be considered for designation due to loss and degradation of native forest on the Sabana.

Our Response: We agree that reforestation may be an important tool in the conservation of the Rota bridled white-eye. However, because these non-forested areas were not occupied by Rota bridled white-eye at the time of listing, do not contain the primary constituent elements, and are not essential for the conservation of the white-eye, we did not consider these areas for designation.

7. *Comment:* One peer reviewer suggested that additional information be provided with Map 1 to explain why some areas surrounded by critical habitat were not designated.

Our Response: We only designated areas that contain the primary constituent elements for the Rota bridled white-eye. Many of the large areas not designated that lie within the outer boundary of the designation are composed of open fields or agricultural plots that do not contain the primary constituent elements needed for the survival of the species.

8. *Comment:* Two peer reviewers stated that the current designation was based on the best available information but suggested that as additional information is obtained about the habitat requirements of the Rota bridled white-eye it may become necessary to modify the designation in the future.

Our Response: If new information becomes available about the habitat requirements of the Rota bridled white-eye which indicates that the designation is not appropriate for the conservation of this species, we will consider amending this critical habitat rule as available resources allow.

9. *Comment:* Three commenters suggested that the forested areas along the rivers in the upper reaches of the Talakhaya region be added to the designation because Rota bridled white-eyes and their primary constituent elements are currently found in these areas.

Our Response: We agree that some of the forested areas in the Talakhaya region are utilized by Rota bridled white-eyes and may contain some of their primary constituent elements. However, since the first island-wide forest bird survey in 1982, Rota bridled white-eyes have been recorded primarily above 490 feet (ft; 150 meters (m)) elevation (Engbring *et al.* 1986, p. 77; Amidon 2000, p. 38; Fancy and

Snetsinger 2001, p. 278). Therefore, we utilized this elevation contour as a criterion for delimiting critical habitat and listed forests above this elevation contour as a primary constituent element for this species (see "Primary Constituent Elements" for details). The majority of the forested areas along the rivers in the Talakhaya region are below this elevation so they were not considered in the designation. We did, however, include Talakhaya region forested areas above this elevation in the proposal and final designation. In addition, one of our selection criteria for the designation was sufficiently forested areas to meet the recovery goal of 16,000 individuals for the species (see the "Criteria Used to Identify Critical Habitat" section for details). Because sufficiently forested areas above 490 ft (150 m) elevation (enough to attain the recovery goal) were available for the designation, we did not include forested areas below this elevation contour.

10. *Comment:* Two peer reviewers and one commenter stated that the section of the proposed rule titled "Designation of Critical Habitat Provides Little Additional Benefit to the Species" is political, editorializing, and out of place in a proposal.

Our Response: The section referenced by the peer reviewers and commenter is intended to be a general statement regarding our position on the designation of critical habitat. As discussed in the preamble of this and other critical habitat designation rules, we believe that, in most cases, conservation mechanisms provided through section 7, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative programs with private and public landowners provide greater incentives and conservation benefits than the designation of critical habitat.

11. *Comment:* One commenter stated the Service's complaints regarding accelerated schedules of court-ordered designations in the section of the rule titled "Designation of Critical Habitat Provides Little Additional Benefit to the Species" does not apply to the Rota bridled white-eye proposal because the Service agreed to the timeline in the settlement agreement.

Our Response: As stated above, the section referenced by the commenter is intended to be a general statement regarding our position on the designation of critical habitat. For some designations, the schedules for completing these rules are not necessarily accelerated.

Comments Related to Economic Analysis and Other Relevant Impacts

1. *Comment:* One commenter stated that the draft wrongly attributed costs related to restrictions on agricultural homestead development to critical habitat designation, and that other factors are the causes.

Our Response: The moratorium associated with the agricultural homestead program described in the draft Economic Analysis is a moratorium on new agricultural homestead applications, not on the development of agricultural homesteads. A backlog on existing applications exists, and there is no moratorium on development associated with the existing applications. The draft Economic Analysis does not assume that the existing moratorium on new applications is attributable to critical habitat designation for the Rota bridled white-eye. The analysis does identify a percentage of land within the critical habitat unit that has agricultural homestead development potential, and identifies the cost associated with the loss of that development potential. To estimate a range of costs, we presumed that the current moratorium on new applications would be lifted because of the importance of land to people of Northern Mariana Islands descent, and the lack of information to suggest that the lifting of the moratorium would be unlikely.

2. *Comment:* Three commenters stated that the analysis of lost development value of critical habitat land in the draft economic analysis does not accurately reflect potential development on Rota in the next 20 years.

Our Response: As described in Section 3.2.2.3 of the Draft Economic Analysis (pp. 3–15), the analysis does not presume the potentially impacted acres will be developed in the next 20 years, but assumes that value is lost associated with the lost option for development. The estimated value of a parcel of land implicitly incorporates its potential for future development. The methods and data used to estimate the reduction in land value associated with restrictions on development were peer reviewed.

3. *Comment:* The CNMI Division of Fish and Wildlife stated that the economic impact of the critical habitat designation of the Mariana Crow on Rota was far less than that of the Rota bridled white-eye, and another commenter stated that the draft economic analysis incorrectly lumps the costs associated with critical habitat designation with costs already triggered by the listing of the species.

Our Response: The economic analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (*i.e.*, the cost estimates are fully co-extensive). In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Ass'n v. USFWS*, 248 F.3d 1277 (10th Cir. 2001)). The economic analysis complies with direction from the U.S. 10th Circuit Court of Appeals. This analysis identifies those economic activities believed to most likely threaten the Rota white-eye and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. Due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation.

4. *Comment:* One commenter stated that the draft economic analysis failed to analyze the benefits of critical habitat designation.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (such as lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that enabled us to measure beneficial impacts, nor was such information submitted during the public comment period. Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the

government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the subspecies and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance. We note, as a practical matter, it is difficult to develop credible estimates of such values, because they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We currently lack both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In summary, we believe that society places significant value on conserving threatened and endangered species and the habitats they depend on, but we need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for her failure to adopt regulation consistent with the agency's comments or petition." Comments received from the CNMI Division of Fish and Wildlife regarding the proposal to designate critical habitat for the Rota bridled white-eye are addressed below.

1. *State Comment:* The CNMI Division of Fish and Wildlife stated that the forests in the As Rosalia area are severely degraded and support very few Rota bridled white-eyes, and suggested that this area be removed from the designation.

Our Response: We agree that the forests in the As Rosalia area are degraded and likely support low numbers of Rota bridled white-eyes. However, we estimated that approximately 4,000 ac (1,600 ha) of forest that contains features essential to the conservation of the Rota bridled white-eye would be needed to support the long-term conservation of the species (see the "Criteria Used to Identify Critical Habitat" section for details). Forests containing essential features are primarily limited to the Sabana region, which includes the As Rosalia area. The As Rosalia area is occupied, albeit by low numbers of Rota bridled white-eyes (Fancy and Snetsinger 2001, p. 276), it still contains features that are essential to the conservation of the species (e.g., yoga,

oschal, and kafu in the canopy or understory), and it has the potential to be improved with appropriate management; therefore, we have included this area in the final designation.

2. *State Comment:* The CNMI Division of Fish and Wildlife stated that the Sabana plateau is primarily grassland and agricultural land and does not contain Rota bridled white-eyes or good habitat for the species. Therefore, they recommend that this area be removed from the designation.

Our Response: We agree that some of the Sabana plateau is not forested, and we did not include these non-forested areas in the proposal or in this final designation because they do not contain the primary constituent elements. We also agree that some of the forested areas on the Sabana plateau have sustained damage caused by typhoons, deer browsing, and other factors. However, as stated above (see State Comment 1), approximately 4,000 ac (1,600 ha) of forest that contains features essential to the conservation of the Rota bridled white-eye would be needed to support the long-term conservation of the species (see the "Criteria Used to Identify Critical Habitat" section for details). Forests containing these essential features are primarily limited to the Sabana region, which includes the Sabana plateau. The Sabana plateau contains many of the features essential for the long-term conservation of the Rota bridled white-eye (such as yoga, oschal, and kafu in the canopy or understory), and with appropriate weed and deer control measures we believe the forests can be managed to increase Rota bridled white-eye numbers. We do not agree with the statement that Rota bridled white-eyes are not found on the Sabana plateau. While the central portion of the plateau is currently occupied at very low population levels, the outer edges of the plateau contain high density Rota bridled white-eye areas (Fancy and Snetsinger 2001, p. 276). We did not remove the forested areas of the Sabana plateau from the final designation because they contain documented occurrences of Rota bridled white-eyes and their primary constituent elements.

Summary of Changes From Proposed Rule

In developing the final critical habitat designation for the Rota bridled white-eye, we reviewed the comments received on our proposed rule and draft economic analysis and conducted further evaluation of lands included under the proposal. Based on our review, we have determined that no

changes to the proposed designation are warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires formal consultation on Federal actions that are likely to result in an adverse effect to critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if its essential features may require special management or protection. In addition, when the best available

scientific data demonstrate that the conservation needs of the species do not require additional areas, we will not designate critical habitat in areas not occupied by the species when it was listed. An area currently occupied by the species that was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject

to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider the physical and biological features (primary constituent elements or PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

Based on our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent elements required by the Rota bridled white-eye for the biological needs of foraging, sheltering, roosting, and nesting and rearing of young are:

Forest above 490 ft (150 m) in elevation containing a midstory and canopy layer, high epiphytic plant volume (typically 11 percent or greater), *Elatostema* and *Procris* spp. on the ground, and yoga, oschal, faniok, kafu, and/or ahgao trees as dominant forest components. In addition, the habitat should contain specific forest components for foraging, nesting, or both, as follows:

(1) Yoga, oschal, faniok, pengua, ahgao, amahadyan, avocado, hodda, mapunyo, atoto, sosugi, and/or sumac-lada trees, and/or piao, in the canopy or subcanopy for foraging; or

(2) Yoga, oschal, faniok, and/or sosugi trees 10 to 49 ft (3 to 15 m) tall and 1 to 24 in (2 to 60 cm) diameter at breast height for nesting.

Because not all life history functions require all the primary constituent elements, not all critical habitat will contain all the primary constituent elements. However, the areas designated in this rule have been determined to contain sufficient primary constituent elements to provide for one or more of the life history functions of the Rota bridled white-eye. For more information on the primary constituent elements essential to the conservation of the Rota bridled white-eye see the proposal to designate critical habitat published in the **Federal Register** on September 14, 2005 (70 FR 54335).

Criteria Used To Identify Critical Habitat

We considered several factors in identifying and selecting lands for designation as critical habitat for the Rota bridled white-eye. First, we assessed the possible recovery goals for the species to help determine the amount of habitat needed to conserve the species. The recovery considerations are based on minimum viable population information from Reed *et al.* (2003). Reed *et al.* (2003, p. 27) reviewed minimum viable population sizes for 102 vertebrate species, including one white-eye species, and estimated that 7,000 breeding adults had a 99 percent likelihood of persisting for 40 generations. We then used data on Japanese white-eyes (*Zosterops japonicus*) (van Riper 2000, p. 10) and silvereyes (*Zosterops lateralis*) (Kikkawa and Wilson 1983, p. 189; Catterall *et al.* 1989, p. 559) to estimate the lifespan of the Rota bridled white-eye and the percentage of its population that may be breeding in order to apply Reed *et al.*'s findings to the Rota bridled white-eye. We used the data on these two more closely related white-eye species because similar population parameter estimates are not available for the Rota bridled white-eye. The other species are similar to the Rota bridled white-eye in size (Kikkawa 1980, p. 441; van Riper 2000, p. 2; Derrickson 1998), breeding biology (Amidon *et al.* 2004, p. 345), and social behavior (Catterall *et al.* 1982, p. 405; Amidon 2000, pp. 33-34; van Riper 2000 pp. 6-7). Based on the information, a potential benchmark for recovery of this species would be a single population of at least 16,000 Rota bridled white-eyes on the island of Rota. To determine the approximate quantity of habitat that would be occupied by a population of this size, we reviewed Rota bridled white-eye density estimates

from 1996 (Fancy and Snetsinger 2001, pp. 275–276) and 1999 (Amidon 2000, p. 68) surveys.

The maximum Rota bridled white-eye densities recorded by Fancy and Snetsinger (2001, p. 276) in 1996, and Amidon (2000, p. 68) in 1999, were approximately 3 and 4 white-eyes per ac (7 and 10 per ha), respectively. The higher Rota bridled white-eye densities reported by Amidon (2000) are likely a result of differing survey methods and not an increase in Rota bridled white-eye densities over the years. The Fancy and Snetsinger (2001, p. 276) estimates were based on a single set of surveys in the Rota bridled white-eye's range involving area searches. The Amidon estimates (2000, pp. 14–15) were based on multiple point count surveys conducted in 1998 and 1999.

Based on these density estimates, we believe that 4 white-eyes per ac (10 per ha) is a conservative estimate of the number of Rota bridled white-eyes a forested area could support if the threats to the species were controlled. Utilizing this density estimate, we then divided the population recovery benchmark (16,000 Rota bridled white-eyes; see discussion above) by 4 birds per ac (10 per ha) and estimated that approximately 4,000 ac (1,600 ha) of forest would be needed to conserve the Rota bridled white-eye. This was then used as a guideline for selecting how much habitat was essential to the Rota bridled white-eye for the critical habitat designation.

When selecting areas for designation, we first selected all of the forested areas (approximately 638 ac (258 ha)) that contained high densities of Rota bridled white-eyes in 1996 (Fancy and Snetsinger 2001, p. 276) and 1999 (Amidon 2000, pp. 68, 82). These areas are primarily limestone forest or introduced forest with sosugi trees or piao. We then selected low density areas that had large numbers of white-eyes in 1982, 1987, 1989, and 1994, and large tracts of mature limestone forest identified by Falanruw *et al.* (1989, pp. 2–3, 6–8). These areas were prioritized because they contain the primary constituent elements needed by the species and have supported larger white-eye populations than other areas containing the white-eyes. When defining critical habitat boundaries, we avoided areas not known to contain primary constituent elements essential for Rota bridled white-eye conservation, such as agricultural lands and other developed lands.

We are designating critical habitat on lands that contain the features that are essential to the conservation of the Rota bridled white-eye. These areas contain

the primary constituent elements and were considered to be occupied at the time the species was listed (69 FR 3022; January 22, 2004) (Fancy and Snetsinger 2001, p. 276). A brief discussion of the area designated as critical habitat is provided in the Critical Habitat Designation section below.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and containing the primary constituent elements may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by the physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection.

As stated in the final listing rule (69 FR 3022; January 22, 2004), the available information indicates habitat loss and degradation and predation by introduced rats (*Rattus* spp.) and birds (black drongos (*Dicrurus macrocercus*)) are threats to the long-term conservation of the Rota bridled white-eye. In addition, the small population size and limited distribution of the species also make it vulnerable to extinction from random environmental events (*e.g.*, typhoons). To address these threats and conserve the species, the following special management actions may be needed: (1) Protection of the remaining stands of mature limestone forest from clearing and modification; (2) restoration of degraded areas; (3) invasive plant control; and (4) rat and black drongo control. For additional information about the threats to the Rota bridled white-eye, see the final listing rule (69 FR 3022; January 22, 2004).

Critical Habitat Designation

We are designating one unit of approximately 3,958 ac (1,602 ha) of forested land for the Rota bridled white-eye as critical habitat (see Map 1 in the rule portion of this document). This area contains forested areas on 3,700 ac (1,498 ha) of public and 258 ac (104 ha) of private lands along the slopes and top of the Sabana plateau. Approximately 62 percent (2,292 ac; 928 ha) of the public land within this proposed designation is within the Sabana Conservation Area. This unit is composed of limestone forest,

introduced forest, and secondary vegetation that together contain the full range of primary constituent elements needed for long-term conservation of the Rota bridled white-eye. This area was considered occupied at the time the Rota bridled white-eye was listed (69 FR 3022; January 22, 2004) (Fancy and Snetsinger 2001, p. 276) and contains the high-density areas identified by Fancy and Snetsinger (2001, p. 276); the only known nesting areas for the Rota bridled white-eye (Pratt 1985, p. 93; Lusk and Taisacan 1997, p. 183; Amidon 2000, p. 109); and the areas where larger numbers of Rota bridled white-eyes have been regularly observed during surveys since 1982. This unit also contains the primary threats to the conservation of the Rota bridled white-eye (introduced rats, black drongos, and habitat degradation and loss [Engbring *et al.* 1986, pp. 10–11; Amidon 2000, pp. 41–43; Fancy and Snetsinger 2001, pp. 278–280]) and requires special management (see Special Management Considerations or Protections above).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency

cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process if those species are listed or the critical habitat is designated.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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, the Service will issue: (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, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, are consistent with the scope of the Federal agency's legal authority and jurisdiction, are economically and technologically feasible, and are actions that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Rota bridled white-eye or its designated critical habitat will require section 7 consultation under the Act. Activities on non-Federal lands requiring a Federal permit (such as a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Rota Bridled White-eye and its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for Rota bridled white-eye jeopardy analyses that relies heavily on the importance of the core area population to the survival and recovery of the Rota bridled white-eye. The section 7(a)(2) analysis is focused not only on this population but also on the habitat conditions necessary to support it.

The jeopardy analysis usually expresses the survival and recovery needs of the Rota bridled white-eye in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population, inclusive of associated habitat conditions, a jeopardy finding may be warranted because of the relationship of the core area population

to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Rota bridled white-eye critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of the Rota bridled white-eye critical habitat unit is to support a viable core area population.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the Rota bridled white-eye is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Rota bridled white-eye include, but are not limited to:

(1) Actions that would reduce the amount of limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include vegetation clearing and fires. These activities could eliminate or reduce foraging and breeding habitat.

(2) Actions that would increase the fragmentation of limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include vegetation clearing and burning. These activities could reduce connectivity between areas utilized by Rota bridled white-eyes for foraging and breeding and increase the amount of forest edge exposed to the potential impacts of typhoons (e.g., tree uprooting and limb damage), thereby further reducing the availability of breeding and foraging habitat.

(3) Actions that would degrade limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include spreading or

introducing invasive weed species, such as *Coccinia grandis* (scarlet gourd), that inhibit the natural regeneration of native forest utilized by Rota bridled white-eyes for breeding and foraging.

The critical habitat unit contains the features essential to the conservation of the Rota bridled white-eye. The unit is within the geographic range of the species, was occupied by the species at the time of listing (based on observations made within the last 25 years), and is likely to be used by the Rota bridled white-eye. Federal agencies are already required to consult with us on activities in areas currently occupied by the Rota bridled white-eye to ensure that their actions do not jeopardize the continued existence of the Rota bridled white-eye.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on May 4, 2006 (71 FR 26315). We accepted comments on the draft analysis until June 5, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Rota bridled white-eye. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. The economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may exist due to the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from,

for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

Pre-designation costs include conservation activities to protect the Rota bridled white-eye and its habitat associated with sections 4, 7, and 10 of the Act that have accrued since the species was listed as endangered on January 22, 2004 (69 FR 3022), but prior to the designation of critical habitat. Total pre-designation costs associated with lands designated as critical habitat are estimated to be \$68,000 in 2005 dollars. These costs include species and habitat research and planning efforts associated with a proposed island-wide habitat conservation plan.

Post-designation effects would include likely future costs associated with protecting the Rota bridled white-eye and its habitat in the 20-year period following the designation of critical habitat (effectively 2006 through 2025). Costs for this designation are associated with public land management, such as species and habitat research and development of habitat conservation plans associated with agricultural homesteads, or the loss of development value of potential agricultural homestead lands that are not developed in the critical habitat unit. Three alternatives were assessed for determining the potential cost of this designation. The first alternative was the development of an island-wide habitat conservation plan. The second was the development of a habitat conservation plan just for agricultural homesteads within the critical habitat unit. The third was that no habitat conservation plan would be developed, and the value of the developable land within the critical habitat unit would be lost. The future costs for Alternatives 1 and 2 are similar: Total undiscounted costs were estimated to range from \$1,301,000 to \$1,328,000 over the 20-year forecast period. Assuming a 7 percent discount rate, costs for Alternatives 1 and 2 were estimated to range from a present value of \$806,000 to \$830,000 or an annualized value of \$76,000 to \$79,000 over the 20-year forecast period. Assuming a 3 percent discount rate, total costs for Alternatives 1 and 2 were estimated to range from a present value of \$1,034,000 to \$1,059,000 or an annualized value of \$69,000 to \$71,000 over the forecast period. Future undiscounted costs for

Alternative 3 were estimated to be \$4,700,000. Assuming a 7 percent discount rate, the cost for Alternative 3 was estimated to be \$4,465,000 or an annualized value of \$421,000 over the 20-year forecast period. Assuming a 3 percent discount rate, the cost for Alternative 3 was estimated to be \$4,572,000 or an annualized value of \$307,000 over the 20-year forecast period.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Division of Endangered Species (see **ADDRESSES** section), or by downloading from the Internet at <http://www.fws.gov/pacificislands>.

Exclusions Under Section 4(b)(2) of the Act

Our economic analysis indicates an overall low cost resulting from the designation. However, pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for the Rota bridled white-eye are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the Rota bridled white-eye, and the designation does not include any Tribal lands or trust resources. We anticipate no impact to national security, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information, including the prepared economic analysis, we believe the unit contains the features that are essential for the conservation of this species. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for Rota bridled white-eye based on economic or other impacts.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this final rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the final rule clearly stated? (2) Does the final rule contain technical jargon that interferes with the clarity? (3) Does the format of the final rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the

SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the final rule? (5) What else could we do to make this final rule easier to understand?

Send a copy of any comments on how we could make this final rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal or policy issues, but will not have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action, which has assisted us in meeting the requirements of E.O. 12866, as well as section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including

school boards and city and town governments that serve fewer than 50,000 residents; and small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the “substantial number” test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.” Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Rota bridled white-eye. 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 reinstate consultation for ongoing or future Federal activities.

In our draft economic analysis of this designation, we evaluated the potential economic effects on small business entities resulting from the protection of the Rota bridled white-eye and its habitat related to the listing of the species and the proposed designation of critical habitat. The estimated effects are anticipated to be borne by the CNMI government (which includes both the Department of Land and Natural Resources and Department of Public Lands) and the Service. The CNMI government has 69,221 constituents and is not considered a small entity.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the critical habitat designation, the types of Federal actions or authorized activities that we have identified as potential concerns are:

- (1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;
- (2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;
- (3) Road construction and maintenance and right-of-way designation funded by the Federal Highway Administration, and Federal regulation of agricultural activities;
- (4) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and
- (5) Activities funded by the Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect the Rota bridled white-eye. The kinds of actions that may be included if future

reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents, because no small businesses are involved and most land is managed by the CNMI government.

In summary, we have considered whether designation of critical habitat would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Federal Highway Administration funding for road improvements and Federal Emergency Management Agency funding for utility and building repair. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the Rota bridled white-eye is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action

and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid

destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate resource agencies in the Commonwealth of the Northern Mariana Islands. The designation of critical habitat in areas currently occupied by the Rota bridled white-eye may impose some additional regulatory restrictions to those currently in place, but only where there is a Federal action, and, therefore, will likely have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are

designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Rota bridled white-eye.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

Outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this

determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination has been upheld in the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands on the island of Rota. Therefore, no Tribal lands were included in the designation of critical habitat for the Rota bridled white-eye.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Pacific Islands 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 § 17.11(h), revise the entry for "White-eye, Rota bridled" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
BIRDS							
* * * * *							
White-eye, Rota bridled.	<i>Zosterops rotensis</i> ..	Western Pacific Ocean-U.S.A (Commonwealth of the Northern Mariana Islands).	Entire	E	741	17.95(b)	NA
* * * * *							

■ 3. Amend § 17.95(b) by adding critical habitat for the "Rota bridled white-eye (*Zosterops rotensis*)" under "BIRDS," in the same order in which species are presented in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(b) Birds
* * * * *

Rota Bridled White-Eye (*Zosterops rotensis*)

(1) Critical habitat units are depicted for Rota, Commonwealth of the Northern Mariana Islands, on the map below.

(2) The primary constituent elements of critical habitat for the Rota bridled white-eye are the habitat components that provide forest above 490 feet (ft) (150 meters (m)) in elevation containing a midstory and canopy layer, high epiphytic plant volume (typically 11 percent or greater), *Elatostema* and *Procris* spp. on the ground, and *Elaeocarpus joga* (yoga), *Hernandia labyrinthica* (oschal), *Merrilliodendron megacarpum* (faniok), *Pandanus tectorius* (kafu), and/or *Premna obtusifolia* (ahgao) trees as dominant forest components for foraging, sheltering, roosting, and nesting and rearing of young. In addition, the habitat should contain the specific forest

components for foraging, nesting, or both, as follows:

(i) Yoga, oschal, faniok, *Macaranga thompsonii* (pengua), ahgao, *Pipturus argenteus* (amahadyan), *Persea americana* (avocado), *Ficus tinctoria* (hodda), *Aglaiia mariannensis* (mapunyao), *Eugenia thompsonii* (atoto), *Acacia confusa* (sosugi), and/or *Tarena sambucina* (sumac-lada) trees, and/or *Bambusa vulgaris* (piao, bamboo) in the canopy or subcanopy for foraging; or

(ii) Yoga, oschal, faniok, and/or sosugi trees 10 to 49 ft (3 to 15 m) tall and 1 to 24 inches (2 to 60 centimeters) diameter at breast height for nesting.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

Critical Habitat Map Unit

(4) Data layers defining the mapped unit were created on a base of USGS 7.5' quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Rota bridled white-eye critical habitat, Rota, Commonwealth of the Northern Mariana Islands (3,958 ac; 1,602 ha).

(i) Unit consists of 346 points with following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84):

300742, 1565012, 300809, 1565217,
300840, 1565285, 300875, 1565341,
300962, 1565420, 300995, 1565444,
301061, 1565473, 301135, 1565490,
301186, 1565494, 301327, 1565491,
301531, 1565451, 301796, 1565425,
301905, 1565419, 301958, 1565425,
302030, 1565456, 302067, 1565466,
302205, 1565482, 302229, 1565471,
302272, 1565429, 302310, 1565416,
302852, 1565346, 302882, 1565343,
302932, 1565348, 302953, 1565356,
302986, 1565377, 303007, 1565407,
303005, 1565510, 302983, 1565616,
302978, 1565666, 302982, 1565740,
302990, 1565763, 303005, 1565777,
303103, 1565824, 303150, 1565828,
303223, 1565806, 303243, 1565792,
303284, 1565740, 303303, 1565731,
303315, 1565733, 303343, 1565752,
303500, 1565896, 303645, 1565995,
303813, 1566125, 303903, 1566164,
304054, 1566243, 304085, 1566255,
304155, 1566270, 304271, 1566306,
304326, 1566311, 304388, 1566328,
304494, 1566336, 304562, 1566352,
304700, 1566368, 304734, 1566365,
304760, 1566355, 304791, 1566336,
304835, 1566299, 304904, 1566293,
304977, 1566261, 305032, 1566256,
305110, 1566231, 305131, 1566220,
305152, 1566197, 305174, 1566158,
305197, 1566090, 305213, 1566016,
305244, 1565964, 305317, 1565923,
305417, 1565815, 305444, 1565800,
305461, 1565775, 305493, 1565766,
305608, 1565782, 305678, 1565798,
305840, 1565858, 305947, 1565890,
306134, 1565992, 306230, 1566039,
306271, 1566055, 306365, 1566071,
306500, 1566077, 306557, 1566089,
306588, 1566105, 306773, 1566245,
306819, 1566265, 307118, 1566324,
307158, 1566325, 307191, 1566320,
307249, 1566295, 307359, 1566230,
307407, 1566207, 307778, 1566099,

307843, 1566062, 307898, 1566047,
307941, 1566020, 307999, 1566003,
308109, 1565940, 308162, 1565898,
308260, 1565834, 308407, 1565674,
308437, 1565635, 308458, 1565596,
308529, 1565323, 308544, 1565200,
308543, 1565150, 308537, 1565112,
308472, 1564974, 308423, 1564834,
308409, 1564746, 308394, 1564555,
308385, 1564519, 308306, 1564339,
308149, 1563842, 308086, 1563674,
308065, 1563629, 308013, 1563560,
308004, 1563528, 307995, 1563514,
307953, 1563481, 307857, 1563392,
307835, 1563367, 307826, 1563347,
307816, 1563286, 307803, 1563028,
307795, 1562975, 307783, 1562966,
307725, 1562954, 307691, 1562925,
307691, 1562911, 307717, 1562869,
307712, 1562856, 307699, 1562846,
307656, 1562826, 307555, 1562804,
307518, 1562768, 307480, 1562756,
307447, 1562734, 307353, 1562655,
307323, 1562617, 307307, 1562586,
307300, 1562465, 307289, 1562432,
307266, 1562397, 307216, 1562348,
307176, 1562324, 307120, 1562306,
307027, 1562297, 307000, 1562286,
306970, 1562267, 306923, 1562220,
306885, 1562107, 306868, 1562080,
306853, 1562074, 306826, 1562082,
306799, 1562099, 306759, 1562155,
306731, 1562179, 306698, 1562219,
306678, 1562233, 306657, 1562234,
306620, 1562216, 306571, 1562209,
306513, 1562179, 306481, 1562177,
306476, 1562191, 306472, 1562272,
306434, 1562361, 306391, 1562443,
306373, 1562497, 306222, 1562602,
306206, 1562602, 306180, 1562585,
306166, 1562534, 306144, 1562526,
306121, 1562532, 306080, 1562567,
306054, 1562574, 305964, 1562570,
305912, 1562563, 305849, 1562573,
305808, 1562551, 305733, 1562553,
305722, 1562561, 305714, 1562595,
305698, 1562604, 305684, 1562596,
305672, 1562575, 305662, 1562500,
305655, 1562483, 305646, 1562484,
305635, 1562495, 305625, 1562531,
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305517, 1562518, 305486, 1562501,
305461, 1562470, 305453, 1562465,
305438, 1562464, 305415, 1562480,
305407, 1562505, 305410, 1562537,
305422, 1562585, 305421, 1562606,
305413, 1562613, 305386, 1562616,
305373, 1562624, 305347, 1562674,
305328, 1562692, 305291, 1562716,
305257, 1562722, 305232, 1562721,
305219, 1562712, 305204, 1562692,
305189, 1562688, 305160, 1562698,
305110, 1562731, 305083, 1562735,
305065, 1562733, 305037, 1562717,
305006, 1562668, 304981, 1562647,
304958, 1562638, 304924, 1562635,
304890, 1562598, 304856, 1562597,

304819, 1562606, 304787, 1562629,
304737, 1562632, 304719, 1562648,
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304793, 1562738, 304770, 1562750,
304721, 1562752, 304653, 1562789,
304603, 1562797, 304550, 1562793,
304520, 1562769, 304504, 1562762,
304464, 1562761, 304432, 1562770,
304403, 1562772, 304355, 1562769,
304332, 1562760, 304325, 1562751,
304323, 1562731, 304327, 1562719,
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304223, 1562419, 304206, 1562376,
304186, 1562353, 304126, 1562326,
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303835, 1562405, 303860, 1562408,
303865, 1562417, 303863, 1562438,
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302906, 1562269, 302895, 1562348,
302883, 1562361, 302835, 1562375,
302814, 1562391, 302792, 1562456,
302766, 1562563, 302712, 1562684,
302665, 1562811, 302645, 1562883,
302595, 1563127, 302565, 1563228,
302535, 1563275, 302436, 1563381,
302380, 1563478, 302354, 1563506,
302333, 1563519, 302254, 1563541,
302185, 1563577, 302125, 1563592,
302080, 1563615, 302015, 1563692,
301971, 1563777, 301951, 1563806,
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301750, 1563946, 301723, 1563952,
301650, 1563960, 301611, 1563981,
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301584, 1564061, 301593, 1564112,
301585, 1564135, 301474, 1564241,
301450, 1564254, 301413, 1564259,
301352, 1564251, 301311, 1564237,
301295, 1564239, 301214, 1564294,
301096, 1564399, 300966, 1564483,
300945, 1564505, 300922, 1564541,
300892, 1564569, 300859, 1564634,
300808, 1564710, 300804, 1564729,
300806, 1564769, 300802, 1564795,
300740, 1564944, 300737, 1564975.

(ii) Not including 13 areas:

(A) Bounded by the following 13 points (2 ac; 1 ha): 301307, 1564935; 301288, 1564908; 301291, 1564898; 301301, 1564889; 301354, 1564890; 301410, 1564877; 301424, 1564879; 301460, 1564899; 301472, 1564922; 301468, 1564941; 301452, 1564950; 301382, 1564933; 301335, 1564939.

(B) Bounded by the following 48 points (39 ac; 16 ha): 301471, 1564593; 301458, 1564567; 301463, 1564557; 301550, 1564532; 301578, 1564506; 301598, 1564501; 301639, 1564501; 301668, 1564487; 301760, 1564465; 301797, 1564449; 301803, 1564442; 301802, 1564433; 301789, 1564410; 301787, 1564397; 301798, 1564388; 301812, 1564387; 301824, 1564395; 301844, 1564426; 301857, 1564432; 301920, 1564441; 301980, 1564460; 302041, 1564447; 302081, 1564449; 302122, 1564459; 302169, 1564479; 302242, 1564523; 302338, 1564565; 302377, 1564592; 302400, 1564618; 302417, 1564647; 302427, 1564679; 302426, 1564699; 302418, 1564724; 302403, 1564740; 302363, 1564757; 302332, 1564757; 302269, 1564741; 302146, 1564681; 302059, 1564655; 302017, 1564655; 301908, 1564682; 301866, 1564674; 301831, 1564660; 301713, 1564582; 301660, 1564566; 301613, 1564561; 301554, 1564564; 301516, 1564572.

(C) Bounded by the following 47 points (58 ac; 23 ha): 301566, 1564945; 301569, 1564920; 301578, 1564904; 301624, 1564888; 301649, 1564857; 301660, 1564850; 301679, 1564850; 301706, 1564888; 301726, 1564892; 301744, 1564883; 301754, 1564864; 301759, 1564836; 301777, 1564825; 301824, 1564810; 301963, 1564798; 301986, 1564807; 302011, 1564845; 302030, 1564859; 302105, 1564881; 302150, 1564885; 302309, 1564864; 302407, 1564883; 302422, 1564895; 302444, 1564926; 302462, 1564938; 302486, 1564939; 302550, 1564927; 302646, 1564928; 302700, 1564940; 302712, 1564951; 302716, 1564964; 302713, 1564975; 302696, 1564984; 302614, 1564988; 302602, 1564995; 302592, 1565021; 302584, 1565102; 302572, 1565118; 302490, 1565138; 302195, 1565151; 302135, 1565146; 302088, 1565135; 301955, 1565082; 301722, 1565014; 301662, 1564986; 301608, 1564971.

(D) Bounded by the following 61 points (91 ac; 37 ha): 302150, 1564098; 302172, 1564039; 302208, 1564002; 302245, 1563984; 302303, 1563975; 302364, 1563928; 302390, 1563916; 302429, 1563913; 302494, 1563933; 302545, 1563926; 302576, 1563927; 302602, 1563941; 302629, 1563977; 302641, 1563982; 302686, 1563948; 302701, 1563945; 302715, 1563951; 302735, 1563975; 302766, 1564034; 302757, 1564078; 302769, 1564119; 302759, 1564172; 302762, 1564208; 302776, 1564221; 302822, 1564235; 302842, 1564246; 302867, 1564270; 302899, 1564315; 302905, 1564345; 302891, 1564382; 302917, 1564467; 302950, 1564548; 303012, 1564647;

303033, 1564728; 303060, 1564765; 303059, 1564787; 303044, 1564799; 303024, 1564795; 302973, 1564763; 302909, 1564709; 302872, 1564700; 302839, 1564684; 302751, 1564683; 302736, 1564669; 302709, 1564620; 302682, 1564601; 302570, 1564563; 302481, 1564539; 302458, 1564528; 302444, 1564509; 302424, 1564435; 302401, 1564389; 302386, 1564348; 302375, 1564301; 302378, 1564265; 302374, 1564251; 302287, 1564174; 302272, 1564172; 302224, 1564179; 302187, 1564171; 302176, 1564161.

(E) Bounded by the following 319 points (677 ac; 274 ha): 302943, 1564065; 302923, 1564061; 302919, 1564054; 302936, 1564038; 302987, 1564019; 303009, 1563991; 303047, 1563971; 303060, 1563954; 303062, 1563939; 303054, 1563879; 303060, 1563827; 303074, 1563808; 303107, 1563796; 303113, 1563780; 303110, 1563765; 303090, 1563727; 303109, 1563690; 303085, 1563639; 303085, 1563600; 303092, 1563584; 303116, 1563562; 303132, 1563539; 303131, 1563504; 303193, 1563466; 303207, 1563465; 303249, 1563476; 303272, 1563471; 303303, 1563452; 303334, 1563412; 303350, 1563400; 303360, 1563399; 303390, 1563413; 303410, 1563410; 303416, 1563402; 303410, 1563386; 303415, 1563373; 303455, 1563344; 303466, 1563282; 303479, 1563248; 303497, 1563232; 303553, 1563212; 303560, 1563195; 303565, 1563150; 303572, 1563128; 303595, 1563106; 303623, 1563095; 303655, 1563097; 303684, 1563125; 303721, 1563132; 303734, 1563152; 303740, 1563192; 303780, 1563201; 303789, 1563208; 303775, 1563236; 303772, 1563257; 303803, 1563373; 303799, 1563391; 303773, 1563433; 303765, 1563441; 303742, 1563447; 303671, 1563435; 303653, 1563441; 303652, 1563453; 303675, 1563474; 303807, 1563534; 303869, 1563577; 303897, 1563608; 303953, 1563714; 303979, 1563736; 304071, 1563770; 304155, 1563793; 304249, 1563795; 304335, 1563782; 304405, 1563794; 304429, 1563789; 304479, 1563751; 304493, 1563746; 304582, 1563737; 304624, 1563741; 304690, 1563727; 304750, 1563734; 304786, 1563719; 304794, 1563708; 304794, 1563686; 304765, 1563636; 304758, 1563605; 304723, 1563588; 304708, 1563573; 304683, 1563490; 304667, 1563465; 304657, 1563459; 304641, 1563459; 304611, 1563483; 304586, 1563482; 304570, 1563497; 304531, 1563517; 304489, 1563530; 304474, 1563529; 304461, 1563512; 304434, 1563423; 304413, 1563389; 304385, 1563357; 304367, 1563345; 304338, 1563334; 304314,

1563311; 304244, 1563308; 304171, 1563273; 304107, 1563257; 304013, 1563250; 303998, 1563253; 303964, 1563283; 303940, 1563294; 303926, 1563349; 303874, 1563345; 303858, 1563339; 303850, 1563329; 303844, 1563275; 303852, 1563237; 303892, 1563228; 303950, 1563198; 303968, 1563194; 303990, 1563158; 304018, 1563160; 304049, 1563155; 304099, 1563163; 304201, 1563127; 304213, 1563109; 304216, 1563048; 304223, 1563035; 304234, 1563028; 304252, 1563031; 304314, 1563067; 304321, 1563065; 304324, 1563051; 304332, 1563043; 304394, 1563024; 304397, 1563008; 304383, 1562960; 304388, 1562898; 304391, 1562885; 304406, 1562879; 304436, 1562896; 304481, 1562945; 304494, 1562947; 304563, 1562939; 304607, 1562972; 304674, 1563009; 304740, 1563024; 304799, 1563053; 304847, 1563054; 304864, 1563059; 304873, 1563073; 304875, 1563091; 304856, 1563155; 304857, 1563163; 304877, 1563174; 304911, 1563180; 304931, 1563177; 304955, 1563165; 304966, 1563164; 305029, 1563211; 305036, 1563224; 305037, 1563241; 305026, 1563279; 305044, 1563311; 305043, 1563342; 305006, 1563380; 304967, 1563439; 304948, 1563446; 304902, 1563445; 304892, 1563451; 304895, 1563457; 304926, 1563472; 304937, 1563482; 304942, 1563501; 304936, 1563514; 304918, 1563519; 304883, 1563494; 304868, 1563502; 304862, 1563511; 304865, 1563525; 304899, 1563563; 304894, 1563570; 304855, 1563591; 304847, 1563606; 304876, 1563674; 304887, 1563732; 304894, 1563743; 304911, 1563750; 304920, 1563748; 304943, 1563727; 304977, 1563752; 305046, 1563746; 305062, 1563751; 305081, 1563784; 305100, 1563805; 305149, 1563831; 305164, 1563844; 305205, 1563919; 305255, 1563967; 305269, 1563987; 305269, 1564034; 305279, 1564060; 305293, 1564075; 305325, 1564089; 305336, 1564100; 305325, 1564120; 305311, 1564131; 305291, 1564139; 305280, 1564149; 305266, 1564195; 305254, 1564212; 305201, 1564236; 305185, 1564253; 305176, 1564277; 305180, 1564335; 305176, 1564354; 305166, 1564368; 305130, 1564386; 305107, 1564406; 305061, 1564482; 304984, 1564553; 304979, 1564566; 304988, 1564594; 304985, 1564605; 304954, 1564615; 304930, 1564637; 304852, 1564669; 304771, 1564722; 304744, 1564766; 304716, 1564763; 304681, 1564794; 304673, 1564810; 304669, 1564832; 304689, 1564912; 304677, 1564981; 304665, 1564999; 304629, 1565015; 304614, 1565043; 304600, 1565052; 304583,

1565047; 304575, 1565037; 304569, 1565014; 304570, 1564995; 304579, 1564967; 304607, 1564940; 304613, 1564924; 304604, 1564909; 304581, 1564899; 304558, 1564896; 304503, 1564900; 304444, 1564919; 304385, 1564919; 304348, 1564928; 304331, 1564937; 304326, 1564948; 304338, 1565014; 304332, 1565017; 304322, 1565011; 304288, 1564957; 304280, 1564975; 304262, 1564978; 304255, 1564985; 304253, 1565027; 304242, 1565034; 304228, 1565035; 304220, 1565029; 304215, 1565012; 304207, 1565004; 304173, 1565015; 304109, 1565006; 304103, 1564998; 304090, 1564952; 304080, 1564937; 304053, 1564920; 303995, 1564904; 303967, 1564847; 303956, 1564836; 303943, 1564836; 303926, 1564850; 303913, 1564855; 303887, 1564852; 303868, 1564842; 303857, 1564820; 303859, 1564799; 303876, 1564791; 303945, 1564781; 303949, 1564777; 303946, 1564767; 303933, 1564756; 303912, 1564752; 303868, 1564759; 303849, 1564756; 303771, 1564713; 303710, 1564691; 303655, 1564659; 303564, 1564631; 303553, 1564633; 303546, 1564643; 303521, 1564743; 303499, 1564757; 303480, 1564756; 303454, 1564736; 303441, 1564711; 303404, 1564670; 303398, 1564657; 303436, 1564543; 303438, 1564509; 303429, 1564479; 303393, 1564423; 303296, 1564316; 303282, 1564278; 303250, 1564261; 303236, 1564193; 303175, 1564150; 303082, 1564137; 303062, 1564125; 303052, 1564107; 303036, 1564092.

(F) Bounded by the following 26 points (20 ac; 8 ha): 304256, 1565414; 304308, 1565357; 304346, 1565330; 304472, 1565298; 304590, 1565251; 304620, 1565250; 304645, 1565261; 304690, 1565255; 304727, 1565280; 304777, 1565289; 304783, 1565297; 304763, 1565363; 304744, 1565464; 304735, 1565486; 304715, 1565507; 304686, 1565508; 304660, 1565521; 304578, 1565501; 304541, 1565485; 304509, 1565451; 304503, 1565402; 304498, 1565394; 304485, 1565388; 304457, 1565388; 304410, 1565414; 304382, 1565421.

(G) Bounded by the following 35 points (11 ac; 4 ha): 305091, 1563607; 305046, 1563577; 305022, 1563553; 305015, 1563522; 305001, 1563499; 305002, 1563487; 305012, 1563476; 305061, 1563454; 305086, 1563459; 305114, 1563484; 305141, 1563495; 305168, 1563525; 305195, 1563534; 305247, 1563543; 305243, 1563575; 305278, 1563639; 305274, 1563687; 305262, 1563722; 305263, 1563729; 305291, 1563736; 305355, 1563721; 305372, 1563721; 305382, 1563732; 305381, 1563761; 305368, 1563775;

305332, 1563784; 305308, 1563782; 305274, 1563768; 305234, 1563743; 305202, 1563707; 305158, 1563671; 305150, 1563657; 305149, 1563633; 305132, 1563611; 305115, 1563602.

(H) Bounded by the following 18 points (9 ac; 4 ha): 305348, 1565123; 305320, 1565080; 305322, 1565051; 305361, 1565002; 305416, 1564959; 305431, 1564953; 305452, 1564953; 305503, 1564970; 305537, 1564975; 305554, 1564987; 305570, 1565010; 305577, 1565037; 305570, 1565071; 305550, 1565102; 305523, 1565121; 305499, 1565129; 305412, 1565142; 305390, 1565140.

(I) Bounded by the following 96 points (52 ac, 21 ha): 305681, 1564571; 305654, 1564580; 305620, 1564578; 305565, 1564595; 305547, 1564592; 305537, 1564571; 305532, 1564484; 305527, 1564469; 305511, 1564467; 305502, 1564474; 305486, 1564499; 305467, 1564500; 305456, 1564489; 305453, 1564478; 305455, 1564431; 305458, 1564418; 305469, 1564405; 305527, 1564420; 305567, 1564424; 305612, 1564419; 305641, 1564401; 305646, 1564382; 305644, 1564358; 305620, 1564264; 305626, 1564238; 305640, 1564232; 305731, 1564234; 305750, 1564230; 305757, 1564225; 305745, 1564207; 305722, 1564193; 305699, 1564192; 305645, 1564203; 305623, 1564195; 305619, 1564181; 305622, 1564158; 305646, 1564097; 305677, 1564083; 305781, 1564061; 305789, 1564055; 305793, 1564024; 305819, 1563988; 305881, 1563974; 305897, 1563964; 305938, 1563897; 305946, 1563858; 305951, 1563774; 305948, 1563696; 305939, 1563637; 305922, 1563609; 305861, 1563583; 305831, 1563543; 305806, 1563520; 305798, 1563498; 305837, 1563315; 305862, 1563291; 305893, 1563286; 305902, 1563291; 305907, 1563301; 305906, 1563358; 305950, 1563453; 305953, 1563477; 305949, 1563508; 305954, 1563523; 305960, 1563526; 305994, 1563522; 306046, 1563531; 306057, 1563540; 306063, 1563555; 306110, 1563573; 306118, 1563592; 306118, 1563606; 306105, 1563642; 306071, 1563662; 306059, 1563682; 306062, 1563709; 306080, 1563772; 306077, 1563819; 306064, 1563889; 306006, 1564047; 306002, 1564117; 305990, 1564133; 305961, 1564145; 305848, 1564153; 305822, 1564158; 305803, 1564170; 305793, 1564191; 305793, 1564205; 305832, 1564256; 305838, 1564283; 305835, 1564313; 305821, 1564340; 305807, 1564356; 305712, 1564414; 305673, 1564451; 305665, 1564483.

(J) Bounded by the following 134 points (92 ac; 37 ha): 306267, 1565331; 306353, 1565325; 306341, 1565326;

306400, 1565325; 306433, 1565329; 306453, 1565341; 306484, 1565382; 306514, 1565388; 306559, 1565384; 306598, 1565356; 306621, 1565346; 306716, 1565329; 306720, 1565333; 306720, 1565374; 306729, 1565422; 306716, 1565443; 306684, 1565448; 306681, 1565467; 306688, 1565481; 306699, 1565487; 306755, 1565496; 306816, 1565485; 306955, 1565429; 307014, 1565397; 307111, 1565330; 307119, 1565340; 307118, 1565350; 307055, 1565408; 307034, 1565438; 307017, 1565445; 307005, 1565460; 306968, 1565468; 306955, 1565488; 306957, 1565495; 306969, 1565498; 307025, 1565488; 307029, 1565496; 307026, 1565526; 307050, 1565540; 307066, 1565542; 307204, 1565460; 307258, 1565412; 307269, 1565394; 307276, 1565368; 307288, 1565356; 307369, 1565327; 307451, 1565259; 307509, 1565229; 307537, 1565210; 307570, 1565178; 307610, 1565126; 307746, 1565004; 307839, 1564896; 307872, 1564877; 307878, 1564878; 307882, 1564884; 307884, 1564905; 307873, 1564932; 307783, 1565058; 307734, 1565112; 307580, 1565259; 307319, 1565473; 307080, 1565610; 307035, 1565624; 307014, 1565621; 306976, 1565592; 306934, 1565568; 306887, 1565525; 306868, 1565520; 306815, 1565528; 306718, 1565559; 306626, 1565562; 306510, 1565585; 306399, 1565586; 306337, 1565579; 306331, 1565589; 306345, 1565658; 306354, 1565736; 306349, 1565806; 306352, 1565829; 306383, 1565896; 306399, 1565902; 306440, 1565898; 306438, 1565928; 306417, 1565948; 306391, 1565949; 306277, 1565911; 306256, 1565896; 306205, 1565844; 306173, 1565823; 306154, 1565817; 306115, 1565820; 306094, 1565817; 306042, 1565781; 305989, 1565708; 305972, 1565692; 305953, 1565683; 305910, 1565671; 305870, 1565667; 305844, 1565673; 305795, 1565705; 305766, 1565717; 305719, 1565718; 305693, 1565710; 305684, 1565703; 305674, 1565679; 305677, 1565641; 305689, 1565625; 305724, 1565609; 305766, 1565605; 305890, 1565626; 305937, 1565602; 305969, 1565601; 305988, 1565595; 306002, 1565572; 305991, 1565555; 305968, 1565549; 305920, 1565551; 305909, 1565543; 305911, 1565530; 305918, 1565520; 305951, 1565499; 305972, 1565493; 306026, 1565498; 306076, 1565493; 306107, 1565505; 306133, 1565507; 306178, 1565494; 306219, 1565475; 306231, 1565463; 306221, 1565427; 306232, 1565386; 306235, 1565356; 306242, 1565346.

(K) Bounded by the following 207 points (355 ac, 144 ha): 305824,

1565279; 305789, 1565258; 305784, 1565251; 305785, 1565239; 305801, 1565217; 305929, 1565095; 305932, 1565086; 305918, 1565072; 305912, 1565059; 305919, 1565045; 306024, 1564981; 306114, 1564950; 306143, 1564935; 306189, 1564892; 306228, 1564832; 306234, 1564811; 306232, 1564774; 306229, 1564764; 306218, 1564755; 306172, 1564745; 306107, 1564754; 306095, 1564751; 306119, 1564647; 306140, 1564643; 306179, 1564618; 306271, 1564573; 306302, 1564551; 306326, 1564524; 306369, 1564511; 306391, 1564451; 306411, 1564417; 306416, 1564385; 306451, 1564361; 306476, 1564320; 306512, 1564285; 306520, 1564269; 306525, 1564238; 306571, 1564226; 306588, 1564168; 306658, 1564143; 306684, 1564127; 306701, 1564108; 306706, 1564092; 306702, 1564075; 306686, 1564051; 306674, 1564042; 306639, 1564039; 306558, 1564052; 306546, 1564039; 306554, 1564023; 306591, 1564006; 306708, 1563983; 306772, 1563964; 306791, 1563953; 306807, 1563932; 306831, 1563941; 306861, 1563968; 306910, 1563986; 306925, 1563998; 306936, 1564022; 306933, 1564035; 306884, 1564066; 306859, 1564062; 306794, 1564101; 306774, 1564120; 306763, 1564146; 306750, 1564158; 306777, 1564193; 306784, 1564210; 306782, 1564217; 306757, 1564222; 306745, 1564235; 306741, 1564248; 306773, 1564278; 306794, 1564357; 306816, 1564376; 306835, 1564377; 306852, 1564364; 306910, 1564341; 306916, 1564308; 306925, 1564297; 307000, 1564277; 307031, 1564262; 307039, 1564252; 307050, 1564208; 307116, 1564160; 307174, 1564088; 307185, 1564080; 307219, 1564074; 307238, 1564065; 307248, 1564043; 307255, 1564008; 307253, 1563934; 307259, 1563908; 307274, 1563879; 307331, 1563809; 307374, 1563769; 307448, 1563710; 307474, 1563696; 307493, 1563692; 307505, 1563698; 307521, 1563719; 307540, 1563768; 307549, 1563778; 307559, 1563772; 307590, 1563724; 307608, 1563710; 307626, 1563711; 307655, 1563727; 307685, 1563724; 307698, 1563711; 307703, 1563696; 307696, 1563628; 307702, 1563589; 307723, 1563542; 307734, 1563528; 307744, 1563523; 307756, 1563524; 307765, 1563534; 307774, 1563582; 307787, 1563600; 307825, 1563608; 307844, 1563604; 307852, 1563596; 307861, 1563558; 307867, 1563553; 307889, 1563564; 307923, 1563593; 307927, 1563604; 307921, 1563627; 307936, 1563675; 307930, 1563733; 307920,

1563742; 307883, 1563736; 307879, 1563783; 307884, 1563800; 307893, 1563814; 307944, 1563854; 307971, 1563870; 307982, 1563901; 307992, 1563990; 307991, 1564149; 307988, 1564195; 307974, 1564273; 307965, 1564280; 307951, 1564281; 307936, 1564279; 307930, 1564273; 307920, 1564120; 307913, 1564102; 307888, 1564066; 307881, 1564043; 307884, 1564018; 307901, 1563976; 307896, 1563936; 307882, 1563914; 307855, 1563892; 307833, 1563882; 307738, 1563862; 307724, 1563851; 307698, 1563804; 307679, 1563790; 307668, 1563794; 307660, 1563807; 307651, 1563877; 307626, 1563911; 307620, 1563912; 307613, 1563901; 307620, 1563870; 307614, 1563851; 307589, 1563831; 307560, 1563832; 307551, 1563859; 307524, 1564171; 307536, 1564245; 307536, 1564274; 307529, 1564301; 307479, 1564419; 307468, 1564503; 307434, 1564587; 307418, 1564611; 307388, 1564640; 307359, 1564686; 307320, 1564721; 307306, 1564740; 307271, 1564752; 307259, 1564762; 307248, 1564802; 307235, 1564826; 307155, 1564929; 307101, 1565031; 306941, 1565211; 306880, 1565237; 306617, 1565317; 306574, 1565313; 306447, 1565277; 306389, 1565255; 306296, 1565255; 306259, 1565250; 306194, 1565223; 306169, 1565231; 306155, 1565256; 306145, 1565262; 306028, 1565253; 305991, 1565246; 305927, 1565246; 305867, 1565253.

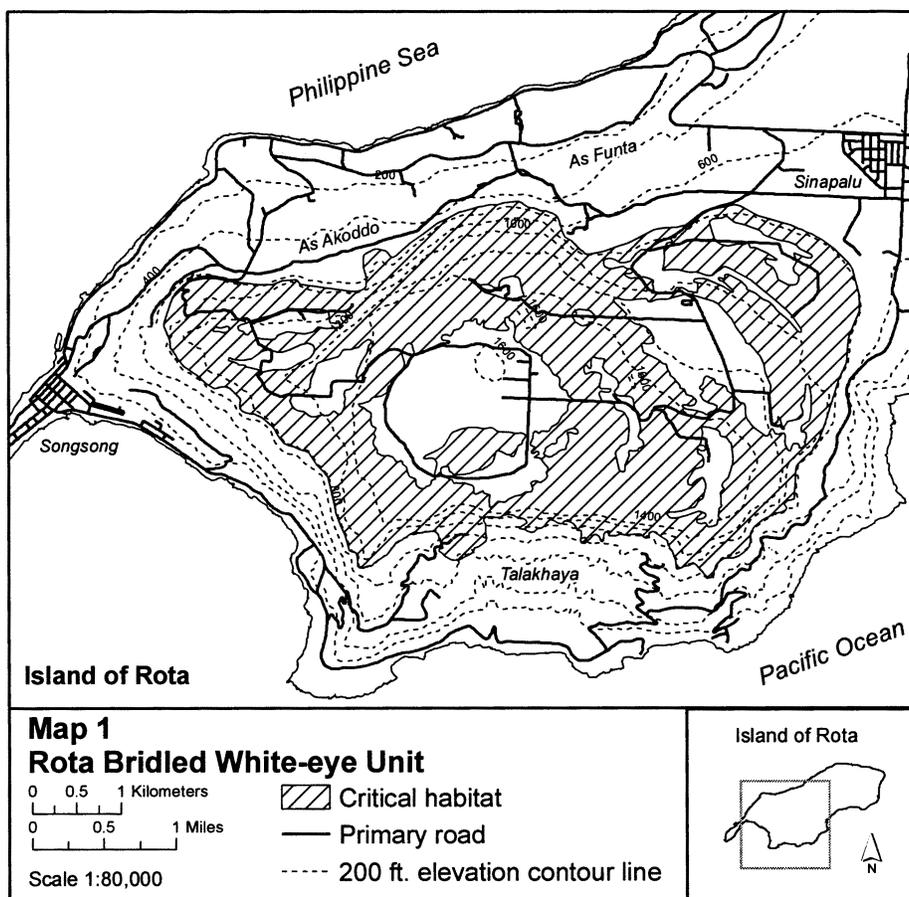
(L) Bounded by the following 107 points (81 ac, 33 ha): 306372, 1562797; 306403, 1562764; 306427, 1562755; 306453, 1562754; 306508, 1562763; 306586, 1562785; 306716, 1562834; 306746, 1562833; 306800, 1562809; 306806, 1562794; 306805, 1562779; 306797, 1562766; 306785, 1562758; 306715, 1562738; 306706, 1562725; 306708, 1562711; 306724, 1562696; 306753, 1562687; 306769, 1562689; 306785, 1562702; 306796, 1562704; 306807, 1562695; 306827, 1562660; 306836, 1562654; 306883, 1562662; 306923, 1562677; 306933, 1562691; 306933, 1562707; 306939, 1562720; 306971, 1562743; 306951, 1562767; 306947, 1562793; 306958, 1562864; 306987, 1562890; 306977, 1562913; 306976, 1562986; 306970, 1563033; 306978, 1563053; 307007, 1563079; 307014, 1563093; 306993, 1563114; 306991, 1563142; 307005, 1563172; 307041, 1563196; 307061, 1563224; 307109, 1563376; 307115, 1563433; 307101, 1563555; 307090, 1563605; 307081, 1563625; 307041, 1563678; 306975, 1563692; 306968, 1563704;

306961, 1563741; 306940, 1563760; 306895, 1563780; 306846, 1563792; 306781, 1563803; 306764, 1563798; 306762, 1563787; 306773, 1563735; 306750, 1563589; 306754, 1563583; 306775, 1563588; 306787, 1563583; 306803, 1563565; 306805, 1563550; 306795, 1563527; 306784, 1563519; 306758, 1563521; 306724, 1563550; 306718, 1563548; 306714, 1563525; 306726, 1563496; 306757, 1563475; 306774, 1563453; 306785, 1563420; 306786, 1563371; 306775, 1563350; 306757, 1563337; 306692, 1563316; 306669, 1563300; 306622, 1563226; 306605, 1563190; 306604, 1563169; 306612, 1563144; 306622, 1563134; 306639, 1563129; 306654, 1563136; 306676, 1563170; 306707, 1563193; 306752, 1563216; 306766, 1563218; 306780, 1563215; 306800, 1563165; 306808, 1563115; 306774, 1562987; 306764, 1562973; 306739, 1562961; 306723, 1562946; 306693, 1562893; 306677, 1562877; 306629, 1562869; 306539, 1562836; 306441, 1562823; 306394, 1562826; 306382, 1562817.

(M) Bounded by the following 69 points (47 ac, 30 ha): 306858, 1566129; 306891, 1566009; 306917, 1565936; 306929, 1565916; 306982, 1565882; 307028, 1565864; 307063, 1565860; 307180, 1565888; 307248, 1565881; 307286, 1565897; 307298, 1565886; 307308, 1565851; 307318, 1565838; 307332, 1565837; 307358, 1565846; 307377, 1565842; 307505, 1565779; 307601, 1565717; 307612, 1565701; 307601, 1565695; 307534, 1565713; 307503, 1565714; 307484, 1565702; 307479, 1565684; 307498, 1565657; 307547, 1565628; 307571, 1565607; 307606, 1565538; 307618, 1565489; 307628, 1565475; 307745, 1565409; 307789, 1565409; 307829, 1565429; 307844, 1565447; 307857, 1565486; 307858, 1565512; 307852, 1565527; 307805, 1565571; 307794, 1565595; 307797, 1565619; 307825, 1565662; 307834, 1565689; 307808, 1565748; 307802, 1565778; 307813, 1565781; 307892, 1565745; 307958, 1565725; 307992, 1565724; 308008, 1565734; 308007, 1565752; 307998, 1565762; 307875, 1565825; 307834, 1565866; 307814, 1565879; 307743, 1565910; 307628, 1565928; 307491, 1565976; 307455, 1565998; 307428, 1566032; 307412, 1566044; 307254, 1566105; 307143, 1566130; 307118, 1566145; 307054, 1566200; 307032, 1566199; 306993, 1566178; 306951, 1566179; 306896, 1566171; 306871, 1566153.

(iii) Note: Map 1 of the critical habitat for Rota bridled white-eye follows:

BILLING CODE 4310-55-P



* * * * *

Dated: September 5, 2006.

David M. Verhey,*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06-7583 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 060606149-6234-02; I.D. 052506A]

RIN 0648-AT95

Fisheries in the Western Pacific; Omnibus Amendment for the Bottomfish and Seamount Groundfish Fisheries, Crustacean Fisheries, and Precious Coral Fisheries**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Final rule.

SUMMARY: NMFS issues this final rule to amend three fishery management plans (FMPs) to include fisheries and waters around the Commonwealth of the Northern Mariana Islands (CNMI) and Pacific Remote Island Areas (PRIA). These amendments affect United States domestic fisheries that offload or operate in Federal waters around the CNMI and the PRIA. These amendments establish new permitting and reporting requirements for vessel operators targeting bottomfish species around the PRIA to improve understanding of the ecology of these species and the activities and harvests of the vessel operators that target them. They also establish new permitting and reporting requirements for vessel operators targeting crustacean species and precious corals around the CNMI and PRIA.

DATES: This final rule is effective October 12, 2006, except for amendments to §§ 665.14, 665.41, and 665.61, which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of the FMP amendments and Environmental Assessment (EA) may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813, or from the web site www.wpcouncil.org. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to William L. Robinson, Regional Administrator, Pacific Islands Region (PIR), NMFS, 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814, or to David Rostker, OMB, by e-mail David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS PIR, 808-944-2271.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This **Federal Register** document is also accessible via the Internet at the web site of the Office of the Federal Register: www.gpoaccess.gov/fr/index.html.

Background

The NMFS Pacific Islands Region encompasses Federal waters, i.e., the U.S. Exclusive Economic Zone (EEZ), around the Territories of Guam and American Samoa, the State of Hawaii, the CNMI, and the PRIA. The EEZ extends from the inner boundary of the EEZ, i.e., the seaward limit of each coastal state, commonwealth, territory, and possession, to 200 nautical miles (nm) offshore. For the CNMI and PRIA, the inner boundary of the EEZ is the shoreline, and for Guam, American Samoa, and Hawaii, the inner boundary of the EEZ is 3 nm from the shoreline.

The Federal waters surrounding the CNMI are currently not included in the Fishery Management Plans for the Bottomfish, Crustaceans, or Precious Corals Fisheries of the Western Pacific Region (Bottomfish FMP, Crustaceans FMP, and Precious Corals FMP). Similarly, Federal waters surrounding the PRIA are not included in the Bottomfish or Crustaceans FMPs. Vessels have been known to fish for bottomfish and crustaceans in the Federal waters around the CNMI and PRIA, although on a small scale. While there are currently no known fisheries operating in the PRIA, and no precious corals fisheries operating in the CNMI, interest may arise in the future. This rule amends the FMPs to include fisheries operating in these areas under the FMPs. This rule is designed to establish monitoring systems and management mechanisms to implement specific regulatory controls should the need arise; specific management measures (such as time and area closures, or effort and landing limits) are not included.

Additional background information on this final rule may be found in the preamble to the proposed rule (71 FR 36049) published on June 23, 2005, and is not repeated here.

Comments and Responses

On June 7, 2006, NMFS published in the **Federal Register** a notice of availability of the subject FMP amendments (71 FR 32911), and on June 23, 2006, NMFS published the proposed rule that would implement the amendments (71 FR 36049). The public comment period ended on August 7, 2006. NMFS received one comment on the proposed rule, as follows:

Comment. The US Fish and Wildlife Service (USFWS) recommended the addition of regulatory text to clarify the management authority over commercial fisheries in refuge waters within the PRIA.

Response. The preamble to the proposed rule states that the USFWS

governs fishing activities within refuges, including those in the western Pacific, pursuant to the National Wildlife Refuge System Administration Act (NWRSA) of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and other authorities. Refuge waters are closed to all uses until they are specifically opened for such uses, and that the USFWS determines whether to open refuge waters for any use that is compatible with the refuges' primary purpose(s) and mission. While commercial fishing is generally prohibited in refuge waters, specific regulations are absent. Including refuge areas under the Bottomfish, Crustaceans, and Precious Corals FMPs will add specific regulations to these areas, but these regulations will not supersede any valid existing Federal regulations that are more restrictive to fishing operations. NMFS believes that the preamble language recognizes the authority of the USFWS, and adequately addresses the USFWS comments.

Changes to the Proposed Rule

In the proposed rule, instruction 5 would have added at § 665.42 a paragraph to make it unlawful for any person to refuse to make available, to an authorized officer or employee of NMFS designated by the Regional Administrator for inspection and copying, any records that must be made available in accordance with § 665.14(f)(2). This proposed addition would have duplicated an existing prohibition at § 665.15(e), and was deemed unnecessary. Accordingly, that instruction was removed from the final rule.

In the proposed rule, instruction 7 would have revised § 665.69, paragraph (b), to define the inner boundary of each new fishery management area. Although the inner boundary of the PRIA was described in the preamble to the proposed rule as being the shoreline, this definition was inadvertently omitted in the regulatory instructions. Accordingly, instruction 7 was edited to include the inner boundary of the PRIA in § 665.69(b).

Classification

The Assistant Administrator, NMFS, determined that the three FMP amendments are necessary for the conservation and management of the affected fisheries, and that the amendments are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, or on the economic impact of the rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains amendments to collection-of-information requirements subject to the PRA under OMB control numbers 0648-0214 and 0648-0490. The amendments to these collection of information requirements have not yet been approved by OMB, but OMB approval is expected no later than November 13, 2006. NMFS will publish a notice when these requirements are cleared by OMB and are, therefore, effective (see **DATES**). The public reporting burden for the permit application process is 30 min per application. In the crustaceans fishery, it is estimated that two permit applications will be submitted annually for the permit area, resulting in a paperwork burden of 1 hr/yr. In the bottomfish fishery, it is estimated that no more than five permit applications will be received annually for the permit area, resulting in a paperwork burden of 2.5 hr/yr. In the precious corals fishery, it is estimated that one permit will be applied for annually for the permit area, resulting in 30 min/yr in paperwork burden. Therefore, the total paperwork burden of these collections of information will be no more than four hours annually. The public burden for the proposed reporting requirements is 5 min per daily logsheet. It is estimated that up to eight vessels will be subject to the reporting requirement at any given time, and that each vessel will fish, on average, no more than 50 days/yr, resulting in a total paperwork burden of approximately 35 hr/yr. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson, NMFS PIR (see **ADDRESSES**), or by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to

respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian natives, Northern Mariana Islands, Pacific Remote Island Areas, Reporting and recordkeeping requirements.

Dated: September 7, 2006.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.12, the definitions for "Crustaceans management area", "Crustaceans permit area 3", and "Crustaceans receiving vessel" are revised, the definitions of "Crustaceans permit area 4", "Pacific Remote Island Areas bottomfish fishing permit", and "Pacific Remote Island Areas crustacean fishing permit" are added, and under the definition of "Precious coral permit area" paragraph (4)(v) is added to read as follows:

§ 665.12 Definitions.

* * * * *

Crustaceans management area means the EEZ waters around American Samoa, the CNMI, Guam, Hawaii, and the PRIA.

* * * * *

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ around Guam and American Samoa, and the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

Crustaceans Permit Area 4 (Permit Area 4) means the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

* * * * *

Crustaceans receiving vessel means a vessel of the United States to which lobsters taken in the crustaceans management area are transferred from another vessel.

* * * * *

Pacific Remote Island Areas (PRIA) bottomfish fishing permit means the permit required by § 665.61 to use a

vessel to fish for bottomfish management unit species (MUS) in the EEZ around the PRIA, or to land bottomfish MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

Pacific Remote Island Areas (PRIA) crustacean fishing permit means the permit required by § 665.41 to use a vessel to fish for crustacean management unit species (MUS) in the EEZ around the PRIA, or to land crustacean MUS shoreward of the outer boundary of the EEZ around the PRIA, with the exception of EEZ waters around Midway Atoll.

* * * * *

Precious coral permit area * * *

(4) * * *

(v) Permit Area X-P-CNMI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of points 3 nautical miles from the shoreline of the CNMI.

* * * * *

3. In § 665.14, paragraph (a) is revised to read as follows:

§ 665.14 Reporting and recordkeeping.

(a) Fishing record forms. The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hr after the completion of each fishing day. Each form must be signed and dated by the fishing vessel operator. For the fisheries managed under § 665.21, 665.41, and 665.81, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 72 hr of each landing of MUS, unless the fishing was authorized under a PRIA troll and handline permit, a PRIA crustaceans fishing permit, or a PRIA precious corals fishing permit, in which case the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of each landing of MUS. For fisheries managed under § 665.602, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 30 days of each landing of MUS.

* * * * *

4. In § 665.41, paragraph (a)(2) is revised to read as follows:

§ 665.41 Permits.

(a) * * *

(2) The owner of any vessel used to fish for lobster in Permit Area 2, Permit Area 3, or Permit Area 4, must have a permit issued for that vessel.

* * * * *

5. In § 665.61, paragraph (a)(1) is revised to read as follows:

§ 665.61 Permits.

(a) * * *

(1) The owner of any vessel used to fish for bottomfish management unit species in the Northwestern Hawaiian Islands Subarea or Pacific Remote Island Areas Subarea must have a permit issued under this section and the permit must be registered for use with that vessel.

* * * * *

6. In § 665.62 paragraph (b) is revised, and paragraph (f) is added to read as follows:

§ 665.62 Prohibitions.

* * * * *

(b) Fish for, or retain on board a vessel, bottomfish management unit species in the Ho'omalulu Zone, the Mau Zone, or the Pacific Remote Island Areas without the appropriate permit registered for use with that vessel issued under § 665.13.

* * * * *

(f) Falsify or fail to make or file all reports of bottomfish management unit species landings taken in the Pacific Remote Island Areas, containing all data in the exact manner, as specified in § 665.14(a).

7. In § 665.69, paragraphs (a) introductory text, (b), and (c) are revised, and paragraphs (a)(6), (a)(7), and (a)(8) are added, to read as follows:

§ 665.69 Management subareas.

(a) The bottomfish fishery management area is divided into eight subareas with the following designations and boundaries:

* * * * *

(6) CNMI Inshore Area means that portion of the EEZ shoreward of 3 nautical miles of the shoreline of the CNMI.

(7) CNMI Offshore Area means that portion of the EEZ seaward of 3 nautical miles from the shoreline of the CNMI.

(8) Pacific Remote Island Areas means that portion of the EEZ seaward of the Pacific Remote Island Areas, with the exception of Midway Atoll.

(b) The inner boundary of each fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, the Territory of Guam, the CNMI, and the PRIA.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is

measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points which

are equidistant between Guam and the island of Rota in the CNMI.

[FR Doc. E6-15066 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 71, No. 176

Tuesday, September 12, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket Number 2006-0027]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Office of Security, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing a new system of records pursuant to the Privacy Act of 1974 for the Office of Security entitled the "Office of Security File System." This system of records will support the administration of a program that provides security for the Department by safeguarding and protecting the Department's personnel, property, facilities and information.

In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: Comments must be received on or before October 12, 2006.

ADDRESSES: You may submit comments, identified by docket number DHS-2006-0027, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 401-4514 (not a toll-free number).

Mail: Marc E. Frey, Senior Advisor, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202-4220.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted

without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Marc E. Frey, Senior Advisor, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528 by telephone (202) 772-5096 or facsimile (202) 401-4514; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202-4220 by telephone (571) 227-3813 or facsimile (571) 227-4171.

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in the **Federal Register**, the Department of Homeland Security (DHS) is publishing a Privacy Act system of records notice describing records in the file system of its Office of Security. DHS established the Office of Security to protect and safeguard the Department's personnel, property, facilities, and information. The Office of Security develops, coordinates, implements, and oversees the Department's security policies, programs, and standards; delivers security training and education to DHS personnel; and provides security support to DHS components when necessary. In addition, the Office of Security coordinates and collaborates with the Intelligence Community on security issues and the protection of information. The Office of Security works to integrate security into every aspect of the Department's operations.

The Office of Security File System consists of records relating to the management and operation of the DHS personnel security and suitability program, including but not limited to, completed standard form questionnaires issued by the Office of Personnel Management and other information related to an individual's eligibility for access to classified or sensitive information.

This system contains records pertaining to numerous categories of individuals including DHS personnel who may be a subject of a counter-terrorism, or counter-espionage, or law enforcement investigation; senders of unsolicited communications that raise a security concern to the Department or

its personnel; state and local government personnel and private-sector individuals who serve on an advisory committee and board sponsored by DHS; and state and local government personnel and private-sector individuals who are authorized by DHS to access sensitive or classified homeland security information, classified facilities, communications security equipment, and information technology systems that process national or homeland security classified information. The information in this system also relates to official Security investigations and law enforcement activities.

Accordingly, DHS proposes to exempt this system, in part, from certain provisions of the Privacy Act and to add that exemption to Appendix C to Part 5, DHS Systems of Records Exempt from the Privacy Act. The DHS Office of Security needs this exemption in order to protect information relating to Security investigations from disclosure to subjects of investigations and others who could interfere with the Office of Security's investigatory and law enforcement activities. Specifically, the exemptions are required to preclude subjects of investigations from frustrating the investigative process; to avoid disclosure of investigative techniques; protect the identities and physical safety of confidential informants and of law enforcement personnel; ensure the Office of Security's ability to obtain information from third parties and other sources; protect the privacy of third parties; and safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In addition, because the Office of Security investigations arise out of DHS programs and activities, information in this system of records may pertain to national security and related law enforcement matters. In such cases, allowing access to such information could alert subjects of the Office of Security investigations into actual or potential criminal, civil, or regulatory violations, and could reveal in an untimely manner, the Office of Security's and other agencies' investigative interests in law enforcement efforts to preserve national security.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived.

List of Subjects in 6 CFR Part 5

Classified information, Privacy, Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552.

2. At the end of Appendix C to Part 5, add the following new paragraph:

Appendix C to part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

4. DHS–OS–001, Office of Security File System. This system and its records are used in the management and implementation of Office of Security programs and activities that safeguard and support the protection of the Department's personnel, property, facilities, and information. Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (I) and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation into an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, which in some cases may be classified, and which could reveal investigative interest on the part of DHS or the Office of Security. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to and Amendment of Records) because access to the records contained in this system of records could inform the subject of an

investigation, which in some cases may be classified, and prematurely reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, tamper with witnesses or evidence, and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of national security or information breaches, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement and for the protection of national security, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the access and amendment provisions of subsection (d).

(e) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 1, 2006.

Hugo Teufel III,
Chief Privacy Officer.

[FR Doc. E6–15046 Filed 9–11–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25272; Directorate Identifier 2006–NE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce plc) Dart 528, 529, 532, 535, 542, and 552 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc) (RRD) Dart 528, 529, 532, 535, 542, and 552 series

turbofan engines. This proposed AD would require repetitive inspections of high pressure turbine (HPT) blade platforms and shrouds, and reworking the engines if the inspections reveal excessive gaps between blade shrouds. This proposed AD results from reports of HPT disk rim failures. We are proposing this AD to prevent HPT disk rim failures resulting in the release of portions of the HPT disk, uncontained engine failure, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by November 13, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

- *Fax:* (202) 493–2251.

- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356 for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7747; fax (781) 238–7199).

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2006–25272; Directorate Identifier 2006–NE–16–AD” in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the

proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified us that an unsafe condition may exist on RRD Dart 528, 529, 532, 535, 542, and 552 turbofan engines. The LBA advises that they received reports of HPT disk rim failures, some of which resulted in release of portions of the HPT disk. These failures resulted from high stress levels in the HPT disk bucket groove due to blade vibration. Excessive gaps between the blade shroud and platform induced the damaging HPT blade vibration. The gaps can increase if wear occurs between the blade shroud and platform abutment faces. We are proposing this AD to prevent HPT disk rim failures resulting in the release of portions of the HPT disk, an uncontained engine failure, and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of RRD DART Service Bulletin (SB) Da72-543, dated July 11, 2003, and RRD Repair Instruction, "Restoration of HPT Blade Platform and Shroud, DRS 611," dated January 20, 2005, that describe procedures for a

dimensional inspection and rework, if necessary, of the HPT blade platform and shroud. The LBA classified this SB as mandatory and issued airworthiness directive 2003-217, dated August 7, 2003, in order to ensure the airworthiness of these engines in Germany.

Differences Between This Proposed AD and the Manufacturer's Service Information

This proposed AD shortens the initial inspection of the HPT blade platform and shroud to no more than 1,500 flight hours from the date of issue of this AD, if the engine has not been inspected or reworked to the DRS 611 standard.

FAA's Determination and Requirements of the Proposed AD

These engines, manufactured in the United Kingdom and transferred to Germany, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the LBA kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. We are proposing this AD, that would require repetitive inspections of HPT blade platforms and shrouds, and reworking the engines if the inspections reveal excessive gaps between blade shrouds. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect about 30 RRD Dart 528, 529, 532, 535, 542, and 552 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 22 work-hours per engine to perform the proposed actions, and that the average labor rate is \$80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be \$52,800.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc): Docket No.

FAA-2006-25272; Directorate Identifier
2006-NE-16-AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 13, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Dart 528, 529, 532, 535, 542, and 552 series turbofan engines. These engines are installed on, but not limited to, Hawker Siddeley, Argosy AW.650, Fairchild Hiller F-27, F-27A, F-27B, F-27F, F-27G, F-27J, FH-227, FH-227B, FH-227C, FH-227D, FH-227E, Fokker F.27 all marks; British Aircraft Corporation Viscount 744, 745D and 810; and Gulfstream G-159 airplanes.

Unsafe Condition

(d) This AD results from reports of high pressure turbine (HPT) disk rim failures. We are issuing this AD to prevent HPT disk rim failures resulting in the release of portions of the HPT disk, uncontained engine failure, and damage to the airplane.

Compliance

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

(f) Using RRD DART Service Bulletin (SB) Da72-543, dated July 11, 2003, and the scheme detailed in RRD Repair Instruction, "Restoration of HPT Blade Platform and Shroud, DRS 611," dated January 20, 2005, inspect and repair HPT blade platforms and shroud abutment faces by weld build-up:

- (1) After no more than 1,500 flight hours from the date of issue of this AD, if the engine has not been previously inspected or reworked to the DRS 611 standard;
- (2) Each time new blades are installed; and
- (3) Before exceeding 7,400 hours since last HPT blade rework.

Alternative Methods of Compliance

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

Related Information

(h) LBA airworthiness directive 2003-217, dated August 7, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 6, 2006.

Peter A. White,

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

[FR Doc. E6-15049 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 63]

RIN 1513-AB20

Proposed Establishment of the Swan Creek Viticultural Area (2005R-414P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 96,000-acre Swan Creek viticultural area in Wilkes, Yadkin, and Iredell Counties, North Carolina. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before November 13, 2006.

ADDRESSES: You may send comments to any of the following addresses:

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, *Attn:* Notice No. 63, P.O. Box 14412, Washington, DC 20044-4412.
- 202-927-8525 (facsimile).
- nprm@ttb.gov (e-mail).
- http://www.ttb.gov/wine/wine_rulemaking.shtml. An online comment form is posted with this notice on our Web site.
- <http://www.regulations.gov> (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400. You may also access copies of the notice and comments online at http://www.ttb.gov/wine/wine_rulemaking.shtml.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville Street, No. 158, Petaluma, CA 94952; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate,

soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;

- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Swan Creek Petition

Raffaldini Vineyards submitted a petition to establish the 96,000-acre "Swan Creek" viticultural area on behalf of the Vineyards of Swan Creek, a trade association representing a group of vineyards and wineries in northwest North Carolina. Within the boundary of the proposed viticulture area are 3 wineries and 75 acres of vineyards. The boundary of the proposed viticultural area incorporates portions of Wilkes, Yadkin, and Iredell Counties and includes a portion of the established Yadkin Valley viticultural area (27 CFR 9.174). We summarize below the evidence submitted in support of the petition.

Name and Boundary Evidence

The petitioner explains that the geographical name "Swan Creek" refers to a village in the approximate center of the proposed viticultural area, as well as two streams located near the village, East Swan Creek and West Swan Creek, which are depicted in the southwest portion of the 1:100,000-scale USGS Winston-Salem, North Carolina topographic map. The USGS map shows Swan Creek village in the Brushy Mountains, with the two creeks running north from the mountain elevations to the Yadkin River. Also, an undated State of North Carolina Department of Environment, Health, and Natural Resources document lists Swan Creek, West Swan Creek, and East Swan Creek

as streams in the Yadkin-Pee Dee River Basin.

The DeLorme North Carolina Atlas and Gazetteer identifies the village as "Swan creek," with East Swan Creek and West Swan Creek to its northwest. The petitioner explains that both names, "Swan Creek" and "Swan creek," reference the proposed viticultural area region. However, the two-word spelling is the more common usage for businesses, roads, creeks, and historical documents, which led the petitioner to identify the proposed viticultural area as "Swan Creek."

The local Wilkes Telephone Membership Corp. telephone book, which covers the region that includes the proposed viticultural area, lists an airport, church, and three businesses using "Swan Creek" in their names. A search of the North Carolina Department of the Secretary of State's Web site (<http://www.secretary.state.nc.us/Corporations/ThePage.aspx>) lists eight businesses currently operating with "Swan Creek" in their names.

As further evidence of the significance of the "Swan Creek" name within the proposed area, the September 7, 2004, minutes of a Yadkin County Commission meeting includes a reference to the Swan Creek area and improvements to Swan Creek Road. Additionally, a National Weather Service bulletin from January 13, 2005, warns of the possibility of a tornado in the Swan Creek area. The name is also repeatedly used in the "Vineyards of Swan Creek Wine Trail" Web site (<http://www.swancreekvineyards.com>).

The petitioner relies on geographical and man-made elements identifiable on the supplied USGS maps to define and draw the boundary for the proposed viticultural area. Climate data and historic evidence that documents the breadth of the "Swan Creek" name also

legitimize the proposed boundary line, according to the petitioner.

From the regional history of the Yadkin Valley, the petitioner connects the "Swan Creek" name to stories of Revolutionary War soldiers traveling along the proposed Swan Creek viticultural area northern boundary line at the Yadkin River, en route to the pivotal battle at King's Mountain in South Carolina. Also, during the Civil War, Union Major General George Stoneman led troops eastward through Swan Creek to Virginia. Historic manuscripts also maintain that frontiersman Daniel Boone homesteaded in the Swan Creek region in the 1750's.

After the Civil War, the Swan Creek area turned to farming, which continues to characterize this rural region despite the urban development in other portions of the Yadkin Valley viticultural area. Today, agriculture in the Swan Creek region includes viticulture, with 75 acres within the proposed Swan Creek viticultural area currently dedicated to grape growing, according to the petition.

The geology of the Swan Creek region, along with its minor climatic variation, also creates distinguishing viticultural features upon which to base boundary distinctions. The entire proposed Swan Creek viticultural area lies within the Yadkin River Basin. The general uniformity in the Swan Creek region's soils is attributable to the natural weathering process of the Brushy Mountains and the Brevard Shear Zone, a major fault system that also defines the Blue Ridge Escarpment in the area. The homogeneous soil within the proposed viticultural area is unlike the varied soils and rock types found in other parts of the Yadkin Valley viticultural area.

The proposed Swan Creek viticultural area boundary overlaps the established Yadkin Valley viticultural area as shown in the table below.

Viticultural areas	Total acres	Overlapping acres	Percent overlapping
Yadkin Valley	1,416,000	57,600	4
Swan Creek (Proposed)	96,000	57,600	60

The northern 60 percent of the proposed Swan Creek viticultural area sits within the Yadkin Valley viticultural area, with the remaining 40 percent south of the Yadkin Valley viticultural area boundary line, according to the petition maps.

The discussion below includes further substantive evidence on the differences between the Yadkin Valley viticultural area and the proposed Swan Creek

viticultural area, which, according to the petitioner, justifies the proposed boundary line.

Distinguishing Features

Situated in the moderate elevations of the Brushy Mountains, and bordering the Yadkin River, the proposed Swan Creek viticultural area's geographical location is responsible for the area's temperate climate and homogenous soil

as compared to surrounding areas, according to the petitioner.

Topography

The Brushy Mountains run through the center of the Swan Creek region, with elevations in the proposed Swan Creek viticultural area varying between 1,000 feet and 2,000 feet, according to the USGS maps submitted with the petition. The Brushy Mountains, within

the proposed viticultural area, have elevations lower than the Blue Ridge Mountains to the west but higher than the other surrounding areas, according to the USGS maps. The Blue Ridge Mountain region to the immediate west of the proposed boundary line rises to elevations of from 3,000 feet to 5,000 feet. To the east and south of the proposed viticultural area, the elevation

drops to between 500 feet and 1,000 feet.

Climate

Both the Yadkin River running adjacent to the proposed Swan Creek viticultural area's northern boundary line and the Brushy Mountains that lie within the proposed viticultural area boundary serve as climatically moderating influences.

The Swan Creek region has an average annual high temperature of 68.9 °F and an average annual low temperature of 42.8 °F. The table below shows the contrasting temperatures in the regions beyond the proposed boundary line, as collected by the Southeast Regional Climate Center (SERCC) of the National Climatic Data Center.

Region	Average annual maximum temperature in degrees Fahrenheit	Average annual minimum temperature in degrees Fahrenheit
Swan Creek	68.9	42.8
West and northwest	59.8	40.4
South and east	70.6	46.6
Yadkin Valley	69.5	44.8

The SERCC data shows that the Swan Creek area is generally warmer than the regions to the west and northwest, cooler than the regions to the south and east, and slightly cooler than the Yadkin Valley as a whole. Also, average January temperatures of 20 °F to 25 °F make the Swan Creek region less prone to Pierce's Disease, which adversely affects vineyards, than the majority of the Yadkin Valley viticultural area.

The proposed Swan Creek viticultural area averages 3,576 degree days of heat accumulation annually, which puts it in climatic region IV, according to temperature data collected by the SERCC. (As a measure of heat accumulation, each degree that a day's mean temperature is above 50 °47F, which is the minimum temperature required for grapevine growth, is counted as one degree day; see "General Viticulture," Albert J. Winkler, University of California Press, 1975.) The surrounding areas, based on Amerine and Winkler heat summation definitions, include climatic regions IV and V to the east, region V to the south, and region I to the west-northwest.

The frost-free season of the proposed Swan Creek viticultural area extends on average from April 19 to October 17 annually, according to the "Average Last Spring Frost Dates for Selected North Carolina Locations," horticulture information leaflets (published December 1996 and revised December 1998), by Katharine Perry, North Carolina State University. According to the petition, this frost-free season is nearly identical to Surry County, which is part of the Yadkin Valley viticultural area located immediately northeast of the proposed Swan Creek viticultural area. However, southeast of the proposed viticultural area, but also within the Yadkin Valley viticultural

area, the Davidson County frost-free season averages from March 31 to October 31, resulting in a month less frost than in the proposed Swan Creek viticultural area. The frost-free season in counties outside the Yadkin Valley viticultural area and the proposed Swan Creek viticultural area varies, extending three weeks longer to the east, but lasting four to six weeks less in regions to the west and northwest.

In addition, the growing season of the proposed Swan Creek viticultural area averages 170 to 190 days annually, according to Perry's "Average Growing Seasons for Selected North Carolina Locations," horticulture information leaflets (published December 1996 and revised December 1998). Again, this growing season is almost identical to the county immediately northeast, located within the Yadkin Valley viticultural area. However, according to Perry's data, Davidson County averages a 214-day growing season annually, or between 24 and 44 more growing days than the proposed Swan Creek viticultural area. Similarly, the petition shows that Guilford County to the east has an annual growing season of between 199 and 210 days. Counties to the west and northwest of the Swan Creek region have a significantly shorter growing season, lasting an average of 139 to 162 days.

Precipitation

The petitioner attributes the moderate rainfall within the proposed viticultural area to the protective influence of the Brushy Mountains. Rainfall within the proposed Swan Creek viticultural area averages 48.6 inches annually, based on SERCC data, with the local grape growers surveyed by the petitioner recording less rainfall at their own weather stations. The areas to the west

and northwest of the proposed viticultural area average 57 inches each year, while regions to the south and east average 44.4 inches of rain annually.

Furthermore, snowfall within the proposed Swan Creek viticultural area averages 6.3 inches annually, based on SERCC records, which is far less than the data recorded at weather stations in surrounding areas.

Geology

The geology of the proposed Swan Creek viticultural area, with documentation and evidence provided for the petition by Matthew Mayberry of the Mayberry Land Company, Elkin, North Carolina, is shaped by plate tectonics and a spectrum of uplift and erosion for the entire Appalachian Mountains building cycle. The Swan Creek region is part of the larger Appalachian Mountain Range area that has gone through at least three cycles of uplift and erosion, with each cycle lasting around 300 million years. Also, the weathering and erosion cycles created the resulting Piedmont and Blue Ridge surfaces found in the proposed viticultural area today.

Mr. Mayberry explains that the four predominant rock types in the proposed viticultural area are Henderson Gneiss, Granite, Biotite Gneiss and Biotite Amphibolite Gneiss, and Sillimanite Mica Schist. These types make up more than 90 percent of the Swan Creek area, with the latter three composing about 80 percent of the southern part of the area. Along the proposed north boundary line at the Yadkin River the predominant rock types include Ashe Formation, Ultramafics, and Granitic Rocks of the Crossnore Group.

Soil

The soil information in the Swan Creek viticultural area petition is compiled from the published soil surveys of Wilkes, Yadkin, and Iredell Counties in North Carolina. Roy Mathis, Soil Specialist for Correlations, Natural Resources Conservation Service, United States Department of Agriculture, provided the soil information included in the petition.

The areas surrounding the proposed Swan Creek viticultural area have soils with differing characteristics, Mr. Mathis explains. The areas to the south and east have high shrink-swell clayey soils, which are less desirable for agriculture. To the west and north are the mountainous rocks and soils of the encroaching Blue Ridge Mountains. Also, the Yadkin Valley viticultural area, which surrounds the proposed Swan Creek viticultural area to the west, north, and east, has a greater variety of soil types and temperature regimes.

The proposed Swan Creek viticultural area mesic temperature regime has soil temperatures of 47 °F to 59 °F at the depth of 20 inches, according to Mr. Mathis. In comparison, the Yadkin Valley viticultural area is in both the mesic and thermic temperature regimes, with soil temperatures much warmer at 59 °F to 72 °F at the same soil depth.

Mr. Mathis explains that the soils in the proposed Swan Creek viticultural area are primarily saprolite, a soft, clay-rich soil derived from weathered felsic (acidic) metamorphic rocks of the Inner Piedmont Belt such as granites, schists, and gneisses. The region includes a small area of Sauratown Belt with the rocks being primarily metagraywacke. In contrast, the surrounding west and north areas include residuum (saprolite) weathered from felsic metamorphic rocks such as gneisses, schists, and phyllites of the Blue Ridge Geologic Belt and Smith River Allochothon. The saprolite in the surrounding area to the east is composed of weathered igneous intrusive rocks like granites, gabbros, and diorites, as well as some gneisses and schists of the Charlotte Belt.

Evard and Cowee soils, which have moderate permeability and are well-drained with a loamy surface and sub-soil layer, predominate in the Brushy Mountains. Yet the dominant ridge top soils of the proposed Swan Creek viticultural area include the Fairview and Clifford series. These soils have sandy clay loam or clay loam surface layers with red clayey sub-soils, and are well-drained with moderate permeability.

Rhodhiss series is the dominant soil on the steep side slopes within the

proposed viticultural area boundary. This well-drained soil has a loamy surface and moderate permeability at the sub-soil level. Mr. Mathis notes that Fairview, Clifford, and Rhodhiss soils all have bedrock deeper than 60 inches.

The Yadkin River, at the northern boundary of the proposed Swan Creek viticultural area, has alluvial soil diversity with textures and drainage. In general, most of the proposed Swan Creek viticultural area soils are acidic and low in natural fertility.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, "Swan Creek," will be recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation would clarify this point. Consequently, wine bottlers using "Swan Creek" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural area name standing alone would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full "Swan Creek" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or term appears in the brand name, then the label is not in compliance and the bottler must change

the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name "Swan Creek" for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Swan Creek viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Swan Creek viticultural area on brand labels that include the words "Swan Creek" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full "Swan Creek" name should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that "Swan" standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information

supporting the conclusion that use of the word "Swan" on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Swan Creek viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail*: You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile*: You may submit comments by facsimile transmission to 202-927-8525. Faxed comments must—
 - (1) Be on 8.5- by 11-inch paper;
 - (2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail*: You may e-mail comments to nprm@ttb.gov. Comments transmitted by electronic mail must—

- (1) Contain your e-mail address;
- (2) Reference this notice number on the subject line; and
- (3) Be legible when printed on 8.5- by 11-inch paper.

- *Online form*: We provide a comment form with the online copy of this notice on our Web site at http://www.ttb.gov/wine/wine_rulemaking.shtml. Select the "Send comments via e-mail" link under this notice number.

- *Federal e-rulemaking portal*: To submit comments to us via the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments.

We will post this notice and any comments we receive on this proposal on the TTB Web site. All name and address information submitted with the comments will be posted, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copies of this notice and the submitted comments, visit http://www.ttb.gov/wine/wine_rulemaking.shtml. Select the "View Comments" link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9. _____ to read as follows:

§ 9. _____ Swan Creek.

(a) *Name*. The name of the viticultural area described in this section is "Swan Creek". For purposes of part 4 of this chapter, "Swan Creek" is a term of viticultural significance.

(b) *Approved maps*. The appropriate maps for determining the boundary of the Swan Creek viticultural area are three United States Geological Survey, 1:100,000 scale, topographic maps. They are titled:

- (1) Winston-Salem, North Carolina, 1984, photoinspected 1982;
- (2) Boone, North Carolina-Tennessee, 1985; and
- (3) Salisbury, North Carolina, 1985, photoinspected 1983.

(c) *Boundary*. The Swan Creek viticultural area is located in Wilkes, Yadkin, and Iredell Counties, North Carolina. The boundary of the Swan Creek viticultural area is described below:

(1) The beginning point is on the Winston-Salem, North Carolina map at the intersection of the Yadkin River and U.S. Highway 21, along the Surry-Yadkin county line, between Elkin and Jonesville;

(2) From the beginning point, proceed 24.6 miles generally south on U.S. Highway 21, crossing onto the Salisbury, North Carolina map, to the intersection of U.S. Highway 21 with Rocky Creek at Turnersburg;

(3) Proceed 12.3 miles generally north and west along Rocky Creek, returning to the Winston-Salem map, to the intersection of Rocky Creek with State Highway 115 at New Hope in the southwest corner of the map;

(4) Proceed 15.5 miles generally northwest along State Highway 115, crossing onto the Boone, North Carolina-Tennessee map, to the intersection of State Highway 115 and the Yadkin River, at North Wilkesboro; and

(5) Proceed 16.7 miles generally east-northeast along the Yadkin River, crossing onto the Winston-Salem map, to the beginning point.

Signed: August 1, 2006.

John J. Manfreda,
Administrator.

[FR Doc. E6-14918 Filed 9-11-06; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1910, 1915, 1917, 1918, and 1926**

[Docket No. H-022K]

RIN 1218-AC20

Hazard Communication

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: OSHA, other Federal agencies, and stakeholder representatives have participated in long-term international negotiations to develop a Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The GHS has been adopted by the United Nations, and there is an international goal for as many countries as possible to implement the GHS by 2008. The GHS includes harmonized provisions for classification of chemicals for their health, physical, and environmental effects, as well as for labels on containers and safety data sheets (SDS). Adoption of the GHS by OSHA would require modifications to the Agency's Hazard Communication Standard (HCS). For example, an order of information would be established for safety data sheets. In this notice, OSHA is providing further information about the GHS, the benefits of adopting it, and its potential impact on the HCS. OSHA is seeking input from the public on a number of issues related to implementation of the GHS. The Agency is simultaneously announcing the availability of a new guide on its Web site at <http://www.osha.gov> that describes the GHS.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by November 13, 2006.

Facsimile and electronic transmission: Your comments must be sent by November 13, 2006.

ADDRESSES: You may submit comments, identified by OSHA Docket No. H-022K, by any of the following methods:
Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions below for submitting comments.

Agency Web Site: <http://ecommments.osha.gov> Follow the

instructions on the OSHA web page for submitting comments.

FAX: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, express delivery, hand delivery, and courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. H-022K, Room N2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Instructions: All submissions received must include the Agency name and docket number (H-022K). Comments received will be posted without change on OSHA's Web page at <http://www.osha.gov>, including any personal information provided. For detailed instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments or background documents received, go to OSHA's Web page. Comments and submissions are also available for inspection and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: Press inquiries: Kevin Ropp, OSHA Office of Communications, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. General and technical information: Maureen O'Donnell, Industrial Hygienist, or David O'Connor, Health Scientist, Directorate of Standards and Guidance, Room N3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1950.

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I. Background*A. History of the OSHA Hazard Communication Standard*

OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200; 1915.1200; 1917.28; 1918.90; and 1926.59) was first adopted in 1983 for the manufacturing sector of industry (48 FR 53280; November 25, 1983). Later, the Agency expanded the scope of coverage to all industries where employees are potentially exposed to hazardous chemicals (52 FR 31852; August 24, 1987). The HCS requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import. The rule provides definitions of health and physical hazards to use as the criteria for determining hazards in the evaluation process. The information about the hazards and protective measures is then required to be conveyed to downstream employers and employees by putting labels on containers and preparing and distributing safety data sheets. All employers with hazardous chemicals in their workplaces are required to have a hazard communication program, including container labels, safety data sheets, and employee training. (**Note:** The HCS uses the term "material safety data sheet" or MSDS, while the GHS uses safety data sheet or SDS. For convenience, safety data sheet or SDS is being used throughout this document.)

OSHA has updated estimates in the standard's regulatory impact analysis, and found that the HCS now covers over 7 million workplaces, more than 100 million employees, and some 945,000 hazardous chemical products. Ensuring that hazard and protective measure information is available in workplaces through hazard communication programs helps employers design and implement appropriate controls for chemical exposures, and gives employees the right-to-know the hazards and identities of the chemicals, as well as allowing them to participate actively in the successful control of exposures. Together, these actions of employers and employees reduce the potential for adverse effects to occur. The information transmitted under the HCS requirements provides the foundation upon which a chemical safety and health program can be built in the workplace.

The HCS is performance-oriented, i.e., it establishes requirements for labels and safety data sheets but does not provide the specific language to convey

the information or a format in which to provide it.

B. OSHA Involvement in the Development of the GHS

OSHA's HCS is designed to disseminate information on chemicals to users to precipitate changes in handling methods and thus protect those exposed to the chemical from experiencing adverse effects. Since the United States (U.S.) is both a major importer and exporter of chemicals, the manner in which the U.S. and other countries choose to regulate information dissemination on hazardous chemicals not only has an impact on the protection of employees in the U.S. but also may pose potential barriers to international trade in chemicals.

To protect employees and members of the public who are potentially exposed to chemicals during their production, transportation, use, and disposal, a number of countries have developed laws that require information about those chemicals to be prepared and transmitted to affected parties. These laws vary with regard to the scope of chemicals covered, definitions of hazards, the specificity of requirements (e.g., specification of a format for safety data sheets), and the use of symbols and pictograms. The inconsistencies between the various laws are substantial enough that different labels and safety data sheets must often be developed for the same product when it is marketed in different nations. For example, Canada has established requirements for labels under its Workplace Hazardous Materials Information System (WHMIS). WHMIS requires that labels include specified symbols within a defined circle. U.S. chemical manufacturers must label chemicals accordingly for marketing in Canada.

Within the U.S., several regulatory authorities exercise jurisdiction over chemical hazard communication. In addition to OSHA's HCS, the Department of Transportation (DOT) regulates chemicals in transport, the Consumer Product Safety Commission (CPSC) regulates consumer products, and the Environmental Protection Agency (EPA) regulates pesticides, as well as having other authority over labeling under the Toxic Substances Control Act. Each of these regulatory authorities operates under different statutory mandates, and have adopted varying approaches to hazard communication requirements.

The diverse and sometimes conflicting national and international requirements can create confusion among those who seek to use hazard information effectively. For example,

labels and safety data sheets may include symbols and hazard statements that are unfamiliar to readers or not well understood. Containers may be labeled with such a large volume of information that important statements are not easily recognized. Given the differences in hazard classification criteria, labels may also be incorrect when used in other countries. This is particularly true with regard to workplace hazard communication in the U.S. Since the U.S. OSHA system is performance-oriented, labels meeting the specification requirements of other countries are often seen in the U.S. workplace. While there are no format requirements in the U.S. that are violated by these differing formats, the underlying hazard criteria from another country may be different and that could make the information on the labels out of compliance with the U.S. HCS.

Development of multiple sets of labels and safety data sheets for each product when shipped to different countries is a major compliance burden for chemical manufacturers, distributors, and transporters involved in international trade. Small businesses may have particular difficulty in coping with the complexities and costs involved.

When the HCS was first issued in 1983, the preamble included a commitment by OSHA to review the standard regularly to address international harmonization of hazard communication requirements. OSHA was asked to include this commitment in the final rule in recognition of an interagency trade policy that supported the U.S. pursuing international harmonization of requirements for chemical classification and labeling. The potential benefits of harmonization were noted in the preamble:

* * * [O]SHA acknowledges the long-term benefit of maximum recognition of hazard warnings, especially in the case of containers leaving the workplace which go into interstate and international commerce. The development of internationally agreed standards would make possible the broadest recognition of the identified hazards while avoiding the creation of technical barriers to trade and reducing the costs of dissemination of hazard information by elimination of duplicative requirements which could otherwise apply to a chemical in commerce. As noted previously, these regulations will be reviewed on a regular basis with regard to similar requirements which may be evolving in the United States and in foreign countries. (48 FR 53287; November 25, 1983)

OSHA was the only Federal agency that had a public commitment to pursue harmonization. We have actively participated in a number of such efforts in the years since that commitment was made, including participation in trade-

related discussions on the need for harmonization with major U.S. trading partners. The Agency also issued a Request for Information (RFI) in the **Federal Register** in January 1990, to obtain input regarding international harmonization efforts, and on work being done at that time to develop a convention and recommendation on safety in the use of chemicals at work in the International Labor Organization (55 FR 2166).

Little progress was made regarding international harmonization until June 1992, when a mandate from the United Nations Conference on Environment and Development (UNCED) (Chapter 19 of Agenda 21), supported by the U.S., called for development of a globally harmonized chemical classification and labeling system:

A globally harmonized hazard classification and compatible labelling system, including material safety data sheets and easily understandable symbols, should be available, if feasible, by the year 2000.

UNCED further noted that an internationally harmonized system for transport of dangerous goods was already available. However:

* * * [G]lobally harmonized hazard classification and labelling systems are not yet available to promote the safe use of chemicals, *inter alia*, at the workplace or in the home. Classification of chemicals can be made for different purposes and is a particularly important tool in establishing labelling systems. There is a need to develop harmonized hazard classification and labelling systems, building on ongoing work.

This international mandate initiated an extensive effort to develop the GHS. It involved numerous international organizations, many countries, and extensive stakeholder representation. The work was managed by the Coordinating Group on the Harmonization of Chemical Classification Systems, under the umbrella of the Interorganization Programme for the Sound Management of Chemicals. OSHA chaired the international coordinating group that managed the harmonization work. The technical work was divided among several international organizations. Development of criteria for health and environmental hazards, as well as mixture classification for chemicals having these hazards, was done under the auspices of the Organization for Economic Cooperation and Development (OECD). Criteria for physical hazards were based on the already harmonized criteria for transportation, and developed by the United Nations Subcommittee of Experts on the Transport of Dangerous Goods and the International Labor

Organization. The overall management of the process, as well as the work on aspects of the system for communicating hazards on labels and safety data sheets, were done by the International Labor Organization. OSHA participated in all of this work, and took the U.S. lead on classification of mixtures and hazard communication.

The negotiations were extensive and spanned a number of years. The primary approach involved identifying the relevant provisions in each of the major existing systems, developing background documents that compared, contrasted, and explained the rationale for such provisions, and undertaking negotiations to find an agreed approach that addressed the needs of the countries and stakeholders involved. The major existing systems were those of the U.S., Canada, and Europe, and the United Nations Recommendations for the Transport of Dangerous Goods. Principles to guide the work were established, including an agreement that protections of the existing systems were not to be reduced as a result of harmonization. Thus countries could be assured that the existing protections of their longstanding systems would be maintained or enhanced in the resulting harmonized approach.

In the U.S., an interagency committee under the auspices of the U.S. Department of State coordinated the various agencies involved. In addition to the four core agencies that have requirements that are potentially impacted by the GHS, there were a number of other agencies involved that had interests related to trade or other aspects of the GHS process. Different agencies had the lead in various parts of the discussions. Positions for the U.S. in these negotiations were coordinated through the interagency committee. Interested stakeholders were kept informed through e-mail dissemination of information, as well as periodic public meetings. The U.S. Department of State also published a notice in the **Federal Register** that described the harmonization activities, the agencies involved, the principles of harmonization, and other information, as well as invited public comment on these issues (62 FR 15951; April 3, 1997). Stakeholders also actively participated themselves in the discussions in the international organizations and were able to present their views directly in the negotiating process.

The product resulting from this effort, the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), was formally adopted by the new United Nations Committee of Experts on

the Transport of Dangerous Goods and the Globally Harmonized System of Classification and Labeling of Chemicals in December 2002. In 2003, the adoption was endorsed by the Economic and Social Council of the United Nations. While the GHS has been adopted, it is considered to be a living document that will be updated as necessary to reflect new technology and scientific developments, or provide additional explanatory text. OSHA expects to propose adoption of the 2005 version, Revision 1. Modifications to the GHS that are made after the GHS is adopted in the U.S. would require additional rulemaking.

It should be noted that the GHS document consists of non-mandatory recommendations and explanatory text. It is not a model regulation or a standard that is to be adopted verbatim. Countries like the U.S., and agencies such as OSHA, will propose converting the recommendations into appropriate regulatory text consistent with national requirements while ensuring that the specific provisions are consistent with the GHS and thus harmonized. OSHA expects to propose modifying the HCS to address the changes in hazard criteria, adopt the specific labeling requirements, and adopt the SDS order of information. Other parts of the framework of the HCS (such as the coverage of articles, trade secrets, and scope) would likely remain the same.

While the GHS text is available to everyone on the UN Web site, it will be the proposed rule to adopt the GHS that OSHA plans to issue rather than the detailed GHS document that will be of primary interest to U.S. stakeholders. To help those who are not familiar with the approach in the GHS, OSHA has prepared a guide that summarizes the GHS requirements, and it is available on our Web site (click on the Hazard Communication button on <http://www.osha.gov>). In addition, the Agency also has a detailed comparison of the HCS to the GHS available on the Web site so that interested parties can review the types of changes that would need to be made for the current U.S. workplace requirements to be harmonized with the international approach.

A review of these differences reveals that the primary impact of revising the HCS to adopt the GHS would be on compliance obligations for producers of hazardous chemicals. The modifications to the HCS would involve a review of the classifications of these chemicals, as well as preparation and distribution of new labels and revised safety data sheets. Employers who use chemicals, and exposed employees, would benefit from receiving the revised labels and

safety data sheets prepared in a consistent format. The information should be easier to comprehend and access in the new approach, allowing it to be used more effectively for the protection of employees. The primary change in workplaces where chemicals are used but not produced will be to integrate the new approach into the workplace hazard communication program, including assuring that both the employers and employees understand the pictograms and other information provided on the chemicals.

The GHS is now available for worldwide implementation, and countries have been encouraged to implement the GHS as soon as possible, with the goal of a fully operational system by 2008. This goal was adopted by countries in the Intergovernmental Forum on Chemical Safety, as well as endorsed by the World Summit on Sustainable Development. In addition, countries involved in the Asia-Pacific Economic Cooperation have endorsed a goal of 2006. The U.S. participates in all of these international groups, and has agreed to working toward achieving these goals.

The U.S. is also a member of both the United Nations Committee of Experts on the Transport of Dangerous Goods and the Globally Harmonized System of Classification and Labeling of Chemicals, as well as the Subcommittee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals. These permanent UN bodies have international responsibility for maintaining, updating as necessary, and overseeing the implementation of the GHS. OSHA and other affected Federal agencies actively participate in these UN groups. In addition, OSHA, EPA and the U.S. State Department also participate in the GHS Programme Advisory Group that functions under the United Nations Institute for Training and Research (UNITAR). UNITAR is responsible internationally for helping countries implement the GHS, and has ongoing programs to prepare guidance documents, conduct regional workshops, and implement pilot projects in a number of interested nations.

C. Other OSHA Activities Related to the GHS

OSHA and the other three core agencies continue interagency discussions related to coordination of domestic implementation of the GHS, in addition to ongoing discussions and coordination related to international work to implement and maintain the GHS.

OSHA also has ongoing activities related to the GHS under the North American Free Trade Agreement (NAFTA) discussions on handling of hazardous substances, and in discussions with the European Union on issues related to the global management of chemicals.

In addition, a number of organizations with whom OSHA has Alliances have expressed an interest in hazard communication, and in working together with each other on the subject. The Alliance program is a cooperative program that enables organizations committed to occupational safety and health to work with OSHA to prevent injuries, illnesses, and fatalities in the workplace (click on the Alliances button on OSHA's home page for an explanation of the program and a list of participants). One of the issues they have identified to work together on is related to the GHS, and making the business case for GHS adoption, particularly for small businesses. OSHA has conducted a roundtable of Alliances interested in this topic, and will continue these meetings to get their input and work with them on products they identify as appropriate for development. Products under consideration include a document addressing frequently asked questions and the corresponding answers, as well as a document that addresses why the GHS is needed.

D. Benefits of the GHS

Development of this system required extensive work by a great number of people, and resources from many countries and organizations. The reason it received such support is that there is a widespread belief that there are significant benefits associated with implementation of a globally harmonized approach to hazard communication. Countries, international organizations, chemical producers and users of chemicals will all benefit.

First and foremost, implementation of the GHS will enhance protection of people potentially exposed to chemicals and the environment. While some countries such as ours already have the benefits of protection under existing systems, the majority of countries do not have such comprehensive approaches. Thus implementation of the GHS will provide these countries with the important protections that result from dissemination of information about chemical hazards and protective measures. In our country, we expect that adoption of the GHS would improve and build on protections we already have. Refinement of the information

provided would help improve comprehensibility and thus make it more likely that the information will result in workplace changes to protect employees. As has already been noted, the majority of affected employers and employees should benefit from adoption of the GHS through receipt of better, more standardized, and consistent information about chemicals in their workplaces.

Secondly, implementation of such an approach would facilitate international trade in chemicals. It will reduce the burdens caused by having to comply with differing requirements for the same product, and allow companies that have not had the resources to deal with those burdens to be involved in international trade. This is particularly important for small producers who may be precluded currently from international trade because of the compliance resources required to address the extensive regulatory requirements for classification and labeling of chemicals.

Third, one of the initial reasons this system was pursued internationally involved concerns about animal welfare and the proliferation of requirements for animal testing and evaluation. Where existing systems have different definitions of hazards, it often results in duplicative testing to produce data related to the varying levels of toxicity or cut-offs used to define the hazards in the different systems. Having one agreed definition will reduce this duplicative testing. It should be noted that OSHA has no testing requirements. The HCS is based on collecting and evaluating the best available evidence on the hazards of each chemical.

Information transmittal systems provide the underlying infrastructure for the sound management of chemicals in a country. Those countries that do not have the resources to develop and maintain such a system can use the GHS to build their chemical safety and health programs. Unlike some other safety and health issues, a country's approach to the sound management of chemicals definitely affects other countries. In some cases, bordering countries may experience pollution and other effects of uncontrolled chemical exposures. In all countries, there is a need to acquire sufficient information to properly handle the chemical when it is imported from other countries. Thus having a coordinated and harmonized approach to the development and dissemination of information about chemicals will be mutually beneficial to both importing and exporting countries.

In the U.S., the four primary regulatory agencies (OSHA, EPA, CPSC, and DOT) that would be responsible for

GHS implementation are not domestically harmonized in terms of definitions of hazards and other requirements related to classification and labeling of chemicals. Thus, if all four agencies adopt the GHS, the U.S. would have the additional benefit of harmonizing the overall U.S. approach to classification and labeling. Since most chemicals are produced in a workplace and shipped elsewhere, every manufacturer deals with at least two of the U.S. systems. Thus every producer is likely to experience some benefits from domestic harmonization, in addition to the benefits that will accrue to producers involved in international trade.

OSHA believes that adoption of the GHS could also address some of the issues that have been discussed in the U.S. regarding the HCS and its implementation, such as improving labels and SDS comprehensibility through implementation of a standardized approach. The current regulatory system includes a performance-oriented approach to labels and SDSs, allowing the producers to use whatever language or format they choose to provide the necessary information. This often results in a lack of consistency that makes it difficult for some users of chemicals to properly identify the hazards and the protective measures, particularly when purchasing the same product from multiple suppliers. Having the information provided in the same words and pictograms on labels, as well as having a standardized order of information on SDSs, would help all users identify the critical information necessary to protect employees.

E. State Plan States

If Federal OSHA promulgates a final rule amending its HCS in response to the GHS, the 26 States and U.S. Territories with their own OSHA-approved occupational safety and health plans would be required to revise their standards to reflect the new amendment within six months of Federal promulgation. 29 CFR 1953.5(a). A revised State hazard communication standard must be applicable to both the private and public (State and local government employees) sectors. Some States may have statutory provisions that would require amendment in order to conform to a revised Federal HCS.

Section 18(c)(2) of the OSH Act requires that State standards applicable to products distributed or used in interstate commerce, if not identical to the Federal standard, must be required by compelling local conditions and must not unduly burden interstate

commerce, in addition to being "at least as effective" as the Federal standard. The amended HCS, like the original standard, would be 'applicable to products' in the sense that it would permit the distribution and use of hazardous chemicals in commerce only if they are in labeled containers accompanied by safety data sheets[.] 48 FR 53280, 53323, November 25, 1983. In order to assure that State standards do not pose an undue burden on interstate commerce, and to advance the goals of the GHS, OSHA would expect to closely scrutinize resultant State standards to assure not only equal or greater effectiveness, but also that any different or additional requirements do not conflict with, or adversely affect, the effectiveness of the national application of OSHA's standard.

II. Provisions of OSHA's HCS and the GHS

A. Scope of the GHS

The GHS covers chemicals in various stages of their life cycle, from production to disposal. It is based primarily on the hazards of chemicals. The GHS is designed to allow regulatory authorities to choose provisions that are appropriate to their particular scope of regulation. This is referred to as the "building block approach." The GHS includes all of the building blocks or possible regulatory components that might be needed for classification and labeling requirements in the workplace as well as for regulation of classification and labeling of pesticides, chemicals in transport, and consumer products. Therefore, regulatory authorities such as OSHA would choose the provisions of the GHS that are necessary for the protection of employees, but would not adopt others that address other types of protection. For example, the GHS includes harmonized criteria for classifying chemicals for aquatic toxicity. Since OSHA does not have the regulatory authority to address environmental concerns, OSHA would not adopt the GHS criteria for aquatic toxicity. It is expected that other U.S. agencies that regulate environmental issues will consider adopting this definition. Similarly, the GHS safety data sheet format includes a section that addresses environmental information. OSHA would not require inclusion of environmental information for SDSs used in workplaces.

The building block approach may also be applied in other ways when deciding which parts of the system to adopt. For example, the GHS includes classification criteria, labels, and SDSs. While workplace authorities such as

OSHA are likely to adopt all of these elements, it is expected that consumer product authorities will not have SDS requirements, nor will transport authorities. The building block approach may also be applied to the criteria for defining hazards. For example, the acute toxicity criteria are much broader than those we currently have in the HCS for workplace exposures. This is to allow consumer product authorities the tools they need to address the protection of children who might accidentally be exposed. OSHA would not need to adopt all of the categories of acute toxicity in order to protect employees from the types of exposures they may have.

In addition to the building block approach, the GHS also contains a number of areas that are left to the competent authority to determine how to apply the provision. Where OSHA is the competent authority, i.e., in terms of workplace protections in the U.S., the Agency expects to maintain its current approaches in terms of interpretations and accommodations regarding application. These approaches are based on the rulemaking record, as well as implementation experiences in the U.S., and have been determined to be an appropriate application. For example, the scope and application provisions in the GHS address the interface of the OSHA requirements to requirements in other agencies that address the same products. These scope interpretations are expected to be the same if OSHA adopts the GHS.

Overall, the scope of the GHS with regard to chemicals covered, as well as types of chemicals and workplaces that are covered, is very similar to the HCS. The HCS has a very broad scope of coverage, ensuring that information is provided on all potential hazards in American workplaces. Adoption of the GHS should maintain this broad coverage of hazards and chemicals. It should be noted that the GHS, like the HCS, does not require any new testing of chemicals. Evaluations of chemical hazards are to be based on the best available evidence.

As has been described above, the HCS consists of requirements for defining health and physical hazards, preparing a written hazard communication program, preparing and distributing labels on containers that are shipped as well as containers in the workplace, preparing and distributing safety data sheets for all hazardous chemicals, and employee training. The GHS addresses classification of health and physical hazards, and preparation and distribution of labels and safety data sheets. It does not include requirements

for a written hazard communication program or for employee training. Training is noted in the GHS as an important adjunct to label and safety data sheet requirements, but the harmonization process did not include such provisions. Countries are thus free to determine what training will be applicable in their own regulatory approach. OSHA believes that training is critical to ensuring the effectiveness of hazard communication, and anticipates maintaining current HCS requirements that training be part of a hazard communication program. OSHA also expects to propose some additional training to ensure understanding of the new approach regarding labels and SDSs in the GHS.

B. Definitions of Hazards Covered

The HCS covers a broad range of both health and physical hazards. The standard is performance-oriented, providing definitions of hazards and parameters for evaluating the best available evidence to determine whether a chemical has a hazardous effect under the standard. In particular, with regard to health hazards, one toxicological study, conducted according to established scientific principles and reporting a statistically significant adverse health effect, is sufficient for a finding of hazard under the rule. The principle behind the standard is that it is to address dissemination of information, and thus complete information about all of the potential hazards should be disseminated to ensure that employers and employees can make appropriate decisions about the level of protection required in their particular workplaces. Hazard information, in combination with information about the exposures occurring in each workplace, allows decisions to be made by employers regarding the appropriate risk management to implement based on the specific conditions in their workplace. Chemical manufacturers and importers do not have information about the exposures to their products in each workplace where their product may be used, so they must prepare their labels and safety data sheets based on the hazards of the chemicals.

C. Health Hazards

The HCS thus covers every type of health effect that may occur, including both acute and chronic effects. The standard describes different systems of the body and indicates that target organ effects are to be considered in the hazard evaluation. The definitions provided are indicative of the wide range of coverage, but are not exclusive.

Any type of adverse health effect that is reported and substantiated by a scientific study is covered. The standard specifically includes the following in the definition of "health hazard":

- Carcinogens
- Toxic or highly toxic agents (all routes of entry)
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins
- Nephrotoxins
- Neurotoxins
- Agents which act on the hematopoietic system
- Agents which damage the lungs, skin, eyes, or mucous membranes

The GHS also has a very broad approach to the range of health effects covered:

- Acute toxicity (any route of entry)
- Skin corrosion/irritation
- Serious eye damage/eye irritation
- Respiratory or skin sensitizer
- Germ cell mutagenicity
- Carcinogenicity
- Reproductive toxicity
- Specific target organ systemic toxicity—single exposure
- Specific target organ systemic toxicity—repeated use
- Aspiration hazard

Under the GHS, each hazard or endpoint as listed above is considered to be a hazard class. The classes are generally sub-divided into categories of hazard. The definitions of hazards are much more specific and detailed than what is in the HCS. For example, under the HCS, a chemical is either a potential carcinogen or it is not. The evaluation is a yes or no response. Under the GHS, there are two categories of carcinogenicity, based on the weight of the evidence involved. The hazard communication consequences of this classification also vary as a result for each category in a hazard class. The hazard communication elements allocated to each category reflect the degree of severity of the hazard.

There are advantages to this more specific and delineated approach. First, the detailed criteria for classification should lead to more accurate hazard determinations and more consistency among multiple classifiers. There is less likely to be room for different interpretations of the same data. This addresses some of the concerns that have been raised about the HCS. In addition, introducing categories gives an indication of the degree of severity of the hazard. This is helpful to employers and employees determining what the appropriate course of action should be when exposures to the chemical occur.

There may be some changes in what the hazard of certain chemicals is determined to be based on a consideration of the data available on a chemical in light of these new criteria. It is expected that chemical manufacturers and importers will be required to re-evaluate their chemicals according to the GHS criteria. But given the current broad nature of the HCS, it is not expected that the number of chemicals covered would change in any significant way. The most likely difference would be that the chemical may be characterized in categories for certain hazards based on the weight of the evidence.

With regard to mixtures of chemicals, the HCS requires the evaluation of mixtures to be based either on data for the mixture as a whole, or, where that is not available, the mixture's health hazards are to be based on the presence of ingredients with health hazards over a specified percentage. That percentage is 0.1% for carcinogens, and 1.0% for all other types of health effects. The HCS also recognizes that risk may remain below these cut-offs, and where there is evidence that is the case, the mixtures are still covered.

The GHS has what has been described as a tiered approach to mixture evaluation. The first step is consideration of data on the mixture as a whole, similar to the HCS. The second step allows the use of "bridging principles" to estimate the hazards of the mixture based on information about its components. For example, if a chemical is considered to be acutely toxic, but it is diluted with something that is not toxic, the GHS allows the employer to take the dilution into consideration when evaluating the hazards of the product rather than simply basing it on a percentage cut-off approach like the HCS. This extrapolation of data will mean that fewer mixtures will be evaluated on the basis of the presence of a chemical above a specific cut-off. The third part of the tiered approach does involve cut-offs, but they vary by the type of effect. In particular, for acute effects, there is a formula for determining whether the mixture is considered to be toxic. The formula is based to some extent on one that is currently used in transport.

Overall, the approach is generally consistent with the current HCS requirements, but provides more detail and specification and allows more extrapolation of data available on the components of a mixture—particularly for acute effects. It is thus more complicated than the approach in the HCS, and it is likely that additional guidance, particularly electronic tools,

may need to be made available to assist with compliance.

As a result of these differences in health hazard criteria and the accompanying approaches to classifying mixtures, another provision of the standard that is potentially impacted by adoption of the GHS is the process of hazard determination. Under the current rule, this process is performance-oriented, allowing for a significant degree of professional judgment on the part of the hazard evaluator. No specific procedures are provided, but there are certain parameters established. The scientific literature must be reviewed, and if there is at least one toxicological study, conducted according to established scientific principles, and providing statistically significant results indicating an adverse health effect, this hazard must be disclosed under the HCS.

The HCS also includes references to sources of information that were identified in the rulemaking record as one basis for making an initial determination of hazard. Among these listed sources are OSHA's substance-specific standards (those chemicals for which OSHA has promulgated a permissible exposure limit (PEL) in Subpart Z, Toxic and Hazardous Substances), American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs), International Agency for Research on Cancer (IARC) monographs, and the National Toxicology Program (NTP) list of carcinogens. These sources provide employers a list of hazardous chemicals. However, manufacturers and importers are still required to review the available information to determine specifically what the hazards of these chemicals are, and to disclose them on labels and safety data sheets.

The GHS provides much more specific criteria for defining health hazards than the HCS does. If OSHA adopts the GHS, these more specific criteria will be part of the HCS. This will eliminate the need for a specific listing of hazardous chemicals as part of the hazard determination procedures. Chemical manufacturers and importers are much more likely to make consistent hazard determination evaluations following the specific criteria in the GHS, thus addressing the concerns that led to the inclusion of lists in the original Hazard Communication Standard. References to the chemicals for which there are ACGIH TLVs, and those chemicals addressed in IARC Monographs and the NTP lists, would no longer be specifically addressed in the HCS. Chemical manufacturers and importers would retain the

responsibility for evaluating all relevant data on the chemicals they produce or import.

Similarly, the provisions for disclosing the hazardous ingredients of mixtures under the GHS are much more detailed than the HCS. The simple across-the-board cut-offs for all types of hazards would no longer be part of the rule if it is changed to adopt the GHS. Modifying the HCS to align with the GHS would also eliminate the current references to ACGIH TLVs as part of the mixture provisions.

D. Physical Hazards

With regard to physical hazards, the current definitions in the HCS are drawn from other standards we have that address such chemicals (*e.g.*, flammable chemicals), or from what were the DOT criteria for physical hazards at the time OSHA promulgated the HCS. OSHA includes definitions for the following physical hazards in the HCS:

- Combustible liquid
- Compressed gas
- Explosive
- Flammable (aerosol, gas, liquid, solid)
- Organic peroxide
- Oxidizer
- Pyrophoric
- Unstable (reactive)
- Water-reactive

The GHS includes criteria for the following physical hazards:

- Explosives
- Flammable (aerosol, gas, liquid (including combustible liquid), solid)
- Oxidizing (liquids, solids, gases)
- Gases under pressure
- Self-reactive substances and mixtures
- Pyrophoric (liquid, solid)
- Self-heating substances and mixtures
- Substances and mixtures which in contact with water emit flammable gases
- Organic peroxide
- Corrosive to metals

DOT subsequently changed their criteria to be consistent with the international transport requirements. The international transport requirements for classification of physical hazards have now been incorporated into the GHS. While DOT must make a few changes to be consistent with the GHS, their requirements are mostly already the same.

OSHA is not harmonized with current DOT requirements. Changing the HCS to adopt the GHS criteria would also ensure that DOT and OSHA requirements are consistent. This is an important improvement in the current situation where the outside of a truck may be placarded with a different hazard than the workplace labels convey on the containers inside the

truck. Again, chemical manufacturers and importers would have to re-evaluate their chemicals according to the new criteria in order to ensure they are classified appropriately. However, if they are chemicals that are transported, *i.e.*, not produced and used in the same workplace, this classification should largely be done already for purposes of complying with DOT's existing transport provisions. This should minimize the additional work required to review the physical hazard classifications to be consistent with the GHS for purposes of workplace classification and labeling.

One issue of concern is whether OSHA should also propose to change the physical hazard definitions in other standards when it proposes to change the HCS criteria to be consistent with the GHS. For example, if the HCS definitions are changed with regard to the definition of flammable liquids, there is a concern as to whether definitions in the flammable liquids standard need to be changed as well, and what the impact of this would be beyond classification and labeling. This is one of the areas that needs to be further explored in terms of impact and possible consequences.

E. Labels

The HCS requirements for labels simply indicate the minimal information required to be on them. At the time the standard was promulgated, OSHA reviewed the current industry consensus standards for labels, and basically focused on requiring information that was not generally present on most labels in use by industry. The additional information included an identity that could be traced to more detailed information, and specific information about both the health and physical hazards. In particular, OSHA did not consider a label statement indicating possible harm but no specific health effect to be a sufficient hazard communication. Other types of information such as precautionary statements were not included in the requirements.

This performance-oriented approach was strongly supported by the chemical industry at the time the standard was adopted. Taking such an approach allowed existing labels to continue to be used in many situations, thus minimizing the impact on a number of producers.

However, it also has resulted in labels that are not consistent, and may not communicate adequately to users. While some producers follow voluntary industry consensus standards, others do not. Many large companies have

developed their own libraries of phrases to be used on labels and safety data sheets, and undertaken translation of them into multiple languages. This is a considerable burden for a company to develop and maintain.

Other major existing systems considered in the harmonization process included specific label phrases to convey hazards and other information. Symbols and pictograms were also part of these systems. For purposes of developing an agreed harmonized approach, it was thus necessary to consider including such elements in the GHS.

For each class and category of hazard under the GHS that OSHA is considering adopting, there is a harmonized hazard statement, a signal word, and a pictogram specified. This is referred to as the core information for a chemical. Thus once an employer classifies a chemical, the GHS provides the specific core information to convey to users on that chemical. There are provisions to allow supplementary information as well so the chemical manufacturer is not limited to the specified core information. This should address product liability concerns for U.S. employers and ensure they can include other information they consider to be necessary for that purpose. Precautionary statements are also provided as examples in the GHS, but they have not yet been agreed and harmonized. This is expected to occur in the future as work on the system continues. Figure 1 is an example of how the core labeling elements (harmonized hazard statement, signal word, and pictogram) are assigned in one hazard class covered under the GHS.

These labeling provisions will likely be the biggest difference between the HCS and the GHS. There are benefits to this standardized approach. First, employers and employees will be given the same information on a chemical regardless of the supplier. This consistency will improve communication of the hazards. It may also improve communication for those who are not functionally literate, or who are not literate in the language written on the label. Literacy of both types is a significant concern in American workplaces. Secondly, having the core information developed already, translated into multiple languages, and readily available to whomever wishes to access it, will eliminate the burden of chemical manufacturers and importers developing and maintaining their own such systems. Thus the specification approach should be beneficial both to

the producers and the users of chemicals.

Figure 1

Example of Core Labeling Elements for a Hazard Class

CARCINOGENICITY				
Category 1A	Category 1B	Category 2	-	-
				
Danger	Danger	Warning		
May cause cancer <i>(state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard)</i>	May cause cancer <i>(state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard)</i>	Suspected of causing cancer <i>(state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard)</i>		
Not required under the UN Recommendations on the Transport of Dangerous Goods, Model Regulations.				

United Nations Globally Harmonized System of Classification and Labeling of Chemicals, First Revised Edition, 2005, Annex I. Diamond frames for pictograms in the top row are red.

The use of symbols and pictograms will require some training and familiarization to be effective. One of the issues OSHA is considering is whether generic training on this aspect of the GHS can be developed and made available to employers and employees.

There is another significant benefit that will be achieved by adopting a system that has harmonized hazard statements in it. "Control banding," a guidance approach to recommending control measures for chemical exposures, is attracting significant attention around the world. The approach uses information that is readily available to small and medium-sized employers with chemicals in their workplaces to provide them with workplace-specific control recommendations. Basically, the system uses such information to estimate the degree of severity of the hazard and the amount of chemical present, and relates that to the degree of control needed. The

control banding approach relies on harmonized hazard statements to allow the system to estimate the degree of severity of the hazard. Initially based on the European hazard classification system, it has now been converted to the GHS phrases. The use of control banding to provide guidance for chemical safety and health approaches in U.S. workplaces cannot be accomplished until harmonized hazard statements are readily available. Adoption of the GHS and its phrases would open up the possibility that control banding guidance can be used in the U.S. to help small and medium-sized employers select and implement appropriate control measures. In addition, the possibility of addressing control banding recommendations in GHS SDSs in the section on controls is also being explored. For more information on control banding, please see <http://www.cdc.gov/niosh/topics/ctrlbanding/>.

F. Safety Data Sheets

Under the HCS, the SDS is the detailed reference source on the chemical. While labels provide a quick

snapshot to remind employers and employees of the hazards of the chemical, the SDS addresses all aspects of hazard information as well as methods for handling and use. The HCS specifies what information must be included on the SDS, but does not specify a format or order of information. Again, this approach was supported by producers to minimize the impact of the standard for those who already developed and disseminated SDSs. Currently, safety data sheets under the HCS are required to include:

- Identification of the chemical or hazardous ingredients of a mixture
- Physical and chemical characteristics
- Health hazards, including signs, symptoms, and medical conditions that could be aggravated by exposure
- The primary routes of entry
- The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other recommended exposure limits
- Whether the chemical is considered to be a carcinogen by OSHA, the International Agency for Research on Cancer, or the National Toxicology Program
- Precautions for safe handling and use
- Control measures
- Emergency and first aid procedures

Date of preparation of the safety data sheet
Contact information for the responsible party

Users of chemicals have always preferred a standardized approach. Many believe that having the information in the same place on every data sheet allows them to access it more effectively. OSHA published a request for information regarding ways to improve the information provided under the HCS (55 FR 20580; May 17, 1990), and received around 600 comments in response. The majority of them were in favor of a standardized format or order of information.

As a result of the users' expressed preferences, chemical manufacturers in the U.S. developed a voluntary industry consensus standard that included an order of information for safety data sheets (ANSI Z400.1). This approach was later adopted into international voluntary industry consensus standards as well.

The HCS allows any format to be used, so many producers have been following the consensus standard order of information for some years. In negotiating the GHS, it was decided that this format should be adopted there as well. One change was made, reversing the order of sections 2 and 3 so the hazard information appeared earlier in the sheet than information on chemical composition. Both the national and international industry consensus standards are being changed to be consistent with this approach. The GHS data sheet is to include the following in this order:

- Identification
- Hazard identification
- Composition/information on ingredients
- First aid measures
- Firefighting measures
- Accidental release measures
- Handling and storage
- Exposure controls/personal protection
- Physical and chemical properties
- Stability and reactivity
- Toxicological information
- Ecological information
- Disposal considerations
- Transport information
- Regulatory information
- Other information

Having a standardized order of information should improve comprehensibility, which has been a continuing issue with regard to safety data sheets. It should also make it easier for chemical producers to comply by providing them with a template to follow. Using the industry consensus standards should also minimize the burden of preparing new safety data sheets since many chemical producers already use the format specified. While the GHS safety data sheet does not

address exposure limits in the titles of the sections, guidance on what should be included indicates that occupational exposure limits would be addressed under the "exposure controls" section. Countries may choose what to require in these sections in terms of occupational exposure limits, but it is anticipated that OSHA would require the PELs to be included.

Under the auspices of the International Program on Chemical Safety (IPCS), a series of over 1300 international chemical safety cards has been developed and translated into 14 languages. These cards are developed and peer reviewed by participating institutions in a number of countries, including the U.S. The National Institute for Occupational Safety and Health (NIOSH) is undertaking this work. The cards are similar to SDSs in terms of the information provided, but they are in a concise format of two pages. The cards are going to be updated to reflect the GHS criteria and hazard information. They may be found on NIOSH's Web page at: <http://www.cdc.gov/niosh/ipcs/nicstart.html> OSHA also has a link to them on our hazard communication page. These cards are an excellent resource for many of the most common chemicals found in the workplace. When updated to be GHS-consistent, they will also be a useful resource for GHS compliance and for implementation of control banding.

As mentioned earlier, there is information required on a GHS SDS that is outside OSHA's jurisdiction to regulate. This includes environmental and transport information. We do not intend to propose requiring it on safety data sheets, but will provide information about the provisions so chemical producers can include it if they wish to be completely consistent with the GHS. OSHA does not preclude such information being on a safety data sheet, but will not review or enforce such provisions.

III. Public Resources for Further Information on the GHS

OSHA has a safety and health topic page on hazard communication available as part of our Web site. There is a hazard communication button on the Agency's home page (<http://www.osha.gov>) that leads to a portal page on the topic, including a box on the GHS. There is a page devoted to the GHS that is reached through clicking on this box. It gives additional background information, and has links to the GHS official text, Web pages of other U.S. agencies, international organizations, and countries involved in GHS implementation.

As noted earlier, a substantive guide to the GHS is available on this page to describe the system in more detail for those who are interested. There is also a detailed comparison of the HCS to the GHS that notes the areas of difference that would have to be addressed in adopting the GHS.

IV. Request for Input

In order to prepare for rulemaking proposing adoption of the GHS and modification of the HCS to accomplish that, OSHA is seeking input from the public on a number of issues related to implementation. This information will be used by OSHA to prepare cost analyses and other documents required to support the rulemaking. These requests are divided into several categories of information below. Please provide comments, evidence, data, and other input for those categories that affect you or for which you have relevant information. The details for submitting this information are specified in Section V.

Current situation. Modifying the HCS to adopt the GHS would have the greatest impact on chemical manufacturers, importers, and employers who produce or distribute hazardous chemicals as currently covered under the HCS. In order to be harmonized, the hazard classifications of each product will need to be reviewed according to the classification criteria of the GHS, and new labels and safety data sheets will have to be prepared.

1. How many hazardous chemicals as defined by the HCS do you produce, import or distribute? How many hazardous chemicals do you export? How many different labels or data sheets do you need to prepare for each chemical you export?

2. Who is responsible for reviewing the data on chemicals and preparing appropriate labels and safety data sheets? What is their professional background? Do you make independent determinations or rely largely on labels or data sheets developed by others (suppliers, materials available on the Internet, etc.)?

3. How long does it take on average for each hazardous chemical to complete the review and prepare new labels and safety data sheets? How much does it cost for each chemical product? Please break down the cost for the classification, preparation of a new label, and revision of a safety data sheet.

4. Would the time required to prepare a GHS SDS be more, less, or about the same as currently required for preparing an SDS? What time and costs would be required to convert existing SDSs to the

GHS format? Would the costs depend on the amount of time allowed for the conversion process?

5. Please describe any electronic tools you have to assist with this process, such as systems that classify chemicals or prepare labels or safety data sheets. How long would it take to update those systems to make them GHS-consistent?

6. How many of your employees receive hazard communication training? How many hours of training at what frequency (on hire, annually, as needed, etc.)? How long would it take to teach employees to recognize GHS pictograms? Would more standardized labels and SDSs make it easier to use the available hazard communication information?

7. What savings will you incur when you only have to classify a chemical once instead of multiple times depending on how many agencies and countries are involved? What other benefits do you anticipate?

Timing. As has been noted, the international goal is for as many countries as possible to adopt the GHS by 2008. Since OSHA has longstanding requirements for labels and safety data sheets, the Agency expects to allow a significant phase-in period for compliance in order to give people sufficient time to review their classifications and amend them as necessary, and subsequently revise labels and safety data sheets to reflect the new requirements. It seems probable at this point that the revised requirements could potentially be in place by 2008, but the phase-in period for compliance may have to extend beyond that time period.

8. What is a reasonable time period for phasing in the modifications? Should the phasing be done by size of business? Are there any other factors that should be considered to differentiate the phasing?

9. What is the normal cycle for updating labels and safety data sheets?

10. Do you have stockpiles of product that are already labeled? How long will those stockpiles last?

11. Do you have any other information or data that would help OSHA determine the appropriate phasing in of the new requirements or other issues related to timing?

Technical issues. As discussed, the scope of hazards covered by the GHS is similar to that of the HCS. OSHA anticipates adopting all of the health and physical hazard criteria in the GHS. Definitions in the HCS will need to be the same as the GHS in order to be harmonized. However, there are some determinations that are left to countries

to decide in terms of whether all categories and all hazards are adopted.

12. Are there any health or physical hazards that are currently covered by the HCS that you think are not adequately addressed in the GHS criteria? What are they and why do you think they are not adequately addressed? Are there any health or physical hazards that aren't covered in either the HCS or the GHS that should be added?

13. In addition to references to hazardous chemicals with OSHA PELs, should OSHA propose to include any other listing of hazardous chemicals when aligning the hazard determination provisions of the HCS to the GHS? Should OSHA propose that the mixture provisions only reference exceeding the OSHA PEL when revised to adopt the GHS? Should OSHA propose deleting the requirement that the ACGIH TLV be included on the SDS when the requirements are changed to be consistent with the GHS? Should other recommended exposure limits be included on the SDS?

14. Within the health hazard criteria, are there any categories of hazard that should not be adopted in the HCS? For example, should OSHA adopt all of the categories addressed in the acute toxicity criteria? If not, what categories would be appropriate to address anticipated workplace exposures?

15. If OSHA changes the HCS to adopt the physical hazard criteria, how will that impact other OSHA standards that use the same criteria as the HCS? Does OSHA need to change those criteria at the same time the HCS is changed? Storage and handling requirements for flammable liquids are one example that has been identified as a potential problem if different definitions apply, and information on a safety data sheet is linked to the definition in the HCS but not consistent with other definitions.

16. Are there any other technical issues that need to be considered in adopting the GHS? Please explain.

Compliance Assistance and Outreach. OSHA is interested in getting input on the types of materials or products that would assist employers in understanding whatever modifications OSHA makes to the HCS to adopt the GHS, and to help them achieve compliance. To this end, we would like to get input now on the types of outreach that would be most helpful. As has been noted, there are some explanatory documents that are already available on OSHA's Web site.

17. What products would be most useful to employers? Employees? Do

you prefer paper publications? Electronic tools?

18. What subjects would be of most interest? Classification criteria and procedures for substances and mixtures? Labels? Safety data sheets?

19. What is the best way to distribute the materials to reach affected employers and employees?

20. Are there any types of materials that would be especially appropriate for small businesses? Most small businesses would be users of chemicals, rather than producers, so they will be receiving labels and safety data sheets prepared according to the new approach. Are there training materials that would be helpful to learn or teach about the new approach? In particular, would training on symbols or pictograms be of use?

V. Public Participation

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page or the Federal Rulemaking Portal. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693-2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and courier service.

All comments and submissions are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at <http://www.osha.gov> (click on "Dockets & E-Comments"). OSHA cautions you about submitting personal information such as Social Security numbers and birth dates. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on OSHA's Web page.

VI. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5-2002 (67 FR 65008).

Issued at Washington, DC, this 6th day of September 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 06-7584 Filed 9-7-06; 9:37 am]

BILLING CODE 4510-26-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05-06-092]

RIN 1625-AA00

Safety Zone: Fireworks Display, Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a 1000 foot safety zone around a fireworks display for the North Carolina Parks and Recreation Conference occurring on November 12, 2006, on the Trent River, New Bern, NC. This action is intended to restrict vessel traffic on the Trent River. This safety zone is necessary to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before October 12, 2006.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, NC 28512. Sector North Carolina maintains the public docket for this rulemaking. Comments and material received from the public. As well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Federal Building Fifth Coast Guard District between 9 a.m. and 2 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: CWO Christopher Humphrey, Prevention Department, Coast Guard Sector North Carolina, at (252) 247-4525.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking CGD05-06-092, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may charge this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Sector North Carolina at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On November 12, 2006, the North Carolina Parks and Recreation Conference fireworks display will be held adjacent to the Trent River, New Bern, NC. Spectators will be observing from both the shore and from vessels. Due to the need of protection of mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone on specified waters of the Trent River. The regulated area will consist of a 1000 foot safety zone around a fireworks display from the southern shore of the City of New Bern, NC. The safety zone will be enforced from 6 p.m. to 8 p.m. on November 12, 2006. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

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

Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Trent River from 6 p.m. to 8 p.m. on November 12, 2006. The safety zone will not have a significant impact on a substantial number of small entities, because the zone will only be in place for a few hours and maritime advisories will be issued, so the mariners can adjust their plans accordingly. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact CWO Christopher Humphrey, Prevention Department, Sector North Carolina, at (252) 247-4525. 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 proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make a final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting & record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 subpart C as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add Temporary § 165.T05-092, to read as follows:

§ 165.T05-092 Safety Zone: Trent River, New Bern, North Carolina.

(a) *Location:* The following area is a safety zone: All waters of the Trent River within 1000 feet of the fireworks display at New Bern, NC, approximate position 35-00-15N 077-02-39W in the Captain of the Port, Sector North Carolina zone as defined in 33 CFR 3.25-20.

(b) *Definition:* As used in this section; *designated representative:* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Sector North Carolina to act on his behalf.

(c) *Regulation:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina, NC, or designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall: (i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer

on board a vessel displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Coast Guard Sector North Carolina Prevention Department, Morehead City, North Carolina can be contacted at telephone number (252) 247-4570 or (252) 247-4520.

(4) Coast Guard vessels enforcing the safety zone can be contacted on VHF-FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* This regulation will be enforced from 6 p.m. to 8 p.m. on November 12, 2006.

Dated: August 29, 2006.

William D. Lee,

Captain, U.S. Coast Guard, Captain of the Port, Sector North Carolina.

[FR Doc. 06-7601 Filed 9-11-06; 8:45am]

BILLING CODE 4910-15-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2006-25767; CGD09-06-123]

RIN 1625-AA00

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Re-opening of comment period.

SUMMARY: In response to public requests, the Coast Guard is re-opening the comment period on its notice of proposed rulemaking (NPRM) to establish permanent safety zones throughout the Great Lakes to conduct live fire gun exercises. These safety zones are necessary to protect the public from the hazards associated with the firing of weapons and to ensure the operational readiness of Coast Guard personnel, cutters and small boats. Re-opening the comment period will provide the public more time to submit comments and recommendations.

DATES: Comments and related materials must reach the Coast Guard on or before November 13, 2006.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2006-2567), U.S. Department of Transportation, room PL-401, 400 SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for the rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL-401, located on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For information on the NPRM provisions contact Commander Gustav Wulfkuhle, Enforcement Branch, Response Division, Ninth Coast Guard District, Cleveland, Ohio at 216-902-6091. For questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On August 1, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM)(71 FR 43402) to establish permanent safety zones throughout the Great Lakes to conduct live fire gun exercises. The initial comment period for this NPRM ended on August 31, 2006.

In response to public requests, the Coast Guard is re-opening the comment period on this NPRM. Re-opening the comment period will provide the public more time to submit comments and recommendations.

In addition, the Coast Guard has added a copy of the "Preliminary Health Risk Assessment for Proposed U.S. Coast Guard Weapons Training Exercises" (January 2006) to the docket in order to better inform the public that the proposed training will pose no elevated health or ecological risks in the Great Lakes.

Request for Comments

The Coast Guard encourages you to submit comments and related materials. If you submit a comment, please include your name and address, identify the NPRM [USCG-2006-2567 (formerly CGD09-06-123)]; published in the

Federal Register on August 1, 2006 (71 FR 43402) and indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit one copy of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the proposed rules in view of the comments.

Dated: September 1, 2006.

John E. Crowley, Jr.,

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

[FR Doc. E6-15109 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-15-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

[Docket No. 2006-1]

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates, time, and location of the first Committee meeting, which will be open to the public.

DATES: The meeting is scheduled for September 27, 2006 (beginning at 1 p.m. and ending at 5 p.m.), September 28, 2006 (beginning at 9 a.m. and ending at 5 p.m.) and September 29, 2006 (beginning at 9 a.m. and ending at 3:30 p.m.). Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

ADDRESSES: The meeting will be held at the National Science Foundation, Room II-555, 4201 Wilson Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004-1111. Telephone number (202) 272-0016 (Voice); (202) 272-0082 (TTY). Electronic mail address: creagan@access-board.gov.

SUPPLEMENTARY INFORMATION: On July 6, 2006 the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice establishing the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) (71 FR 38324, July 6, 2006). The committee will provide recommendations for revisions and updates to accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. Forty organizations were appointed as members of the Committee. After the notice was published, it came to our attention that the application from the Japanese Standards Association, which had been timely received, had been overlooked. As a result, Access Board Chairman David Bibb has added the Japanese Standards Association as a committee member. We apologize for this oversight. Additionally, on July 26, 2006, the Access Board Chairman announced the appointment of Mike Paciello and Jim Tobias as co-chairs of the advisory committee. Mr. Paciello is the Founder and Principal of the Paciello Group from Nashua, New Hampshire and Mr. Tobias is the Principal of Inclusive Technologies from Matawan, New Jersey.

Over 120 organizations applied to serve on the committee. In order to keep the Committee to a size that can be effective, it was necessary to limit membership. It is also important to have balance among members of the Committee representing different clusters of interest, such as disability organizations and the technology industry. Some organizations that were not accepted have asked that their applications be reconsidered. Additionally, some organizations learned about the committee too late to submit an application. On Thursday, September 28 (at approximately 2:30 p.m.) there will be time set aside on the agenda to discuss additional committee applicants. Organizations seeking to be added to the committee are encouraged

to contact Timothy Creagan prior to the meeting (see **FOR FURTHER INFORMATION CONTACT** above).

A draft meeting agenda and other information about the Committee are available on the Access Board's Web site at <http://www.access-board.gov/sec508/update-index.htm>. Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on subcommittees that will be formed. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting site is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. Individuals who require other accommodations should contact Timothy Creagan by September 20, 2006 (see **FOR FURTHER INFORMATION CONTACT** above). Persons attending Committee meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Due to security measures at the National Science Foundation, members of the public should notify Timothy Creagan of their intent to attend the meeting (see **FOR FURTHER INFORMATION CONTACT** above). This will ensure that a name badge is available at the National Science Foundation check-in desk to facilitate efficient building entry and will enable the Board to provide additional information about mandatory technology screening processes which the National Science Foundation requires.

James J. Raggio,

General Counsel.

[FR Doc. E6-15061 Filed 9-11-06; 8:45 am]

BILLING CODE 8150-01-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. 2004-1]

RIN 3014-AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Reopening of comment period.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) had placed in the docket and on its Web site for public review and comment draft guidelines on accessibility for passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers, all ferries regardless of size and passenger capacity, and certain tenders which carry 60 or more passengers. The comment period closed on September 5, 2006. This document reopens the comment period for an additional 60 days.

DATES: Comments on the draft guidelines must be received by November 13, 2006. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments on the draft guidelines, identified by Docket No. 2004-1, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: pvag@access-board.gov. Include Docket No. 2004-1 in the subject line of the message.

Fax: (202) 272-0081.

Mail or Hand Delivery: Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004-1111.

Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington DC 20004-1111. Telephone number (202) 272-0012 (voice); (202) 272-0082 (TTY); Electronic mail address: pvag@access-board.gov.

SUPPLEMENTARY INFORMATION: On July 7, 2006, the Architectural and

Transportation Barriers Compliance Board (Access Board) placed in the docket and on its Web site for public review and comment draft guidelines which address accessibility to and in passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. (71 FR 38563, July 7, 2006). In addition, the draft addresses all ferries regardless of size and passenger capacity, and certain tenders which carry 60 or more passengers. The comment period closed on September 5, 2006.

The Board received two requests for an extension of the comment period from the passenger vessel industry to further review the detailed guidelines and provide in-depth comments. As a result, the Board has reopened the time for filing comments by an additional 60 days. The Board believes that the extension of time for comments will give the public a better opportunity to provide input on the draft guidelines.

James J. Raggio,
General Counsel.

[FR Doc. E6-15062 Filed 9-11-06; 8:45 am]

BILLING CODE 8150-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2006-0184; FRL-8218-5]

Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

DATES: Any comments on this proposal must arrive by November 6, 2006.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2006-0184, by one of the following methods:

(1) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions.

(2) *E-mail:* rosen.rebecca@epa.gov.

(3) *Mail or deliver:* Rebecca Rosen (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosen, EPA Region IX, (415) 947-4152, rosen.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

A. Action

In today's action, EPA proposes to promulgate a FIP to establish federally enforceable emissions limitations for sulfur dioxide (SO₂), nitrogen oxides (NO_x), and total particulate matter (PM) applicable to the FCPP. The FIP also proposes federally enforceable emissions limitations for opacity and control measures for dust.

B. Facility

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Based on lease agreements signed in 1960, FCPP was constructed and has been operating on real property held in trust by the Federal government for the Navajo Nation. The facility consists of five coal-fired electric utility steam generating units with a total capacity in excess of 2000 megawatts (MW).

C. Attainment Status

FCPP is located in the Four Corners Interstate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). See 40 CFR 81.332. The proposed FCPP FIP establishes federally enforceable emissions limitations that are more stringent than, or at least as stringent as, the emissions limitations with which FCPP has historically complied. Therefore, EPA believes that air quality in this area will be positively impacted by this action.

D. Historical Overview of FCPP FIP Actions

When the Clean Air Act was amended in 1990, Congress included a new provision, Section 301(d), granting EPA authority to treat Tribes in the same manner as States where appropriate. See 40 U.S.C. 7601(d). In 1998, EPA promulgated regulations known as the Tribal Authority Rule (TAR). See 40 CFR parts 9, 35, 49, 50 & 81, 63 FR 7254 (February 12, 1998). EPA's promulgation of the TAR clarified, among other things, that State air quality regulations generally do not, under the Clean Air Act, apply to facilities located anywhere within the

exterior boundaries of Indian reservations. See 63 FR at 7254, 7258 (noting that unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement Clean Air Act programs in Indian country, EPA is the appropriate entity to implement Clean Air Act programs prior to tribal primacy), *Arizona Public Service Company v. E.P.A.*, 211 F.3d 1280 (DC Cir. 2000), *cert. denied sub nom. Michigan v. E.P.A.*, 532 U.S. 970 (2001) (upholding the TAR), see also *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with Federal government and tribes, not with states).

Prior to the addition of Section 301(d) and promulgation of the TAR, some States had mistakenly included emissions limitations in their State Implementation Plans (SIPs) which they believed could apply to private facilities operating on adjacent Indian reservations. Such was the case for FCPP. The State Implementation Plan for New Mexico contained emissions limitations purported to apply to FCPP and with which FCPP was complying.

EPA recognized that New Mexico's SIP emissions limits could not apply to FCPP, and on September 8, 1999, EPA proposed a source-specific FIP for the FCPP. See 64 FR 48731 (September 8, 1999). The 1999 proposed FIP stated: "Although the facility has been historically regulated by New Mexico since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes." See 64 FR 48733. EPA intended for the 1999 FCPP FIP to "federalize" the emissions limitations that New Mexico had erroneously included in its State Implementation Plan. *Id.* at 64 FR 48736. EPA received comments on the proposed 1999 FIP but did not take action finalizing the proposal.

Since EPA's 1999 FIP proposal, Arizona Public Service (APS), the operating agent for FCPP, has been in negotiation with the Navajo Nation, EPA Region IX, the Environmental Defense, New Mexico Citizens for Clean Air and Water, Western Resources Advocates, and the National Park Service. Recently, APS agreed to install emission control devices and take other measures to significantly reduce the amount of SO₂ that will be emitted from its various boilers.

Today's FIP proposal, therefore, establishes a significantly lower emission limit for SO₂ than the one set forth in the 1999 proposed FIP, and also promulgates federally enforceable

emissions limits for PM and NO_x. EPA is also proposing to establish an emissions limitation for opacity and a requirement for control measures to limit dust emissions. NO_x emissions are also further limited by the Federal Acid Rain Program. FCPP is subject to a plantwide averaging plan limit of 0.62 pounds per million British thermal unit (lbs/MMBtu) for NO_x.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

As mentioned above, States generally lack authority to administer Clean Air Act programs in Indian country. See *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998). In the preamble to the proposed and final 1998 TAR, EPA discusses generally the legal basis under the CAA by which EPA is authorized to regulate sources of air pollution in Indian country. See 59 FR 43956; 63 FR 7253. EPA concluded that the CAA authorizes EPA to protect air quality throughout Indian country. See 63 FR 7262; 59 FR 43960–43961 (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA "[s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) [sic] and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan." See 63 FR at 7273 (codified at 40 CFR 49.11(a)).¹

Since there is not currently an approved Implementation Plan covering FCPP, a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will establish federally enforceable

¹ In the preamble to the final TAR, EPA explained that it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR 7264–7265.

emissions limits for SO₂, NO_x, PM, and opacity, and control measures for dust.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to FCPP to provide for maintenance of the national ambient air quality standards and to advance the goal of visibility protection. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are necessary or appropriate to protect air quality on the Reservation.

B. Relation to Regional Haze Rule

The Clean Air Act defines sources potentially subject to Best Available Retrofit Technology (BART) as major stationary sources with the potential to emit greater than 250 tons or more of any pollutant, and which were placed into operation between 1962 and 1977. See Clean Air Act sections 169(A)(b)(2)(A) and (g)(7). EPA promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. These regulations require all States to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e).

As explained in the regional haze rulemaking, Tribes are not required to submit regional haze implementation plans but they may seek approval to develop a regional haze program under 40 CFR part 49. 64 FR at 35759. EPA noted that pursuant to its authority under section 301(d)(4) of the CAA, EPA will promulgate FIPs within reasonable timeframes to protect air quality in Indian country and take on the responsibility of meeting the requirements of the regional haze rule consistent with the provisions of 40 CFR 49.11(a). *Id.*

EPA notes that there are only two major sources of SO₂ on the Navajo Reservation that are potentially subject to the BART requirements under the regional haze rule at 40 CFR 51.308. As explained in a companion notice published elsewhere in this **Federal Register**, Navajo Generating Station (NGS), is at this time already required to meet an SO₂ limit of 0.1 lb/MMBtu, which requires a greater than 90% reduction in SO₂ emissions through the use of wet scrubbers. The wet scrubbers for NGS are new scrubbers that came

on-line between 1997 and 1999 for the three units at the source.

APS, in partnership with the Navajo Nation, several environmental groups and Federal agencies, conducted a test program to determine if the efficiency of the existing scrubbers at FCPP could be improved from the recent historical level of 72% SO₂ removal to 85%. The test program, which was completed in spring of 2005, was successful and the plant was able to achieve a plant-wide annual SO₂ removal of 88%. The parties involved in the test program have agreed that this rule should propose to require 88% efficiency for the FCPP.

EPA believes that the SO₂ controls proposed today for FCPP are close to or the equivalent of a regional haze BART determination for SO₂. For example, the BART Guidelines published by EPA in 2005 establish a presumption for the control of SO₂ from uncontrolled large utility boilers of either 95% control or 0.15 lbs/MMBtu, but suggest that for electric generating units with pre-existing post-combustion SO₂ controls of at least 50% removal efficiency, States consider cost effective scrubber upgrades designed to improve the system's overall SO₂ removal efficiency. 70 FR 39104, 39171 (July 6, 2005). The conclusion that the SO₂ controls proposed today are close to or the equivalent of BART takes into consideration not only the BART Guidelines but also the early reductions for Regional Haze that this action will achieve through the modifications to the existing SO₂ scrubbers. As explained in today's companion notice for NGS published elsewhere in this **Federal Register**, EPA previously determined that the SO₂ emission limits in the 1991 FIP for NGS provide for a greater degree of reasonable progress toward the Regional Haze national goal than would BART. See 56 FR 50172. As a result, EPA does not consider it necessary or appropriate to develop a regional haze plan to address the BART requirements under 40 CFR 51.308 for the Navajo Reservation for SO₂.

This proposal addresses only the necessity or appropriateness of developing a regional haze plan to address the BART requirements for SO₂ for the Navajo Reservation. EPA will evaluate emissions of NO_x, PM, and other pollutants that contribute to visibility impairment for their impact on regional haze and determine in a future action whether it is necessary and appropriate to develop a regional haze plan to address the BART requirements with respect to these pollutants.

III. Four Corners Power Plant Facility Description

The FCPP is a 2040 MW net coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. The FCPP consists of two 170 MW net electric generating units, one 220 MW net unit and two 740 MW net units, all of which became operational between 1963 and 1970. The APS is the operating agent for FCPP which is jointly owned by the APS, the Southern California Edison Company, the Salt River Project Agricultural Improvement and Power District (SRP), the Public Service Company of New Mexico, the El Paso Electric Company and the Tucson Electric Power Company. Existing pollution control equipment at FCPP units 4 and 5 includes baghouses for particulate matter control, lime spray towers for SO₂ control, and burners for limiting NO_x formation. Units 1, 2 and 3 each have venturi scrubbers for particulate matter and SO₂ control, and burners for limiting NO_x formation. None of these unit's burner designs are the latest technology for NO_x control.

IV. Summary of FIP Provisions

A. Proposed FIP Standards

1. FCPP's SO₂ emissions are not allowed to exceed 12 percent of the SO₂ produced in the burning of sulfur-bearing coal (averaged over a daily rolling yearly average on a plant-wide basis) and not to exceed 17,900 pounds of total SO₂ per hour averaged over any consecutive three-hour period, on a plant-wide basis.

2. Particulate emissions are not to exceed 0.050 lbs/MMBtu of heat input, as averaged from at least three sampling runs, each at a minimum of 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

3. Opacity is limited to 20%, averaged over a six-minute period, for Units 4 and 5. The opacity limit for Units 4 and 5 allows for one six-minute period per hour of not more than 27 percent opacity, excluding water vapor. The opacity limit is not being applied to Units 1, 2, and 3. The scrubbers currently in operation on Units 1, 2, and 3 were designed for control of particulate matter, and were later redesigned to also control SO₂. However, FCPP cannot currently meet a continuous opacity limit of 20 percent at Units 1, 2, and 3. EPA is proposing that FCPP design and enact a plan to monitor operating parameters such as pressure drop and scrubber liquid flow for the scrubbers. This will yield information about continuous proper operation of the scrubbers for

particulate control. This information could then be used to determine appropriate parameters, which could be included in FCPP's Title V permit as indicators for good particulate matter control practice. EPA requests comment on this proposal, including whether an opacity standard of 20% or 40% could be applied to Units 1, 2, and 3. It should be noted that even if this regulation adopts an opacity limit, continuous opacity monitors would not be required since the stack is continuously wet from water vapor from the scrubbers.

4. Opacity is limited to 20 percent averaged over a six minute period for dust from emissions associated with coal transfer and storage and other dust-generating activities. APS is required to submit a description of the dust control measures.

5. FCPP's nitrogen oxide emissions are not allowed to exceed 0.85 lbs/MMBtu of input for Units 1 and 2, and 0.65 lbs/MMBtu of input for Units 3, 4, and 5, averaged over any successive 30 boiler operating day period; nor shall they exceed 335,000 lb per 24-hour period on a plant-wide basis. When any one unit is not operating, the limits are reduced by 1542 pounds per hour for units 1, 2, and 3, and by 4667 pounds per hour for units 4 and 5.

B. Other Requirements

1. All periods of excess emissions will be treated as violations of the emission limitation. This rule does, however, provide an affirmative defense to enforcement actions for penalties brought for excess emissions that arise during certain malfunction episodes. As explained in EPA's excess emissions policy,² affirmative defenses must be restricted to malfunctions that are sudden, unavoidable, and unpredictable. In addition, all possible steps must have been taken to minimize excess emissions. The rule accordingly requires an owner or operator to meet several conditions to qualify for an affirmative defense. An affirmative defense is not available if, during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

2. APS will develop a plan to monitor, record and report operating parameters indicative of good operation of the scrubbers for control of particulate matter on Units 1, 2, and 3.

² September 20, 1999, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (the Excess Emissions Policy).

C. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, except where specified otherwise.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from FCPP. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by November 6, 2006 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect, * * *."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Federal implementation plan for the Four Corners Power Plant proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (DC Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA

certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "federal mandates" that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Regional Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no Federal mandates on state, local or tribal governments, because it will not impose any additional enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of \$100 million or more by the private sector in any one year. Although the proposed FIP imposes enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small

governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

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

The FCPP FIP is not subject to Executive Order 13045 because it implements previously promulgated health or safety-based Federal standards. Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a

mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

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

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of FCCP. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable voluntary consensus standards (VCS). For the measurement of the sulfur in the coal for calculating the efficiency of the SO₂ scrubbers for FCCP, EPA proposes to require use of American Society of Testing and Materials (ASTM) standards. FCCP would have the ability to choose an applicable ASTM standard for both the coal sample collection and the sulfur in coal analysis.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would

then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 through 5.

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

SO₂—EPA Method 6C and Performance Specification 2 for Continuous SO₂ Monitoring.

NO_x—EPA Method 7E and Performance Specification 2 for Continuous NO_x Monitoring and Performance Specification 6 for Flow Monitoring.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 30, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—[AMENDED]

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is proposed to be amended by adding § 49.21 to read as follows:

§ 49.21 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant ("the Plant") on the Navajo Nation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(2) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(3) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(4) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(5) *Heat input* means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be in accordance with 50 CFR part 75.

(6) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(7) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(8) *Oxides of nitrogen (NO_x)* means the sum of nitric oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, expressed as nitrogen dioxide.

(9) *Plant-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(10) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency (EPA) Region 9 or his/her authorized representative.

(11) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(12) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(13) *24-hour period* means the period of time between 12:01 a.m. and 12 midnight.

(d) *Emissions Standards and Control Measures.*

(1) *Sulfur Dioxide.* No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO₂) into the atmosphere in excess of

(i) 12.0% of that which is produced by the Plant's coal burning equipment, determined each day on a yearly plant-wide basis; and

(ii) 17,900 pounds of total SO₂ emissions per hour averaged over any consecutive three (3) hour period, determined on a plant-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pounds per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged from at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of this section, the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding water vapor, averaged over any six (6) minute period, except for one six (6) minute period per hour of not more than 27% opacity, excluding water vapor.

(5) *Oxides of nitrogen.* No owner or operator shall discharge or cause the discharge of NO_x into the atmosphere

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit, and from either Units 3, 4, or 5 in excess

of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a plant-wide basis; for each hour when coal burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and Monitoring.* Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO₂ and NO_x shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be tested annually, or at such other time as requested by the Regional Administrator, based on data from testing conducted in accordance with 40 CFR part 60, Appendix A, Methods 1 through 5, or any other method receiving prior approval from the Regional Administrator. Compliance with the emissions limits set for opacity shall be determined by using data from a Continuous Opacity Monitoring System (COMS) except during saturated stack conditions (condensed water vapor). If the baghouse is operating within its normal operating parameters, the baghouse is not fully closed, and a high opacity reading occurs, it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered a violation.

(1) The owner or operator shall maintain and operate CEMS for SO₂, NO or NO_x, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and Appendix B of 40 CFR Part 60. Within six (6) months of promulgation of this section, the owner or operator shall install CEMS and COMS software which complies with the requirements of this section. The owner or operator of the Plant may petition the Regional Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required there under shall be submitted

to the Regional Administrator. The owner or operator shall provide the Regional Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide*. For the purpose of determining compliance with this section, the sulfur dioxide inlet concentration (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Regional Administrator. A daily fuel sample shall be collected using the coal sampling tower conforming to the ASTM specifications. The analyses shall be done on the daily sample using ASTM methods or any other method receiving prior approval from the Regional Administrator.

(i) The inlet sulfur dioxide concentration shall be calculated using the following formula:

$$I_s = 2(\%S_f)/GCV \times 10^4 \text{ English units}$$

Where:

I_s = sulfur dioxide inlet concentrations in pounds per million Btu;

$\%S_f$ = weight percent sulfur content of the fuel; and

GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The total pounds of SO₂ generated by burning the coal shall be calculated by multiplying the SO₂ inlet concentration by the daily total heat input determined by the 40 CFR part 75 acid rain monitoring. This will determine the pounds of SO₂ produced per day. The SO₂ emitted from the stacks shall be determined by adding the daily SO₂ emissions from each stack as determined by the 40 CFR part 75 acid rain monitors.

Compliance with the emission limit shall be determined for each day by adding that day's SO₂ emissions and that day's SO₂ produced to the previous 364 days and then dividing the 365 days of emissions by the 365 days of SO₂ produced. Compliance is demonstrated if this fraction, converted to a percent, is equal to or less than 12.0%. The data from the 40 CFR part 75 monitors shall not be bias adjusted. Missing hours of data shall be calculated by averaging the last prior valid hourly data with the next valid hour after the data gap.

(3) *Particulate Matter*. Particulate matter emissions shall be determined by averaging the results of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry

standard cubic feet. Particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90% of maximum operation in accordance with 40 CFR 60.8 and Appendix A to 40 CFR part 60. The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Regional Administrator, and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Regional Administrator) in advance of the new date of testing.

(4) *Oxides of nitrogen*. The total daily plant-wide oxides of nitrogen emissions in pounds of NO₂ per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^n \sum_{j=1}^m (E_{ij} \times H_{ij})$$

Where:

TE = total plant-wide nitrogen dioxide emissions (lb NO₂/day);

E_{ij} = hourly average emissions rate of each unit (lb NO₂/MMBtu);

H_{ij} = hourly total heat input for each unit (MMBtu);

n = the number of units of coal burning equipment operating during the hour;

m = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO₂, NO_x, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. The one-hour averages shall be calculated using these data points. At least two data points must be used to calculate the one-hour averages. When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. NO_x emissions rates and quantities shall be reported as NO₂ concentrations.

For reporting purposes, when CEMS data is not available because of malfunctions or other reasons, the unavailable data will be replaced with a calculated value based on the average of the last valid data point and the next valid data point for purposes of calculating total plant-wide emissions.

(6) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under Section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Regional Administrator no later than sixty (60) days after the effective date of this FIP. The owner or operator shall implement this plan within 30 days of approval by the Regional Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section. If requested by the Regional Administrator, this plan shall be revised and submitted to the Regional Administrator for approval within sixty (60) days of the request. The revised plan shall be implemented within sixty (60) days of the Regional Administrator's approval.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan within sixty (60) days of the effective date of this FIP, or the Regional Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of

one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30% from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this section. The owner or operator shall implement this requirement no later than one hundred twenty (120) days after the effective date of this FIP if it failed to submit the plan within sixty (60) days after the effective date of this FIP; or no later than 60 days after the Regional Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Regional Administrator for an extension of the sixty (60) day deadline. Such extension shall be granted only if the owner or operator demonstrates to the satisfaction of the Regional Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Regional Administrator reports of the monitoring data required by this section quarterly. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Regional Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS and COMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this section, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(2) For each day, provide the 365-day percent SO₂ emitted, the total SO₂ emitted that day, and the total SO₂ produced that day. List the number of hours of substitute data used for each of the 5 units during that day.

(3) Furnish the Regional Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

(i) The test date;

(ii) The test method;

(iii) Identification of the coal burning equipment tested;

(iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;

(v) Average heat input;

(vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;

(vii) Arithmetic average of sample data expressed in pounds per MMBtu; and

(viii) A description of any variances from the test method.

(4) *Excess Emissions Report.* (i) For excess emissions (except in the case of saturated stack conditions), the owner or operator shall notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day ("initial notification"). A complete written report of the incident shall be submitted to the Navajo Environmental

Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator within ten (10) working days of the initial notification. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: r9.aeo@epa.gov. The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements.

For this reporting requirement, excess opacity due to saturated stack conditions is exempted.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Regional Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this section shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of startup and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative

defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment or of a process to operate in a normal or usual manner;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were taken in an expeditious fashion to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E6-15097 Filed 9-11-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-R09-OAR-2006-0185; FRL-8218-6]

Source-Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona.

DATES: Any comments on this proposal must arrive by November 6, 2006.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2006-0185, by one of the following methods:

(1) *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the on-line instructions.

(2) *E-mail:* rosen.rebecca@epa.gov.

(3) *Mail or deliver:* Rebecca Rosen (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosen, EPA Region IX, (415) 947-4152, rosen.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

A. Action

In today's action, EPA proposes to promulgate a FIP to establish Federally enforceable emissions limitations for total particulate matter (PM) and sulfur dioxide (SO₂) applicable to the NGS. The FIP also proposes Federally enforceable emissions limitations for opacity and control measures for dust.

B. Facility

NGS is a coal-fired power plant located on the Navajo Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, that is owned and operated by Salt River Project (SRP). Through lease agreements, the facility utilizes real property held in trust by the Federal government for the Navajo Nation. The facility operates three units, each with a capacity of 750 megawatts (MW) net generation. The total capacity of the facility is 2250 MW. Operations at the facility produce emissions of sulfur dioxide, nitrogen dioxide, and particulate matter.

C. Attainment Status

NGS is located in the Northern Arizona Intrastate air quality control region (AQCR), which is designated unclassifiable for all criteria pollutants under the Clean Air Act (CAA or "the Act"). See 40 CFR 81.303. The proposed NGS FIP establishes Federally enforceable emissions limitations that are more stringent than, or at least as stringent as, the emissions limitations with which NGS has historically complied. Therefore, EPA believes that air quality in this area will be positively impacted by this action.

D. Visibility FIP

In 1987, EPA issued a visibility FIP for the state of Arizona addressing reasonably attributable visibility

impairment.¹ 52 FR 45132 (November 24, 1987). Following a report issued by the National Park Service that identified NGS as a source of visibility impairment in the Grand Canyon National Park, EPA preliminarily determined that visibility impairment at the Grand Canyon was reasonably attributable to emissions of SO₂ from NGS. See 54 FR 36948 (September 5, 1989). Under the visibility regulations, such impairment must be addressed in accordance with 40 CFR 51.302(c), which sets forth measures for achieving reasonable progress, including best available retrofit technology (BART). Id. In 1991, EPA revised the visibility FIP for the state of Arizona to include an SO₂ emission limit for NGS to remedy visibility impairment in the Grand Canyon National Park that was reasonably attributable to NGS. 56 FR 50172 (October 3, 1991), codified at 40 CFR 52.145. Under the 1991 visibility FIP, NGS was required to phase-in compliance with the SO₂ emission limit, by installing scrubbers in 1997, 1998, and 1999. 40 CFR 52.145(d)(7). In establishing the SO₂ emission limit for NGS, which includes a higher level of control than that proposed as BART, EPA determined that the FIP would provide for greater reasonable progress toward the national visibility goal than implementation of BART. 56 FR 50172.

The 1991 visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the 1991 visibility FIP.

E. Historical Overview of NGS FIP Actions

When the Clean Air Act was amended in 1990, Congress included a new provision, Section 301(d), granting EPA authority to treat Tribes in the same manner as States where appropriate. See 40 U.S.C. 7601(d). In 1998, EPA promulgated regulations known as the Tribal Authority Rule (TAR). See 40 CFR parts 9, 35, 49, 50 and 81, 63 FR 7254 (February 12, 1998). EPA's promulgation of the TAR clarified, among other things, that State air quality regulations generally do not, under the Clean Air Act, apply to

facilities located anywhere within the exterior boundaries of Indian reservations. See 63 FR at 7254, 7258 (noting that unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement Clean Air Act programs in Indian country, EPA is the appropriate entity to implement Clean Air Act programs prior to tribal primacy), *Arizona Public Service Company v. E.P.A.*, 211 F.3d 1280 (D.C. Cir. 2000), cert. denied sub nom, *Michigan v. E.P.A.*, 532 U.S. 970 (2001) (upholding the TAR), see also *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998) (primary jurisdiction over Indian country generally lies with Federal Government and tribes, not with states).

Prior to the addition of Section 301(d) and promulgation of the TAR, some States had mistakenly included emissions limitations in their State Implementation Plans (SIPs) which they may have believed could apply under the Clean Air Act to private facilities operating on adjacent Indian reservations. Such was the case for NGS. The SIP for Arizona, and permits issued pursuant to the SIP, contained emissions limitations purported to apply to NGS and with which NGS was complying.

However, EPA recognized that Arizona's SIP emissions limits do not apply to NGS under the Clean Air Act, and on September 8, 1999, EPA proposed a source-specific FIP for NGS. See 64 FR 48725 (September 8, 1999). The 1999 proposed FIP stated: "Although the facility has been historically regulated by Arizona since its construction, the state lacks jurisdiction over the facility or its owners or operations for CAA compliance or enforcement purposes." EPA intended for the 1999 NGS FIP to "Federalize" the emissions limitations that Arizona had erroneously included in its State Implementation Plan. 64 FR at 48727. EPA received comments on the proposed 1999 FIP but did not take action finalizing the proposal.

Today's proposed rule would promulgate Federally enforceable emissions limits for PM and SO₂. The 1991 visibility FIP includes an SO₂ emission limit for the NGS that is more stringent than the emissions limitation for SO₂ set out in today's proposed rule. However, the SO₂ limit included in today's proposed rule is a short-term emissions limit, unlike the annual emissions limit in the 1991 visibility FIP.

EPA is also proposing to establish an emissions limitation for opacity and a requirement for control measures to

¹ On December 2, 1980, EPA issued regulations addressing visibility impairment that is traceable or "reasonably attributable" to a single source or small group of sources. 45 FR 80084, codified at 40 CFR parts 300-307. These regulations required a number of States to submit State Implementation Plans (SIPs) no later than September 2, 1981. Most States, including Arizona, failed to submit SIPs as called for by the regulations.

limit dust emissions. In addition, the proposed FIP contains NO_x and SO₂ emissions limitations that apply to NGS as part of the Acid Rain program, which was also added when the Clean Air Act was amended in 1990.

II. Basis for Proposed Action

EPA's Authority To Promulgate a FIP in Indian Country

As mentioned above, States generally lack authority to administer Clean Air Act programs in Indian country. See *Alaska v. Native Village of Venetie Tribal Government*, 533 U.S. 520, 526 n.1 (1998). In the preamble to the proposed and final 1998 TAR, EPA discusses generally the legal basis under the CAA by which EPA is authorized to regulate sources of air pollution in Indian country. See 59 FR 43956; 63 FR 7253. EPA concluded that the CAA authorizes EPA to protect air quality throughout Indian country. See 63 FR 7262; 59 FR 43960–43961 (citing, among other things, to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA “[s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) [sic] and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.” See 63 FR at 7273 (codified at 40 CFR 49.11(a)).²

Since there is not currently an approved Implementation Plan covering NGS, a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will establish Federally enforceable emissions limits for PM, SO₂, and opacity, and control measures for dust.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority

² In the preamble to the final TAR, EPA explained that it was inappropriate to treat Tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two-year period for Tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. See 63 FR at 7264–7265.

under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a FIP to remedy an existing regulatory gap under the Act with respect to NGS. EPA's FIP will establish Federally enforceable emissions limits applicable to NGS to provide for maintenance of the national ambient air quality standards. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are necessary or appropriate to protect air quality on the Reservation.

III. Navajo Generating Station Facility Description

NGS is a 2250 MW (net generation) coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona. NGS is a baseload generating station consisting of three 750 MW (net generation) units which became operational between 1974 and 1976. SRP is the operating agent for NGS, which is jointly owned by SRP, the Los Angeles Department of Water and Power, the Arizona Public Service, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for PM removal and burners specifically designed for NO_x control. Furthermore, to meet the emission limits in the 1991 visibility FIP, NGS installed limestone wet scrubbers on each unit to reduce SO₂ emissions by 90%. These scrubbers are now fully operational. Compliance with the SO₂ emission limit in the 1991 visibility FIP is determined on a plant-wide annual rolling average basis. See 40 CFR 52.145.

IV. Summary of FIP Provisions

A. Proposed FIP Standards

1. EPA is proposing to limit particulate matter at 0.060 pounds per million british thermal units (lbs/MMbtu), determined by averaging the results of at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet, on a plant-wide basis. The Arizona particulate emissions standard was changed from 17.0 Q^{0.4320} pounds per hour (where Q is million BTU per hour) to 0.060 pounds per million BTU because this standard is a generally recognized form for the particulate standard and it is more reliably measured.³

³ Using EPA Region 9's policy of conducting emissions tests at 90 percent to 100 percent of the facility's full load, the original equation in the Arizona State Implementation Plan (SIP) yields estimated allowable emissions of between 0.057 and 0.061 pounds per million BTU. Thus, a limit of 0.060 lb/MMbtu is appropriate.

The FIP we are proposing specifically states that the particulate standard will be measured on a plant-wide basis. Although the Arizona permit did not state this explicitly, this was the way that Arizona determined compliance at the NGS historically.

2. Opacity from each unit is limited to 20% averaged over any normal six (6) minute period, excluding condensed water vapor, and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods. The proposed opacity standard specifically excludes condensed water vapor. NGS has opacity monitors on each of its stacks; condensed water vapor, which will be present in all stacks because of the SO₂ scrubbers, causes inaccurate excess emission readings on the opacity monitors. Therefore, excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance.

3. SO₂ emissions are limited to 1 lb/MMbtu averaged over a three-hour period, on a plant-wide basis.⁴ The method of compliance determination has been changed from one based on the sulfur content of coal to one based on continuous emission monitoring (CEM). We are making this change not only because the facility has experienced difficulty with the analysis of the sulfur content of coal, but because the Federal acid rain regulations require CEM monitoring, which is generally recognized as being more accurate and precise than monitoring the sulfur content of coal.

NGS previously complied with the limit of 1 lb/MMbtu on a per-unit basis by using very low sulfur coal. Because NGS has now installed scrubbers to comply with the 1991 visibility FIP, however, NGS will be able to comply with its short-term limits by removing sulfur from the exhaust stream. This will allow NGS to purchase slightly higher sulfur coal; additionally, the plant-wide average allows one scrubber to be down for periodic maintenance (lasting usually 30 to 40 days) without requiring the purchase of specific low sulfur coal for use during the maintenance. Nevertheless, the actual SO₂ emissions from NGS will remain 90% lower on an annual basis than they were before the scrubbers were installed to comply with the 1991 visibility FIP. To ensure, however, that NGS continues to meet this limit, we are proposing to include the 1 lb/MMbtu 3 hour average limit in today's FIP. With the scrubbers in place, the plantwide hourly

⁴ This emissions limit for SO₂ was previously established in the Arizona State Implementation Plan.

emissions (tons per hour) will always be less than under the prior state limit, since at least one unit with its scrubber operating and removing SO₂ will be needed to meet the plantwide SO₂ three hour limit.

4. Opacity is limited to 20 percent averaged over a six minute period for dust from emissions associated with coal transfer and storage and other dust-generating activities. NGS is required to submit a description of the dust control measures.

B. Other Requirements

All periods of excess emissions are violations of the emission limitation. This rule does, however, provide NGS with an affirmative defense to enforcement actions for penalties brought for excess emissions that arise during certain startup, shutdown, and malfunction episodes. As explained in EPA's excess emissions policy⁵, affirmative defenses must be restricted to malfunctions that are sudden, unavoidable, and unpredictable. In addition, NGS must have taken all possible steps to minimize excess emissions. This rule accordingly requires an owner or operator to meet several conditions to qualify for an affirmative defense. An affirmative defense is not available to NGS if, during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to NGS.

C. Compliance Schedule

EPA proposes that the requirements contained in this proposal become effective upon final promulgation of these regulations.

V. Other Requirements for NGS

A. Visibility FIP

Under the 1991 visibility FIP, SO₂ emissions are limited to 0.1 lb/MMbtu on a plant-wide (all units, either in operation or not) rolling annual basis. NGS installed scrubbers, operable on all three units, by February 1999.

The SO₂ scrubbers substantially lower the SO₂ emissions from NGS. When the scrubbers are operating, SO₂ emissions are less than 0.1 lbs/MMbtu. However, we note that compliance with the SO₂ emission limits is determined based on an annual average, as this was determined to be protective of visibility in the Grand Canyon. These provisions are not being amended or changed by today's action.

⁵ "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999)(the Excess Emissions Policy).

B. Acid Rain Program Requirements

NGS is subject to the Federal Acid Rain requirements under title IV of the Clean Air Act. NGS elected to comply early as a Phase I NO_x facility which means NGS currently has a NO_x limit of 0.45 lbs/MMbtu, per unit, on an annual basis. This limit applies until 2008, when it will be lowered to 0.40 lbs/MMbtu.

VI. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from NGS. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by November 6, 2006 will be considered in the final action taken by EPA.

VII. Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including* * * notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect,* * *."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis to assess the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The Federal implementation plan for the Navajo Generating Station proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*,

773 F.2d 327 (D.C. Cir. 1985)(agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "Federal mandates" that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Regional Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no Federal mandates on state, local or tribal governments, because it will not impose any additional enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of \$100 million or more by the private sector in any one year. Although the proposed FIP imposes enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or

uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

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

The NGS FIP is not subject to Executive Order 13045 because it implements previously promulgated health or safety-based Federal standards. Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

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

Under Executive Order 13175, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13175 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires EPA to

develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of NGS. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule. As discussed above, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA Performance Specification 1 (see 40 CFR part 60, Appendix B) for the opacity monitoring for this facility is a consensus standard. It was promulgated on August 10, 2000.

With regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and Performance Specifications (40 CFR part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, Appendices A and B. Any VCS so incorporated in a specified test method

or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 5 or 17.

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

SO₂—EPA Method 6C and Performance Specification 2 for Continuous SO₂ Monitoring.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 30, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—[AMENDED]

1. The authority citation for part 49 continues to read as follows:

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

2. Part 49 is proposed to be amended by adding § 49.20 to read as follows:

§ 49.20 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) on the Navajo Nation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon the effective date of this section.

(c) *Definitions.* For the purposes of this section:

(1) *Absorber upset transition period* means the 24-hour period following an upset of an SO₂ absorber mode.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. This rule provides an affirmative defense to actions for penalties brought for excess

emissions that arise during certain malfunction episodes.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises the NGS, any of the fossil fuel-fired, steam-generating equipment at the NGS, or the auxiliary steam boilers at the NGS.

(5) *Plant-wide* means a weighted average of particulate matter and SO₂ emissions for Units 1, 2, and 3 based on the heat input to each unit as determined by 40 CFR part 75.

(6) *Point source* means any crusher, any conveyor belt transfer point, any pneumatic material transferring, any baghouse or other control devices used to capture dust emissions from loading and unloading, and any other stationary point of dust that may be observed in conformance with Method 9 (excluding stockpiles).

(7) *Regional Administrator* means the Regional Administrator of the Environmental Protection Agency Region 9 or his/her authorized representative.

(8) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit and startup ends when a unit reaches 300 MW net load. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during startup episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(9) *Shutdown* shall be the period from cessation of coal fires in the boiler until the electrostatic precipitator is de-energized. Shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service. The precipitator shall be

maintained in service until boiler fans are disengaged. This rule provides an affirmative defense to actions for penalties brought for excess emissions that arise during shutdown episodes. An affirmative defense is not available if during the period of excess emissions, there was an exceedance of the relevant ambient air quality standard that could be attributed to the emitting source.

(10) *Oxides of nitrogen (NO_x)* means the sum of nitrogen oxide (NO) and nitrogen dioxide (NO₂) in the flue gas, expressed as nitrogen dioxide.

(d) *Emissions Limitations and Control Measures.*

(1) *Sulfur Oxides.* No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2 or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu, as averaged from at least three sampling runs, each at minimum 60 minutes in duration, each collecting a minimum sample of 30 dry standard cubic feet, on a plant-wide basis.

(3) *Dust.* Each owner or operator shall operate and maintain the existing dust suppression methods for controlling dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Regional Administrator a description of the dust suppression methods for controlling dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities. Each owner or operator shall not emit dust with an opacity greater than 20% from any crusher, grinding mill, screening operation, belt conveyor, truck loading or unloading operation, or railcar unloading station.

(4) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 1, 2, or 3 into the atmosphere exhibiting greater than 20% opacity, excluding condensed water vapor, averaged over any normal six (6) minute period and 40% opacity, averaged over six (6) minutes, during absorber upset transition periods.

(e) *Testing and Monitoring.* (1) Effective sixty (60) days after promulgation of this section, the owner or operator shall maintain and operate Continuous Emissions Monitoring Systems (CEMS) for NO_x and SO₂ and Continuous Opacity Monitoring Systems (COMS) on Units 1,2, and 3 in

accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75, or 40 CFR part 60, whichever is more stringent.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, Appendix A.

(3) Within 90 days after promulgation of this section, the owner or operator shall conduct initial mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the two auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. Thereafter, the tests shall be conducted annually from the promulgation date of this rule or after 720 hours of operation, whichever is later. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, Appendix A. For particulate matter, testing shall consist of three test runs. Each test run shall be at least sixty (60) minutes in duration and shall collect a minimum volume of thirty (30) dry standard cubic feet.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR part 60, Appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter (PM_{2.5} and PM₁₀), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be reported annually to the Regional Administrator. All particulate matter samplers shall operate at least once every six days, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42

U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(f) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Regional Administrator required by this section shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, (928) 871-7692, (928) 871-7996 (facsimile), and to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 972-3990, (415) 947-3579 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Regional Administrator and postmarked within 60 days of testing.

(2) For excess emissions, notify the Navajo Environmental Protection Agency Director and the U.S. Environmental Protection Agency Regional Administrator by telephone or in writing within one business day. This notification should be sent to the Director, Navajo Environmental Protection Agency, by mail to: P.O. Box 339, Window Rock, Arizona 86515, or by facsimile to: (928) 871-7996 (facsimile), and to the Regional Administrator, U.S. Environmental Protection Agency Region 9, by mail to the attention of Mail Code: AIR-5, at 75 Hawthorne Street, San Francisco, California 94105, by facsimile to: (415) 947-3579 (facsimile), or by e-mail to: r9.aeo@epa.gov. A complete written report of the incident shall be submitted to the Regional Administrator within ten (10) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps that were taken or are being taken to limit excess emissions.

(3) Notify the Regional Administrator verbally within one business day of determination that an exceedance of the NAAQS has been measured by a monitor operated in accordance with this regulation. The notification to the Regional Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances. Compliance with this paragraph (f)(3)(v) shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Regional Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7(c) and (d) and include the Quality Assurance assessment of Appendix F of part 60. Excess opacity due to condensed water vapor in the stack does not constitute a reportable exceedance, however, the length of time during which water vapor interfered with COMS readings should be summarized in the § 60.7(c) report.

(g) *Compliance Certifications.*

Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment Operations.* The owner or operator shall operate all equipment

or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) **Enforcement.** (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[FR Doc. E6-15086 Filed 9-11-06; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-35

[FMR Case 2004-102-1]

RIN 3090-AH93

Federal Management Regulation; Disposition of Personal Property

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by revising coverage on personal property and moving it into Subchapter B of the FMR. This proposed rule adds a new part to Subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts as well as the Federal Property Management Regulations (FPMR) parts. The FPMR parts will be included in the FMR in the near future. The FMR and any corresponding documents may be accessed at GSA's Web site at <http://www.gsa.gov/fmr>.

DATES: Interested parties should submit comments in writing on or before October 12, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2004-102-1 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.gsa.gov/fmr>. Click on FMR Proposed Rules, and the FMR case number to submit comments.

- E-mail: fmr.case.2004-102-1@gsa.gov. Include FMR case 2004-102-1 in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR case 2004-102-1 in all correspondence related to this case. All comments received will be posted without change to <http://www.gsa.gov/fmr>, including any personal information provided. Click on "FMR Public Comments".

FOR FURTHER INFORMATION CONTACT The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501-3828, or e-mail at robert.holcombe@gsa.gov. Please cite FMR case 2004-102-1.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule adds a new part, 102-35, to Subchapter B of the FMR to provide an overview of the property disposal regulation and to provide definitions for terms found in FMR parts 102-36 through 102-42 (41 CFR 102-36 through 102-42), as well as FPMR parts 101-42 and 101-48 (41 CFR 101-42 and 101-48) which will be included in the FMR in the near future. This part serves as a summary and overview of the policies relating to the disposal of Federal personal property and provides overall guidance for all methods of property disposal.

Finally, this part emphasizes the use of excess property from other agencies as the first source of supply, and specifically identifying the preference to transfer property to Federal agencies for their own use before transferring that property to agencies for use by non-Federal entities.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–35

Government employees, Personal property.

Dated: January 18, 2006.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapter 102 as follows:

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

1. Part 102–35 is added to subchapter B of chapter 102 to read as follows:

PART 102–35—DISPOSITION OF PERSONAL PROPERTY

Sec.

- 102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?
 102–35.10 How are these regulations for the disposal of personal property organized?
 102–35.15 What are the goals of GSA's personal property regulations?
 102–35.20 What definitions apply to GSA's personal property regulations?
 102–35.25 What management reports must we provide?
 102–35.30 What actions must I take regardless of the property disposition method?

Authority: 40 U.S.C. 121(c).

§ 102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

The General Services Administration's personal property disposal regulations contained in this part and parts 102–36 through 102–42 of this subchapter B as well as parts 101–42 and 101–48 of the Federal Property Management Regulations (41 CFR parts 101–42 and 101–48) cover the disposal of personal property under the custody and control of executive agencies located in the United States, the U.S. Virgin Islands, American Samoa, Guam,

Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau, except in part 102–39 of this subchapter B which applies to the replacement of all property owned by executive agencies worldwide using the exchange/sale authority and in sections 102–36.380 through 102–36.400 which apply to the disposal of excess property located in countries and areas not listed in this subpart. The legislative and judicial branches are encouraged to follow these provisions for property in their custody and control.

§ 102–35.10 How are these regulations for the disposal of personal property organized?

The General Services Administration (GSA) has divided its regulations for the disposal of personal property into the following program areas:

- (a) Disposition of excess personal property (part 102–36 of this subchapter B).
 (b) Donation of surplus personal property (part 102–37 of this subchapter B).
 (c) Sale of surplus personal property (part 102–38 of this subchapter B).
 (d) Replacement of personal property pursuant to the exchange/sale authority (part 102–39 of this subchapter B).
 (e) Utilization and disposal of hazardous materials and certain categories of property (part 101–42 of the Federal Property Management Regulations (FPMR), 41 CFR 101–42).
 (f) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 101–48 of the FPMR, 41 CFR 101–48).
 (g) Utilization, donation, and disposal of foreign gifts and decorations (part 102–42 of this subchapter B).

§ 102–35.15 What are the goals of GSA's personal property regulations?

The goals of GSA's personal property regulations are to—

- (a) Reduce procurement costs by maximum use of the exchange/sale authority for the replacement of personal property;
 (b) Improve the identification and reporting of excess personal property;
 (c) Maximize the use of excess property as the first source of supply to minimize expenditures for the purchase of new property, when practicable;

Note to § 102–35.15(c): If there are competing requests among Federal agencies for excess property, preference will be given to agencies where the transfer will avoid a new Federal procurement. A transfer to an agency where the agency will provide the property to a non-Federal entity for the

non-Federal entity's use will be secondary to Federal use.

(d) Achieve maximum use of Government property through the donation of surplus personal property to State and local public agencies and other eligible non-Federal recipients;

(e) Obtain the optimum monetary return to the Government for surplus personal property sold and property sold under the exchange/sale authority; and

(f) Reduce management and inventory costs by appropriate use of the abandonment/destruction authority to dispose of unneeded personal property that has no commercial value or the estimated cost of continued care and handling would exceed the estimated sales proceeds (see FMR §§ 102–36.305 through 102–36.330).

§ 102–35.20 What definitions apply to GSA's personal property regulations?

The following are definitions of, or cross-references to, some key terms that apply to GSA's personal property regulations. Other personal property terms are defined in the sections or parts to which they primarily apply.

Abandoned or other unclaimed property (see § 101–48.001–1 of the Federal Property Management Regulations (41 CFR 101–48.001–1)).

Accountable Personal Property includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property.

Accountability means the ability to account for personal property by providing a complete audit trail for property transactions from receipt to final disposition.

Acquisition cost means the original purchase price of an item.

Capitalized Personal Property includes property that is entered on the agency's general ledger records as a major investment or asset. An agency must determine its capitalization level based on generally accepted accounting standards as defined by the American Institute of Certified Public Accountants.

Control means the ongoing function of maintaining physical oversight and surveillance of personal property throughout its complete life cycle using various property management tools and techniques taking into account the environment in which the property is located and its vulnerability to theft, waste, fraud, or abuse.

Excess personal property (see § 102–36.40 of this subchapter B).

Exchange/sale (see § 102–39.20 of this subchapter B).

Executive agency (see § 102–36.40 of this subchapter B).

Federal agency (see § 102–36.40 of this subchapter B).

Foreign gifts and decorations (see § 102–42.10 of this subchapter B).

Forfeited property (see § 101–48.001–5 of the FPMR (41 CFR 101–48.001–5)).

Inventory includes a formal listing of all accountable property items assigned to an agency, along with a formal process to verify the condition, location, and quantity of such items. This term may also be used as a verb to indicate the actions leading to the development of a listing. In this sense, an inventory must be conducted using an actual physical count, electronic means, and/or statistical methods.

National property management officer means an official, designated in accordance with § 102–36.45(b) of this subchapter B, who is responsible for ensuring effective acquisition, use, and disposal of excess property within your agency.

Personal property (see § 102–36.40 of this subchapter B).

Property management means the system of acquiring, maintaining, using and disposing of the physical assets of an organization or entity.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and

handling will be the responsibility of that agency until final ownership is determined by the judicial process.

Sensitive Personal Property includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, and classified property or records, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs.

Surplus personal property (see § 102–37.25 of this subchapter B).

Utilization means the identification, reporting, and transfer of excess personal property among Federal agencies to fill current or future authorized requirements in lieu of new procurement.

§ 102–35.25 What management reports must we provide?

(a) There are three reports that must be provided. The report summarizing the property provided to non-Federal recipients and the report summarizing exchange/sale transactions (see FMR 102–36.295 and FMR 102–39.75 respectively) must be provided every year (negative reports are required). In addition, if you conduct negotiated sales

of surplus personal property valued over \$5,000 in any year, you must report this transaction in accordance with FMR 102–38.115 (negative reports are not required for this report).

(b) The General Services Administration (GSA) may request other reports as authorized by 40 U.S.C. 506(a)(1)(A).

§ 102–35.30 What actions must I take regardless of the property disposition method?

Regardless of the disposition method used, you should take the following actions.

(a) You must maintain property in a safe, secure, and cost-effective manner until final disposition.

(b) You have authority to use the abandonment/destruction provisions at any stage of the disposal process (see §§ 102–36.305 through 102–36.330 and § 102–38.70 of this subchapter B).

(c) You must implement policies and procedures to remove sensitive or classified information from property. Agency-affixed markings should be removed, if at all possible, prior to property permanently leaving your agency's control.

(d) Government property may only be used as authorized by your agency. Title to Government property may not be transferred to a non-Federal entity unless through official procedures specifically authorized by law.

[FR Doc. E6–15073 Filed 9–11–06; 8:45 am]

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Notices

Federal Register

Vol. 71, No. 176

Tuesday, September 12, 2006

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

Food Safety and Inspection Service

[Docket No. FSIS-2006-0019]

The National Advisory Committee on Meat and Poultry Inspection; Nominations for Membership

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The full Committee consists of no less than 16 and no more than 18 members, and each person selected is expected to serve a two year term. Existing members can serve three consecutive two year terms. USDA is soliciting nominations in order to fill 16 to 18 vacancies on the Committee.

DATES: Nomination materials must be received no later than October 12, 2006.

ADDRESSES: Nominations should be submitted by e-mail to NACMPI@fsis.usda.gov, or by mail to Dr. Barbara J. Masters, Administrator, Food Safety and Inspection Service (FSIS), USDA, in care of the Advisory Committee Specialist, Room 405 Aerospace Building, 901 D Street, SW., Washington, DC 20250-3700, or by fax to (202) 690-6519.

FOR FURTHER INFORMATION CONTACT: Loraine Cannon, (202) 690-6647.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, USDA is seeking nominees for membership on the National Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary on meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), and 301(c) of the Federal Meat

Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). Nominations for membership are being sought from persons representing industry, academia, State and local government officials, public health organizations, and consumers.

Nomination materials including the names of the nominees and their curricula vitae or résumés, must be submitted to the person described in the **ADDRESSES** section of this notice. Applications, AD-0755 Advisory Committee Membership Background Information, are available on-line in Word and pdf format at: http://www.ocio.usda.gov/forms/ocio_forms.html.

Appointments to the Committee will be made by the Secretary. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. It is anticipated that the Committee will meet at least twice annually.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations/2006_Notices_Index/. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web

page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC on September 7, 2006.

Barbara J. Masters,
Administrator.

[FR Doc. E6-15060 Filed 9-11-06; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2006-0011E]

Harvard Risk Assessment of Bovine Spongiform Encephalopathy (BSE) Update; Notice of Availability and Technical Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability; reopening and extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening and extending the comment period for the 2005 updated Harvard Risk Assessment of bovine spongiform encephalopathy (BSE). The original comment period closed on August 11, 2006. The Agency is taking this action in response to a comment that was submitted after the Agency held its July 25, 2006, technical meeting to provide information on the updated risk assessment model and report.

DATES: Comments are due by October 27, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go

to <http://www.regulations.gov> and, in the "Search for Open Regulations" box, select "Food Safety and Inspection Service" from the agency drop-down menu, and then click on "Submit." In the Docket ID column, select FDMS Docket Number FSIS-2005-0011 to submit or view public comments and to view supporting and related material available electronically. This docket can be viewed using the "Advanced Search" function in Regulations.gov.

Mail, including floppy disks or CD-ROM's, and hand or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

Electronic mail: FSIS.regulations.comments@fsis.usda.gov.

All submissions received by mail and electronic mail must include the Agency name and docket number FSIS-2006-0011. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted to the [regulations.gov](http://www.regulations.gov) Web site and on the Agency's Web site at http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.

FOR FURTHER INFORMATION CONTACT:

Lynn E. Dickey, PhD, Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700; Telephone (202) 720-5627.

SUPPLEMENTARY INFORMATION: On July 12, 2006, FSIS published a notice in the **Federal Register** announcing that the Agency was making the 2005 updated Harvard Risk Assessment of BSE available to the public. In the notice, FSIS gave the public until August 11, 2006, to submit comments on the updated risk assessment. The notice also announced that the Agency would be holding a technical meeting to provide information on the 2005 updated Harvard Risk Assessment. This meeting was held on July 25, 2006.

On August 1, 2006, FSIS received a comment requesting that the Agency extend the comment period on the updated Harvard Risk Assessment until 45 days from the day on which it makes the transcript of the July 25, 2006, technical meeting publicly available. The comment was submitted by a trade association that represents small cattle producers. The comment asserted that the 30-day comment period provided in

the July 12, 2006, **Federal Register** notice is not an adequate amount of time to evaluate the new assumptions and analyses in the revised risk assessment, and that it needed the official transcript of the technical meeting proceedings to formulate its comments.

FSIS agrees that the matters presented in the risk assessment are complex. Therefore, FSIS is reopening the comment period for 45 days as the transcript of the July 25, 2006, technical meeting is now available on the FSIS Web site at http://www.fsis.usda.gov/PDF/BSE_Transcript_072506.pdf and http://www.fsis.usda.gov/News_&_Events/2006_events/index.asp. This comment period will provide time for interested persons to fully assess the complex information presented at the technical meeting and to make written comments based upon their assessments.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposal, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations_&_policies/2006_Proposed_Rules_Index/index.asp.

The [Regulations.gov](http://www.regulations.gov) Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals,

and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/.

Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done in Washington, DC, September 6, 2006.

Barbara J. Masters,
Administrator.

[FR Doc. E6-15017 Filed 9-11-06; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

Brick Trout Project, Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvesting the Brick Creek, Panther Creek, Lunch Creek, Trout Creek, and Fan Creek drainages (herein referred to as the Brick Trout project). The project area is located 16 miles east of Kamiah, Idaho, north of U.S. Highway 12, mostly along or near Forest Roads 514 and 5043. The project area is outside of inventoried roadless areas.

DATES: Comments concerning the scope of the analysis must be postmarked within 45 days after this Notice of Intent appears in the **Federal Register**. The draft environmental impact statement is expected to be available in February, 2007 and the final environmental impact statement is expected to be completed in September of 2007.

ADDRESSES: Written comments concerning this notice or a request to be placed on the project mailing list should be addressed to Chris Tootell, TEAMS, 200 East Broadway, Suite 251, Missoula, Montana, 59807. Comments may also be sent via e-mail to ctootell@fs.fed.us. The subject line in the e-mail message should contain the title "Brick Trout

Timber Sale Project." If you choose to comment by e-mail, please include your name and regular mailing address with the comment. Comments may also be sent via facsimile to (406) 329-3411, c/o Chris Tootell, Environmental Coordinator.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the U.S. Forest Service, Lochsa District Office in Kooskia, Idaho.

FOR FURTHER INFORMATION CONTACT:

Chris Tootell, Environmental Resource Coordinator, TEAMS Enterprise unit, USDA Forest Service (406) 329-3459. 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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The proposed project is located in portions of Sections 8, 17, 18, 23-28, 33-36, T34N, R6E, and Section 3, T33N, R6E, Boise Meridian, Idaho County, Idaho. The analysis area encompasses approximately 7,000 acres.

Purpose and Need for Action

The purpose and need for the proposed action is to: (1) Improve forest health, reduce catastrophic wildfire risk, maintain and restore ecological processes and functions, and restore tree stands to structure and species composition that would be expected under natural disturbance regimes; (2) manage the landscape to provide for goods and services deemed important to society; (3) restore the aquatic ecosystem to more natural processes and functions.

Proposed Action

The Forest Service proposes to harvest timber on 427 acres and then plan western white pine and western larch on most of the harvest area. Specifically, harvesting would include: 300 acres of clearcutting with reserves, 70 acres of seed tree harvest, 57 acres of final removal, 437 acres of slash treatment and site preparation for tree planting, 437 acres of tree planting. Cable yarding systems would be used for most of the area (350 acres). The rest of the area (77 acres) would use tractor-yarding methods. To access the harvest units, 3.5 miles of temporary road would be built. Upon project completion, all temporary roads would be decommissioned, which includes recontouring the road prism. Watershed restoration activities would consist of

road reconstruction on 1.9 miles of road, road reconditioning (brushing, blading and ditch cleaning) on 43.7 miles of road, replacement of two undersized culverts to improve fish passage, road decommissioning on three miles of road, and placing about 7.7 miles of road into storage.

Possible Alternatives

The Forest Service will consider alternatives to the proposed action including a "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives being considered examine varying levels and locations for the proposed activities to achieve the proposal's purpose and need, as well as to respond to issues and other resource concerns.

Responsible Official

The Responsible Official is the Forest Supervisor of the Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544. The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to the District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

Scoping Process

The Clearwater National Forest has developed a listing of individuals and organizations that have expressed an interest in being informed of and providing input to projects such as this. This list of individuals and organizations include Native American groups, private citizens, businesses, various organizations, and Federal, State and county agencies. All of these contacts will be sent the initial scoping document.

Preliminary Issues

The following list of preliminary issues was developed for the project area by the Forest Service Interdisciplinary Team (ID Team). This list of issues will be amended and/or expanded after review of the Brick Trout Environmental Impact Statement project scoping comments. Preliminary issues include: effects of tree retention levels on ecosystem functions and processes, effects, of road decommissioning on future forest access, effects of mature forest harvest on sensitive species, and effects of proposed activities on old growth habitat.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the draft environmental impact statement, including the identification of the range of issues to be addressed and for identifying the significant issues related to the proposed action. The Forest Service believes that it is important to give reviewers notice that they must comment or otherwise notify the Forest Service of their interest in this project to have the right to appeal. To assist the Forest Service in identifying and considering issues, concerns and other relevant information on the project proposal, comments should be as specific as possible.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 5, 2006.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 06-7587 Filed 9-11-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92-463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet via teleconference on September 27, 2006. The purpose of the meeting is to meet as a Committee to review proposed projects for fiscal year 2007.

DATES: The meeting will be held as follows: September 27, 2006, 1 p.m. to 2 p.m. in John Day, Oregon.

ADDRESSES: The September 27, 2006 teleconference meeting will be held at the Malheur National Forest Supervisor's Office, 431 Patterson Bridge Rd., John Day, Oregon 97845.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, P.O. Box 909, John Day, Oregon 97845. Phone: (541) 575-3008.

SUPPLEMENTARY INFORMATION: A public comment period will be provided at 1:05 p.m. and individuals will have the opportunity to address the committee at that time.

Dated: September 5, 2006.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 06-7586 Filed 9-11-06; 8:45 am]

BILLING CODE 3410-DK-M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet September 15, 2006 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes; (2) Handout Discussions, (3) Public Comment, (4) Financial Report, (5) Subcommittees, (6) Matters before the group, (7) Discussion—Approval of projects, (8) Next agenda and meeting date.

DATES: The meeting will be held on September 15, 2006, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983-8503; e-mail rhurt@fs.fed.us.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by September 12, 2006. Public comment will have the opportunity to address the committee at the meeting.

Dated: September 4, 2006.

Blaine Baker,

Designated Federal Official.

[FR Doc. 06-7595 Filed 9-11-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of Inspector General; Proposed Information Collection; Comment Request; Applicant for Funding Assistance

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information and copies of the information collection instrument and instructions should be directed to the attention of Joyce Baker, Herbert C. Hoover Building, Room 7721, (202) 482-1023, or via e-mail to jbaker@oig.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce, through its bureaus, the Economic Development Administration (EDA), Minority Business Development Agency (MBDA), International Trade Administration (ITA), National Oceanic and Atmospheric Administration (NOAA), National Technical Information Service (NTIS), National Telecommunications and Information Agency (NTIA), and other programs, assists reliable, capable individuals and firms in pursuit of various business development, business enterprise development and other forms of economic development. The form, CD-346, is used to assist programs and grants administration officials in determining the fiscal responsibility and financial integrity of principal officers and employees of organizations, firms, and other entities which are recipients or beneficiaries of grants, cooperative agreements, loans, loan guarantees or other forms of federal financial assistance. The requirement is derived from the duties and responsibilities set forth in Section 4(a)(3) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. App. 3.

The CD-346 is also completed, when required, by grant recipients. Through the name check process, the Office of Inspector General collects background information on key individuals associated with proposed financial assistance (grants, cooperative agreements, loans and loan guarantees) recipient organizations. The name check identifies those principals affiliated with proposed recipient organizations who have been convicted of, or are presently facing, criminal charges or are under investigation for fraud, theft, perjury or other matters which have significant impact on questions of

management honesty or financial integrity.

II. Method of Collection

Paper format.

III. Data

OMB Number: 0605-0001.

Form Numbers: CD-346.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; farms; Federal, State, Local or Tribal government.

Estimated Number of Respondents: 2,500.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Respondent Burden Hours: 625.

Estimated Total Annual Respondent Cost Burden: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15037 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-55-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Defense Priorities and Allocations System

ACTION: Extension of a currently approved collection: request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, (or via the Internet at DHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person who receives a priority rated order under the implementing DPAS regulation (15 CFR part 700) must retain records for at least 3 years.

II. Method of Collection

Records retention.

III. Data

OMB Number: 0694-0053.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit institutions.

Estimated Number of Respondents: 700,000.

Estimated Time Per Response: 1 to 31.5 minutes per response.

Estimated Total Annual Burden Hours: 14,477 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

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

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: September 5, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15038 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-428-815)

Initiation of Antidumping Duty Changed Circumstances Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended ("the Act"), and section 351.216(b) of the U.S. Department of Commerce's ("the Department") regulations, ThyssenKrupp Steel North America, Inc. ("ThyssenKrupp"), a U.S. importer, filed a request for the Department to initiate a changed circumstances review of the antidumping duty ("AD") orders on certain corrosion-resistant carbon steel flat products ("CORE") from Germany. The purpose of such review would be to partially revoke the order with respect to a certain product because of lack of interest by the domestic industry.¹

¹ DaimlerChrysler Corporation ("DaimlerChrysler"), a domestic consumer of CORE, submitted letters to the Department pre-dating ThyssenKrupp's request, indicating that it had contacted United States Steel Corporation, Mittal Steel, AK Steel, and Nucor Corporation and determined they are not interested in maintaining the antidumping duty order with respect to the product in question. See Letters to the Department from DaimlerChrysler dated June 22, 2006, and July 18, 2006.

Mittal Steel USA (“Mittal Steel”), a domestic CORE producer, submitted a letter to the Department expressing a lack of interest in continuing to have the product in question subject to the antidumping duty order. Mittal Steel also stated that it is a major domestic producer of CORE. In response to the request made by the “interested party” within the meaning of section 771(9) of the Act, ThyssenKrupp, and the lack of interest from Mittal Steel, the Department is initiating a changed circumstances review on CORE from Germany with respect to a specific corrosion resistant steel product as described below.

EFFECTIVE DATE: September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Lao or Abdelali Elouaradia, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482-7924 and (202) 482-1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2006, ThyssenKrupp, a U.S. importer of CORE, requested a changed circumstance review with respect to a specific CORE. Specifically, ThyssenKrupp requested to exclude from the AD order on CORE from Germany, imports meeting the following description: Electrolytically zinc coated flat steel products, with a coating mass between 35 and 72 grams per meter squared on each side; with a thickness range of 0.67 mm or more but not more than 2.95 mm and width 817 mm or more but not over 1830 mm; having the following chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.25, manganese not over 0.9, phosphorous not over 0.025, sulfur not over 0.012, chromium not over 0.1, titanium not over 0.005 and niobium not over 0.05; with a minimum yield strength of 310 Mpa and a minimum tensile strength of 390 Mpa; additionally coated on one or both sides with an organic coating containing not less than 30% and not more than 60% zinc and free of hexavalent chrome. See ThyssenKrupp letter to the Department dated August 17, 2006.

Scope of the Order

The product covered by this order is corrosion-resistant carbon steel flat products (“corrosion-resistant steel”) from Germany. This scope includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals

such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin-free steel”), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

On September 22, 1999, the Department issued the final results of a

changed circumstances review partially revoking the order with respect to certain corrosion-resistant steel from Germany.² This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise’s chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

On March 22, 2006, the Department issued the final results of a changed circumstances review partially revoking the order with respect to certain corrosion-resistant steel from Germany.³ This partial revocation applies certain corrosion-resistant carbon steel flat products from Germany meeting the following description: certain flat-rolled wear plate ranging from 30 inches to 50 inches in width, from 45 inches to 110 inches in length and from 0.187 inch to 0.875 inch in total thickness, having a layer on one side composed principally of a combination of boron carbides, chromium carbides, nickel carbides, silicon carbides, manganese carbides, niobium carbides, iron carbides, tungsten carbides, vanadium carbides, titanium carbides and/or molybdenum carbides fused to a non-alloy flat-rolled steel substrate. The carbides are in the form of M_xC_x where “M” stands for the metal and “x” for the atomic ratio. An example of a common carbide would be (Cr_7C_3) . The carbide layer is a visually

² See *Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, was sufficient to warrant partial revocation.

³ See *Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany*, 71 FR 14498 (March 22, 2006). The Department noticed that the affirmative statement of no interest in the continuation of the orders with respect to the product in question from the domestic interested parties, combined with the lack of comments from interested parties, was sufficient to warrant partial revocation.

distinct layer ranging in thickness from 0.062 inch to 0.312 inch with hardness at the surface of the carbide layer in excess of 55 HRC.

The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party for a review of an AD duty order which shows changed circumstances sufficient to warrant a review of the order. As noted above, on August 18, 2006, ThyssenKrupp requested for a ruling from the Department in accordance with 19 CFR 351.216(b) to exclude a specific corrosion resistant steel product as described above from this AD order. In addition, as noted above, Mittal Steel, a domestic interested party, has expressed a lack of interest in the order with respect to the product in question, and has stated that it is a major domestic producer of CORE. See Letter to the Department from Mittal Steel dated, August 18, 2006. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b), we are initiating a changed circumstances review. Interested parties are invited to comment on whether partial revocation of the order is appropriate based on lack of interest by domestic interested parties representing substantially all of the production of the domestic like product.

Public Comment

Interested parties may submit comments, which the Department will take into account in the preliminary results of this review. The due date for filing any such comments is no later than 15 days after publication of this notice. Responses to those comments may be submitted no later than seven days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances reviews in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in

accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.221(b) of the Department's regulations.

Dated: September 5, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-15088 Filed 9-11-06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-888

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of 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 the first administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (PRC). The period of review (POR) is February 3, 2004, through July 31, 2005. We have preliminarily determined that two of the three respondents made sales to the United States of the subject merchandise at prices below normal value. We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

EFFECTIVE DATE: September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, 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) 482-8173 or (202) 482-0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** an antidumping duty order regarding floor standing, metal-top ironing tables and parts thereof (ironing tables) from the PRC. See *Notice of Amended Final*

Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 47868 (August 6, 2004) (*Amended Final FR*).

On August 1, 2005, the Department published a notice of opportunity to request an administrative review of the ironing tables antidumping order. See *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 44085 (August 1, 2005). On August 12, 2005, Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) requested, in accordance with 19 CFR 351.213(b)(2), an administrative review of its exports of subject merchandise during the POR. On August 25, 2005, Home Products International Inc. (petitioner) requested an administrative review of the ironing tables produced or exported by Since Hardware during the POR, in accordance with 19 CFR 351.213(b)(1). On August 26, 2005, Shunde Yongjian Housewares Co., Ltd. (Shunde Yongjian) requested a review of its exports of subject merchandise during the POR, and on August 29, 2005, Forever Holdings Ltd. (Forever Holdings) requested a review of its exports of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(2). On August 31, 2005, Shunde Yongjian sent a letter to the Department stating that it wanted to clarify that its request for an administrative review should also include a variation of the name that may have been used to export subject merchandise during the POR. Shunde Yongjian stated that the name variation is as follows: Foshan Shunde Yongjian Houseware & Hardware Co., Ltd. (Foshan Shunde).

On September 28, 2005, the Department initiated a review with respect to Since Hardware, Shunde Yongjian (aka Foshan Shunde), and Forever Holdings (collectively, respondents). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). On October 19, 2005, the Department issued antidumping duty questionnaires to the three PRC producers/exporters of the subject merchandise covered by this administrative review.

On January 11, 2006, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the other potential surrogate countries and to submit publicly available information to value the

factors of production. On March 1, 2006, we extended the time limit for submitting surrogate country and surrogate value comments. On April 3, 2006, we received comments from Since Hardware and Forever Holdings. Petitioner commented on surrogate values on April 13, 2006.

On April 19, 2006, in accordance with 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until August 4, 2006. See *Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 71 FR 20076 (April 19, 2006).

On July 27, 2006, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department further extended the deadline for the preliminary results of review until August 31, 2006. See *Floor-Standing, Metal-Top Ironing Tables and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 71 FR 42627 (July 27, 2006).

The Department received timely filed original and supplemental questionnaire responses from Since Hardware, Foshan Shunde, and Forever Holdings.

Scope of the Antidumping Duty Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such

as an iron rest or linen rack. The term "complete" ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, e.g. iron rest or linen rack. The term "incomplete" ironing table means product shipped or sold as a "bare board" – i.e., a metal-top table only, without the pad and cover with or without additional features, e.g. iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Shunde Yongjian (aka Foshan Shunde)

As indicated above, the Department initiated a review on Shunde Yongjian, a respondent in the original less-than-fair-value (LTFV) investigation, and Foshan Shunde. Foshan Shunde (aka Shunde Yongjian) filed a November 23, 2005, Section A response, where the company indicated that it would be answering the Department's questionnaires as Foshan Shunde because Foshan Shunde produced and sold subject merchandise to the United States during the POR. It also stated that Foshan Shunde's owners controlled Shunde Yongjian, which had in July 2004 ceased all production activities and retained only its sales department to dispose of the company's remaining

inventory. Foshan Shunde (aka Shunde Yongjian) further stated that Shunde Yongjian did not sell any subject merchandise to the United States during the POR. Foshan Shunde (aka Shunde Yongjian) reiterated the statement that Shunde Yongjian had no POR shipments of subject merchandise in its February 28, 2006, supplemental questionnaire in response to the Department's request for clarification of Foshan Shunde (aka Shunde Yongjian)'s responses and the relationship between Foshan Shunde and Shunde Yongjian. In their July 13, 2006, supplemental response, Foshan Shunde (aka Shunde Yongjian) confirmed that during the POR Shunde Yongjian did not produce the same model types or control numbers that Foshan Shunde produced and sold to the United States during the POR. The Department has issued an additional questionnaire related to the affiliation between Shunde Yongjian and Foshan Shunde to obtain more information on whether the two entities should be collapsed or whether Foshan Shunde is the successor in interest to Shunde Yongjian. If the Department determines not to collapse the two entities and that Foshan Shunde is not the successor in interest, we intend to rescind the review of Shunde Yongjian based on no shipments.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. See *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*). In this review Since Hardware, Foshan Shunde, and Forever Holdings submitted information in support of their claims for company-specific rates.

Accordingly, we have considered whether each of the companies is independent from government control, and therefore eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing,

and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from *Sparklers*, 56 FR 20588 at Comment 1, as amplified by *Notice of Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities. *See Sparklers*, 56 FR 20588 at Comment 1 and *Silicon Carbide*, 59 FR 22586–87.

Since Hardware, Foshan Shunde, and Forever Holdings provided complete separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether these exporters are independent from government control.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588 at Comment 1. As discussed below, our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of government control for the three fully responsive companies based on each of these factors.

Since Hardware:

Since Hardware has placed on the record a number of documents to demonstrate absence of *de jure* control, including documentation substantiating

its claims that it is a wholly foreign-owned enterprise registered in China, the "Foreign Trade Law of the People's Republic of China" (May 12, 1994) (*Foreign Trade Law*), and "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" (June 3, 1988) (*Legal Corporations Regulations*). *See* Since Hardware's November 22, 2005, submission (Since Hardware Section A) at Exhibits 2, 4, and 6. Since Hardware also submitted a copy of its business license, which was issued by the Guangzhou Municipal Industrial and Commercial Administration. *See* Since Hardware Section A at Exhibit 5. Since Hardware explains that its business license ensures that Since Hardware maintains sufficient capital and operating capacity to engage in normal business operations and that only Since Hardware may use its business license. *See* Since Hardware Section A at pages 5–6. Since Hardware affirms that its business license does not impose limitations on the company or grant any entitlements to Since Hardware beyond the company's basic right to operate within the parameters outlined in the business license. *See id.* The license may be revoked, according to Since Hardware, if a situation arises consistent with those outlined in Articles 20 and 22 of the *Legal Corporations Regulations*. *See id.* Further, Since Hardware states that to obtain a renewal, it must submit relevant documents, such as financial statements, to the issuing authority. *See id.*

Foshan Shunde:

Foshan Shunde has placed on the record a number of documents to demonstrate absence of *de jure* control, including documentation substantiating its claims that it is a wholly foreign-owned enterprise registered in China, the *Foreign Trade Law*, and the *Legal Corporations Regulations*. *See* Foshan Shunde's November 25, 2005, submission (Foshan Shunde Section A) at Exhibit 2, 3, and 5. Foshan Shunde also submitted a copy of its business license, which was issued by Foshan City Shunde District Municipal Industrial and Commercial Administration. *See* Foshan Shunde Section A at Exhibit 4. Foshan Shunde explains that its business license ensures that Foshan Shunde maintains the necessary capital and functional capacity to engage in business operations and that only Foshan Shunde may use its business license. *See* Foshan Shunde Section A at pages 4–5. Foshan Shunde affirms that its business license does not impose limitations on the

company or create any entitlements to Foshan Shunde beyond the right of the Administration to revoke a business license if the enterprise engages in activities prohibited by Article 30 of the *Legal Corporations Regulations*. *See id.* The license may be revoked, according to Foshan Shunde, if a situation arises as provided for in Articles 20 and 22 of the *Legal Corporations Regulations*. *See id.* Further, Foshan Shunde states that to obtain a renewal, it must submit relevant documents, such as financial statements, to the issuing authority. *See id.*

Forever Holdings:

Forever Holdings has placed on the record a number of documents to demonstrate absence of *de jure* control, including documentation substantiating its claims that it is a foreign-invested joint-venture, the "Company Law of the People's Republic of China" (December 29, 1993) (*Company Law*), the *Foreign Trade Law*, and the *Legal Corporations Regulations*. *See* Forever Holdings' November 9, 2005, submission (Forever Holdings Section A) at Exhibits 2 and 3. Forever Holdings also submitted a copy of its business license, which was issued by Foshan Shunde Industrial and Commercial Administration Bureau. *See* Forever Holdings Section A at Exhibit 3. Forever Holdings explains that its business license is for registration purposes, defines the scope of the company's business activities, and that only Forever Holdings may use its business license. *See* Forever Holdings Section A at pages 6–7. Forever Holdings affirms that its business license entitles it to conduct business and imposes no limitations on the operation of Forever Holdings, defines the types of business activities the licensee can engage in, and can be amended if the licensee wishes to expand its business scope. *See id.*, at page 8. Forever Holdings states that the license may be revoked if the company has insufficient capital, engages in illegal activities, or is bankrupt. *See id.*, at pages 8–9. Further, Forever Holdings states that to obtain a renewal, it must apply for a renewal and provide a copy of its most recent financial statements to the issuing authority. *See id.*, at page 9.

We note that Forever Holdings states that it is governed by the *Company Law*, which it claims governs the establishment of limited liability companies and provides that such a company shall operate independently and be responsible for its own profits and losses. *See id.*, at page 5. Since Hardware, Foshan Shunde, and Forever Holdings have all placed on the record the *Foreign Trade Law* and state that

this law allows them full autonomy from the central authority in governing their business operations. See Since Hardware Section A at page 4; Foshan Shunde Section A at page 3; and Forever Holdings Section A at page 5. We have reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states, “foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.” As in prior cases, we have analyzed such PRC laws and found that they establish an absence of *de jure* control. See, e.g., *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People’s Republic of China*, 66 FR 30695, 30696 (June 7, 2001), unchanged in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People’s Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of *de jure* control over the export activities of Since Hardware, Foshan Shunde, and Forever Holdings.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *id.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from assigning separate rates. See *id.*

Since Hardware has asserted the following: (1) it is a wholly foreign- and privately owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) the company’s general

manager appoints the company’s management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its board of directors decides how profits will be used. See Since Hardware Section A at pages 4, 6–9. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC ironing tables.

Foshan Shunde has asserted the following: (1) it is a wholly foreign- and privately owned company; (2) there is no government participation in its setting of export prices; (3) the general manager has the authority to bind sales contracts; (4) the general manager selects management and the company does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its board of directors decides how profits will be used. See Foshan Shunde Section A at pages 2, 6–8. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC ironing tables.

Forever Holdings has asserted the following: (1) it is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its owners have the authority to bind sales contracts; (4) the board of directors appoints the company’s management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) the owners and board of directors decide how profits will be used. See Forever Holdings Section A at pages 2, 10–13. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC ironing tables.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over each respondent’s export activities, we preliminarily determine that Since Hardware, Foshan Shunde, and Forever Holdings have each met the criteria for the application of a separate rate.

Normal Value Comparisons

To determine whether the respondents’ sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the “U.S.

Price” and “Normal Value” sections of this notice.

U.S. Price

Export Price

For Since Hardware, Foshan Shunde, and Forever Holdings, we based U.S. price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign inland freight, foreign brokerage and handling expenses, and U.S. import duties and brokerage and handling from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Specifically, for Since Hardware we deducted foreign inland freight, foreign brokerage and handling expenses, and other discounts, where applicable, from the starting price (gross unit price) in accordance with section 772(c) of the Act. Also, we added to the gross unit price billing adjustments for origin receiving charges and freight revenue, where applicable. We have preliminarily determined to accept these billing adjustments on the basis of the statements and documentation provided by Since Hardware indicating that these charges were separately listed on the sales invoice and paid for by the customer. For Foshan Shunde, we deducted foreign inland freight and foreign brokerage and handling expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act. For Forever Holdings, we deducted foreign inland freight, foreign brokerage and handling expenses and U.S. import duties and brokerage and handling from the starting price (gross unit price), where applicable, in accordance with section 772(c) of the Act.

Where foreign inland freight or foreign brokerage and handling were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (see “Factors of Production” section below for further discussion). For those expenses that were provided by a market–economy provider and paid for in market–economy currency, we used the reported expense, pursuant to 19 CFR 351.408(c)(1).

Normal Value

Non-Market-Economy Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). None of the parties to these reviews has contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market-economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the "Memorandum from the Office of Policy to James C. Doyle," issued on January 9, 2006.¹ In addition, based on information from the investigation of ironing tables, India is a significant producer of comparable merchandise. See *Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040, 44042 (July 25, 2003), unchanged in *Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 5127 (February 3, 2004) and *Amended Final FR*.

Accordingly, we considered India the surrogate country for purposes of

valuing the factors of production because it meets the Department's criteria for surrogate-country selection. See "Memorandum to the File: Selection of a Surrogate Country," dated August 31, 2006 (Surrogate Country Memo).

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors of production reported by the producer for materials, energy, labor, and packing. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Certain of Since Hardware's and Foshan Shunde's inputs into the production of the merchandise under review were purchased from market economy suppliers and paid for in market economy currencies. We used the weight-averaged market economy prices paid by Since Hardware and Foshan Shunde when the inputs were obtained from a market economy, paid for in a market economy currency, and were a significant portion of the total purchases of that input. For purposes of the preliminary results we have determined that all of Since Hardware's and Foshan Shunde's market economy purchases were a significant portion of total purchases of that input and have used the reported prices in our calculations.

Since Hardware, Foshan Shunde, and Forever Holdings all reported by-product sales. With respect to the application of the by-product offset to normal value, consistent with the Department's determination in diamond sawblades from the PRC, because our surrogate financial statements contain no references to the treatment of by-products and because all three companies reported that they sold their by-products, we will deduct the surrogate value of the by-product from normal value. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by-product, the by-product necessarily incurs expenses for overhead, SG&A, and profit. See *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May

22, 2006), unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (Indian Import Statistics) for February 2004 through July 2005 to value inputs² sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the closest seaport to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand) from our surrogate value calculations. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1. See "Memorandum to the File: Factors of

¹ This memorandum (which was mistakenly dated January 9, 2005, instead of January 9, 2006) is attached to the letters, dated January 11, 2006, sent to interested parties to this proceeding requesting comments on surrogate country and surrogate value information.

² For PE Foam and Titanium Hypochlorite Anhydride 4, data from Indian Import Statistics was not available for the POR, therefore we used import data for January 2003 through December 2003 to value these inputs.

Production Valuation Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof (Ironing Tables) from the People's Republic of China (PRC)," dated August 31, 2006 (Factor Valuation Memo), for a complete discussion of the import data that we excluded from our calculation of surrogate values. This memorandum is on file in the Central Records Unit (CRU).

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration website (<http://www.trade.gov/ia/>). See Factor Valuation Memo.

We valued the factors of production as follows:

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Since Hardware, Foshan Shunde, and Forever Holdings used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all surrogate values used for respondents, see Factor Valuation Memo.

To value water, we calculated the average rate of inside and outside industrial water rates from various regions as reported by the Maharashtra Industrial Development Corporation, <http://midcindia.org>, dated June 1, 2003. We inflated the value for water using the POR average WPI rate. See Factor Valuation Memo.

We valued electricity using the 2000 electricity price in India reported by the International Energy Agency statistics for *Energy Prices & Taxes, Second Quarter 2003*. We inflated the value for electricity using the POR average WPI rate. See Factor Valuation Memo.

We valued diesel using the rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics* from 2004 and 2005. The prices are based on 2004 and 2005 first quarter prices of automotive diesel fuel retail prices. See Factor Valuation Memo.

Consistent with the determination in the LTFV investigation, to value the surrogate financial ratios of factory

overhead, selling, general & administrative expenses, and profit, the Department relied on the publicly available information in the annual report and accounts for Godrej & Boyce Manufacturing Company Limited (Godrej), submitted by Since Hardware on April 3, 2006, at Exhibit 3. The annual report covers the period April 1, 2004, to March 31, 2005, covering 12 months of the POR. We determine that Godrej is an appropriate surrogate producer because it is a producer of comparable merchandise and the financial data is contemporaneous with the POR. See Factor Valuation Memo.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. Therefore, to value the labor input, we used the PRC's regression-based wage rate published by Import Administration on its website, <http://www.trade.gov/ia/>. See Factor Valuation Memo.

To value truck freight, we calculated a weighted-average freight cost based on publicly available data from www.infreight.com, an Indian inland freight logistics resource website. See Factor Valuation Memo.

To value brokerage and handling, we used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s (Essar) February 28, 2005, Section C submission in the antidumping duty review of certain hot-rolled carbon steel flat products from India, and information from Agro Dutch Industries Ltd.'s (Agro Dutch) May 25, 2005, Section C submission, taken from the administrative review of preserved mushrooms from India, for which the POR was February 1, 2004, through January 31, 2005. Both sets of data are contemporaneous to the POR and the Department's preference is to average these two values because they represent values for numerous transactions that are available for a range of products and minimize the potential distortions that might arise from a single price source. One value, taken in isolation, could differ significantly when compared across a range of products, values, and special circumstances of a single transaction. See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision memo at Comment 6; and *Certain Preserved Mushrooms From*

India: Final Results of Antidumping Duty Administrative Review, 71 FR 10646 (March 2, 2006). See Factor Valuation Memo.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Since Hardware (Guangzhou) Co., Ltd.	0.21%
Foshan Shunde Yongjian Houseware & Hardware Co., Ltd.	0.59%
Forever Holdings Ltd.	9.00%

For details on the calculation of the antidumping duty weighted-average margin for each company, see the respective company's analysis memorandum for the preliminary results of the first administrative review of the antidumping duty order on ironing tables from the PRC, dated August 31, 2006. Public versions of these memoranda are on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific assessment rates for ironing tables from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 157.68 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d). If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.213(h)(1).

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 these review periods. 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.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-15089 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-875

Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0414.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2006, the Department published in the **Federal Register** its preliminary results of the second administrative review on non-malleable cast iron pipe fittings from the People's Republic of China ("PRC"). See *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 30116 (May 25, 2006) ("*Preliminary Results*"). The final results of this administrative review are currently due no later than September 22, 2006.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue final results within 120 days of the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day period to a maximum of 180 days. Completion of the final results of this review within the 120-day period is not practicable because the Department needs additional time to evaluate substantially intricate issues raised by the petitioners and respondents in their respective case briefs and rebuttals.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of review by 30 days until October 22, 2006, in accordance with section 751(a)(3)(A) of the Act.

Further, because October 22, 2006, falls on a Sunday, the final results will be due on October 23, 2006, the next business day. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: September 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-15099 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-832

Notice of Extension of Final Results of the 2004-2005 Administrative Review of Pure Magnesium from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482-3434 and (202) 482-6478, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2006, the Department of Commerce ("the Department") published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"). See *Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 18067 (April 10, 2006) ("Preliminary Results"). In the *Preliminary Results*, we stated that we would issue our final results of review no later than 120 days after the date of publication of the preliminary results (*i.e.*, August 8, 2006). On July 31, 2006, the Department publishes in the **Federal Register** a notice extending the time limit for the final results or the administrative review from August 8, 2006, to September 7, 2006. See *Notice of Extension of Final Result of the 2004-2005 Administrative Review of Pure Magnesium from the People's Republic of China*, 71 FR 43110 (July 31, 2006). The final results of review are currently due no later than September 7, 2006.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results in an administrative review within 120 days of publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, the Department may extend the time limit for the final results to 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, such as valuation of various factors of production that both the Petitioner and the respondent addressed in their case briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing these final results of review by an additional 22 days to 172 days, *i.e.*, until September 29, 2006.

Dated: September 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-15087 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-894

Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Seaman Paper Company of Massachusetts, Inc. (petitioner), the Department of Commerce (the Department) is initiating an anti-circumvention inquiry to determine whether certain imports of tissue paper from Vietnam are circumventing the antidumping duty order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC). See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (Tissue Paper Order).

EFFECTIVE DATE: September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, 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) 482-8173 or (202) 482-0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2006, petitioner submitted a letter requesting that the Department initiate and conduct an anti-circumvention inquiry, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h), to determine whether imports of tissue paper from Vietnam made from jumbo rolls of tissue paper which are a product of the PRC are circumventing the antidumping duty order on tissue paper from the PRC. Specifically, petitioner alleges that sending PRC jumbo rolls of tissue paper to Vietnam for completion or assembly into merchandise of the same class or kind as that covered by the antidumping duty order on tissue paper from the PRC constitutes circumvention of the antidumping duty order on tissue paper from the PRC.

On July 21, 2006, petitioner re-filed the anti-circumvention request to include business proprietary information, which had been redacted in the first initiation request. On August 11, 2006, Vietnam Quijiang Paper Co., Ltd (Quijiang) submitted comments on petitioner's July 21, 2006, request for an anti-circumvention inquiry. On August 14, 2006, the Department requested that petitioner submit documentation referenced, but not included, in its July 21, 2006, request. On August 18, 2006, petitioner submitted a response to the Department's August 14, 2006, request. On August 21, 2006, petitioner submitted comments on Quijiang's August 11, 2006, submission.

Scope of the Order

The tissue paper products subject to order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely

of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

Tissue paper products subject to this order do not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS) and appear to be imported under one or more of the several different "basket" categories, including but not necessarily limited to the following subheadings: HTSUS 4802.30, HTSUS 4802.54, HTSUS 4802.61, HTSUS 4802.62, HTSUS 4802.69, HTSUS 4804.39, HTSUS 4806.40, HTSUS 4808.30, HTSUS 4808.90, HTSUS 4811.90, HTSUS 4823.90, HTSUS 9505.90.40.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Excluded from the scope of the order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Initiation of Anti-circumvention Proceeding

Applicable Statute

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the

antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, petitioner presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

Petitioner states that the Tissue Paper Order covers cut-to-length sheets of tissue paper equal to or greater than 0.5 inches in width, with a basis weight not exceeding 29 grams per square meter and other specified characteristics of the scope. Petitioner argues that the tissue paper from Vietnam, which Quijiang has stated on the record of the first administrative review of tissue paper from the PRC that it produces from Chinese jumbo rolls and which is being imported into the United States from Vietnam, is physically identical to the subject merchandise cut-to-length tissue paper from the PRC. Because of this, pursuant to section 781(b)(1)(A)(i) of the Act, petitioner claims this tissue paper is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order.

B. Completion of Merchandise in a Foreign Country

Petitioner states that the tissue paper that is the subject of the anti-circumvention inquiry request is made from jumbo rolls of tissue paper produced in the PRC and processed in Vietnam for export to the United States. Petitioner argues that this tissue paper is the final result of a production process that involves a highly capital intensive, skilled operation to produce the tissue paper in the PRC with end stage processing, including converting the tissue paper (cutting-to-length, possibly folding, and packaging) and possibly printing or dyeing, to produce cut-to-length tissue paper in Vietnam. Petitioner also notes that Quijiang and Guilin Qifeng Paper Co., Ltd. (Guilin Qifeng) have both stated on the record of the first administrative review of tissue paper from the PRC that Guilin Qifeng supplied its affiliate Quijiang with jumbo rolls of tissue paper produced in the PRC, which were then further processed in Vietnam. Petitioner therefore concludes that, pursuant to section 781(b)(1)(B)(ii) of the Act, Quijiang's cut-to-length tissue paper is merchandise completed in another foreign country (Vietnam) from merchandise that is produced in a country (the PRC) already subject to a

dumping order which includes cut-to-length tissue paper in its scope.

C. Minor or Insignificant Process

Petitioner argues that for the purposes of section 781(b)(1)(C) of the Act, conversion of jumbo rolls of tissue paper produced in the PRC into cut-to-length tissue paper in Vietnam is a "minor or insignificant process" as defined by the Act. According to petitioner, printing and dyeing are decorative operations that complete the decorative aspects of merchandise. Petitioner argues that most fundamental aspects of the merchandise-tissue paper possessing a particular basis weight, texture, quality, and other specific characteristics that may be required if the paper is intended for printing-are previously and irrevocably established when the tissue paper is produced. Citing the February 17, 2004, petition in tissue paper from the PRC, petitioner states that the production process for making lightweight tissue paper is complex and requires high-quality material inputs, complex and capital-intensive physical equipment, and high levels of technical expertise by the operators. See "Antidumping Duty Petition on Certain Tissue Paper Products and Crepe Paper Products from the People's Republic of China," filed by Seaman Paper Company of Massachusetts, Inc.; American Crepe Corporation; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL-CIO, CLC, dated February 17, 2004. Furthermore, petitioner claims that this type of tissue paper production is consistent with the production that Guilin Qifeng employs in the PRC. According to its Internet site, petitioner states, Guilin Qifeng possesses a large, modern papermaking operation, with 18 different paper machines. See July 21, 2006, anti-circumvention request at Exhibit 4.

Petitioner states that the papermaking process is different in significance and complexity compared to the dyeing, decorating, printing or converting of jumbo rolls. While petitioner states that it does not have access to the detailed information concerning Quijiang's facilities, it contends that the best information available on Vietnam processing is the record of the underlying investigation concerning production in the PRC. Regarding printing in the PRC, petitioner states that, despite the nature of the design, *i.e.*, whether complicated or simple, the nature of the printing process is not

complex. Petitioner further states that converting the tissue involves two to three minor processes typically performed by hand in the PRC: cutting the tissue to a specific size, folding it (by hand) and packaging for export (also by hand). Petitioner cites to an affidavit from the Petition (at Exhibit 5), where members of the domestic industry reported first-hand knowledge of the production facilities in China based on site visits where they observed papermaking and converting operations; the public version of Section D and Exhibit D-5 of the Section D response of China National Aero-Technology Import and Export Xiamen Corp. (China National) during the investigation, which reflects the production process petitioner described in its July 21, 2006, anti-circumvention request; and the January 6, 2005, verification report for China National at page 39 from the investigation, where Department verifiers confirm that China National used manual labor for folding paper and packaging. See August 18, 2006, petitioner submission at pages 2-4 and Exhibits 3-4. All of these sources, petitioner argues, support its statements that Chinese converting operations involve hand folding and packaging, rather than automated activities, and are therefore "minor or insignificant" processes.

Petitioner argues that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the Vietnam processing is "minor or insignificant." These factors include: (1) level of investment in the foreign country; (2) level of research and development in the foreign country; (3) nature of the production process in the foreign country; (4) extent of production facilities in the foreign country; and (5) whether the value of the processing in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

Petitioner argues that the Vietnam process is "minor and insignificant" as the term is defined in section 781(b)(2) of the Act when compared to the complex, highly capital intensive, skilled operations required to produce lightweight tissue paper from pulp, chemicals, and dyes in the PRC. Petitioner's analysis of the statutory factors follows:

(1) Level of Investment

Petitioner claims that available information from Quijiang and Guilin Qifeng indicates that little investment has been or is being made in Vietnam. Petitioner argues that the business model described by the two companies

indicates that Quijiang only serves as a converting operation and an export platform for Guilin Qifeng and is not an integrated production operation. Petitioner further argues that Guilin Qifeng would have no desire to set up an operation in Vietnam that would compete with its own production capacity. Petitioner cites to Quijiang's business license, which provides a description of Quijiang's business activities, as proof of its statements. Because the business license is business proprietary information, its specific content cannot be discussed here. See July 21, 2006, anti-circumvention request at Exhibit 5. Petitioner concludes that the level of investment in the Vietnam processing facility is low.

(2) Level of Research and Development

Petitioner states that because Quijiang is affiliated with Guilin Qifeng, it is reasonable to presume that any research and development efforts would originate at Guilin Qifeng in the PRC. Furthermore, the tissue paper production industry is a mature industry and any innovations are refinements rather than new technologies, petitioner states, as determined by the U.S. International Trade Commission (USITC) in its injury findings. See *Certain Tissue Paper Products From China*, Inv. No. 731-TA-1070B (Final), Pub. 3758 at III-3 (March 2005) (*USITC Final Report*). Converting operations are also mature, according to petitioner, and likely involve hand-folding and packaging, rather than automated and research and development intensive activities, as would be found in the United States.

(3) Nature of the Production Process

Petitioner argues that both Quijiang and Guilin Qifeng describe the nature of the Vietnamese production process as follows: jumbo rolls further processed by cutting, slitting, dying, printing, decorating, folding, and packaging prior to transport. See July 21, 2006, anti-circumvention request at Exhibits 2-3. Although petitioner states that it does not have specific information regarding these production processes, it contends that taking the description at face value indicates that the operations are decorative in nature or involve completing the merchandise. Petitioner argues that none of the processes listed above, particularly dying and decorating, alter the fundamental nature or critical characteristics such as basis weight, quality, and texture— of the papermaking stage of production. Petitioner states that dip-dyeing, printing, and converting use few inputs,

and, while cutting jumbo rolls to length involves some skill and may involve machinery, the essence of the activity is not complex although it can be performed in a variety of more or less complex ways. Folding and packing, petitioner adds, are done by hand in the PRC. Petitioner presumes, based on its knowledge of the PRC industry, that folding and packing are done by hand in Vietnam as well.

(4) Extent of Production in Vietnam

Petitioner states that it does not have access to detailed information concerning the extent of production facilities in Vietnam. However, petitioner claims that Quijiang's operations are housed in rented facilities, which suggests a lower level of investment than that which would be required by the capital-intensive nature of papermaking operations. Specifically, papermaking operations require that the necessary machinery be permanently placed and operated, while printing and converting operations are more easily temporarily housed and movable, petitioner states. Petitioner claims that the rented nature of the business operations supports a determination that Quijiang was established as a means for Guilin Qifeng to continue to use its production capacity while evading the dumping order.

(5) Value of Vietnam Processing Compared to Tissue Paper Imported Into the United States

Petitioner states that it does not have access to information concerning the cost of tissue paper rolls sent to Quijiang or the costs associated with operations in Vietnam; however, it contends that data from the period of investigation supports a determination that the value of processing performed in Vietnam represents a small proportion of value of the merchandise imported into the United States. In late 2003 and early 2004, petitioner states, it gathered prices on jumbo rolls and converted tissue paper products. Based on a comparison of two data points, petitioner argues that the value added by converting jumbo rolls is insignificant. Because the price points are business proprietary information, they cannot be discussed here. See July 21, 2006, anti-circumvention request at pages 21-22 and Exhibit 7.

D. Value of Merchandise Produced in PRC

Petitioner argues that the evidence as noted *supra* in their anti-circumvention request clearly supports its position that the value of the Guilin Qifeng jumbo rolls produced in the PRC and sent to

Quijiang represents a significant portion of the total value of the merchandise exported to the United States, as measured by the prices at which jumbo rolls and converted tissue paper were offered for sale.

E. Factors To Consider in Determining Whether Action Is Necessary

Petitioner argues that additional factors must be considered in the Department's decision whether to issue a finding of circumvention regarding importation of Vietnamese tissue paper. These factors are discussed below.

Pattern of Trade

Petitioner states that section 781(b)(3) of the Act directs the Department to take into account patterns of trade when making a decision on anti-circumvention rulings. Petitioner argues that in February 2004, when petitioner and other members of the domestic industry filed a Petition in this proceeding, Vietnam was not a source of any exports of tissue paper to the United States. Petitioner bases these claims on an analysis of publicly available information from the Port Import Export Reporting Service (PIERS). See July 21, 2006, anti-circumvention request at Exhibit 1 and August 18, 2006, petitioner submission at Exhibits 1–2. Petitioner claims that four months after the petition was filed, in June 2004, Guilin Qifeng established Quijiang with the sole purpose of importing Chinese jumbo rolls for converting and completion into tissue paper for export into the United States. Two months later, petitioner contends, in August 2004 large and increasing volumes of tissue paper shipments from Vietnam emerged and have continued. See July 21, 2006, anti-circumvention request at Exhibit 1 and August 18, 2006, petitioner submission at Exhibits 1–2.

Affiliation

Petitioner states that section 781(b)(3) of the Act directs the Department to take into account whether the manufacturer or export of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States when making a decision on anti-circumvention rulings. Petitioner contends that both Quijiang and Guilin Qifeng have admitted that they are affiliated companies. See July 21, 2006, anti-circumvention request at Exhibits 2 and 3. The timing of the establishment of Quijiang and the terms of the company's operation, *i.e.*, importing rolls to be converted and then exported, petitioner argues, suggests a

clear intention to shift completion of merchandise under order from the PRC to Vietnam.

Subsequent Import Volume

Petitioner states that section 781(b)(3) of the Act directs the Department to take into account whether imports into the foreign country of the merchandise have increased after the initiation of the investigation which resulted in the issuance of such an order or finding when making a decision on anti-circumvention rulings. Petitioner claims it does not have access to data concerning trade flows of jumbo rolls between the PRC and Vietnam; however, it noted that it is impossible that Quijiang would have received jumbo rolls before June 2004 because the company did not exist before then. Petitioner also claims that the evidence concerning Vietnam's lack of exports to the United States, along with the emergence of large exports of tissue paper starting in August 2004, is a reasonable basis for inferring that jumbo roll imports into Vietnam from the PRC increased after the initiation of the original investigation in this proceeding. See July 21, 2006, anti-circumvention request at Exhibit 1 and August 18, 2006, petitioner submission at Exhibits 1–2.

Comments from Quijiang

On August 11, 2006, Quijiang submitted comments on petitioner's July 21, 2006, anti-circumvention request. Quijiang states that the Department should not initiate an anti-circumvention inquiry. It claims that its production of tissue paper from Vietnamese-sourced paper, in addition to PRC-sourced paper, shows that Guilin Qifeng's investment in Vietnam is substantial and that research and development does take place at Quijiang. Quijiang argues that the effect of paper converting is significant and cites the record from the USITC injury determination where the USITC examined the converting process in detail and determined that the domestic industry consists of vertically integrated firms and firms that convert tissue paper from jumbo rolls. See *USITC Final Report* at I–10–11 and III–4; see also *Id.* at 3–4. Quijiang also claims that information from the March 12, 2004, USITC post-conference brief indicates the percentage of value added to a jumbo roll by the conversion process is significant and that this information is readily available to petitioner.

Quijiang states that the original scope request on jumbo rolls, in which the Department determined that jumbo rolls were excluded from the scope of this

order, indicated that the value-added by converting operations was estimated to be about one third of the total value. See "Memorandum for Acting Deputy Assistant Secretary: Final Scope Ruling: Antidumping Duty Order on Certain Tissue Paper from the People's Republic of China (A–570–894); CSS Industries, Inc.," dated December 1, 2004.

If the Department believes that Quijiang's cutting of jumbo rolls may constitute circumvention, Quijiang argues, then it should investigate petitioner's operations as well because Quijiang is aware that its affiliate Guilin Qifeng sells petitioner jumbo rolls from the PRC which petitioner then converts using essentially the same production processes as Quijiang.¹ In addition, Quijiang states that it objects to petitioner having placed proprietary documents submitted by Quijiang and Guilin Qifeng in the first administrative review of tissue paper from the PRC on the record of this proceeding. Petitioner's decision, Quijiang claims, to submit the July 21, 2006, anti-circumvention request as business proprietary, including bracketing some of petitioner's own information, makes it impossible for Quijiang to meaningfully comment of the information contained within the submission as no administrative protective order (APO) has been established for the anti-circumvention inquiry yet.²

For all the reasons stated above, Quijiang argues, the Department should reject petitioner's request to initiate an anti-circumvention inquiry.

Analysis

Based on our analysis of the application and the August 18, 2006, petitioner submission, the Department determines that a formal anti-circumvention inquiry is warranted. In accordance with 19 CFR 351.225(e), if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's

¹ At this time, the Department is not considering Quijiang's request here in the absence of a formal anti-circumvention request that provides information regarding all of the factors enumerated in section 781(b) of the Act.

² In accordance with our practice, the Department notes that an APO will be established upon the initiation of this inquiry and at that time Quijiang's counsel may apply for an APO and receive copies of the business proprietary anti-circumvention request and other relevant submissions, upon which it may then make more comments. We note that that lack of an APO at this time has no bearing on whether an anti-circumvention inquiry should be initiated.

scope service list of the initiation of a scope inquiry, including an anti-circumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1)(ii), a notice of the initiation of an anti-circumvention inquiry issued under paragraph (e) of this section will include a description of the product that is the subject of the anti-circumvention inquiry in this case, cut-to-length tissue paper that contains the characteristics as provided in the scope of the order, and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided below.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in the PRC, petitioner has presented information indicating that the merchandise being imported from Vietnam is of the same class or kind as the tissue paper produced in the PRC, which is subject to the antidumping duty order. The merchandise from Vietnam shares physical characteristics with the merchandise covered by the antidumping duty order.

With regard to completion of merchandise in a foreign country, petitioner has also presented information that the tissue paper from Vietnam is being processed in Vietnam using PRC jumbo rolls of tissue paper as the input. Guilin Qifeng and Quijiang have admitted the same on the record of the first administrative review of tissue paper from the PRC. See "Letter to the Secretary from Guilin Qifeng: Q&V response of Guilin Qifeng Paper Co., Ltd.," dated June 21, 2006; see also "Letter to the Secretary from Quijiang: Q&V response of Vietnam Quijiang Paper Company, Limited," dated May 25, 2006.

With regard to whether the conversion of PRC jumbo rolls of tissue paper into cut-to-length tissue paper from Vietnam is a "minor or insignificant process," petitioner addressed the relevant statutory factors used to determine whether the processing jumbo rolls of tissue paper is minor or insignificant with the best information available to petitioner at the time of the request. Petitioner relied on information from the underlying investigation and information placed on the record of the first administrative review by Quijiang and Guilin Qifeng. Although Quijiang has challenged petitioner's claim that the conversion process in Vietnam is "minor or insignificant," we find that the information presented by petitioner supports petitioner's request to initiate an anti-circumvention inquiry. In

particular, petitioner provides evidence for each of the criteria provided in the statute, including arguing 1) that Quijiang's business license suggests little investment has been made in Quijiang; 2) that because Guilin Qifeng has a fully integrated production facility and is affiliated with Quijiang it is reasonable to presume that research and development takes place in the PRC; 3) that printing, folding, and cutting, *i.e.*, the converting process, do not alter the fundamental characteristics of the tissue paper; 4) that Quijiang's rented facilities suggest a lower investment level than that required by the capital-intensive nature of the paper-making process; and 5) that business proprietary price points obtained by petitioner suggest that converting tissue paper adds little value to the merchandise imported to the United States. Furthermore, we note that the converting operations described in the scope request and in the USITC report, to which Quijiang refers, discuss converting operations in the United States. Our analysis will focus on converting operations in Vietnam and, in the context of this proceeding, we will closely examine the value-added and extent of processing in Vietnam.

With respect to the value of the merchandise produced in the PRC, petitioner relied on the information and arguments in the "minor or insignificant process" portion of its anti-circumvention request to indicate that the value of jumbo rolls of tissue paper is significant relative to the total value of finished merchandise exported to the United States. We find that the information adequately meets the requirements of this factor, as discussed above.

Finally, petitioner argued that the Department should also consider the pattern of trade, affiliation, and subsequent import volumes as factors in determining whether to initiate the anti-circumvention inquiry. The import information submitted by petitioner indicates that imports of tissue paper from Vietnam are rising significantly. Moreover, Guilin Qifeng's and Quijiang's own statements establish that Quijiang is an affiliate of Guilin Qifeng.

Accordingly, we are initiating a formal anti-circumvention inquiry concerning the antidumping duty order on certain tissue paper products from the PRC, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

The Department is focusing its analysis of the significance of the production process in Vietnam on the single processor identified by the petitioner, namely Quijiang, in its July 21, 2006, anti-circumvention request and about which sufficient information to initiate an inquiry has been provided. If the Department receives a formal request from an interested party regarding potential circumvention by other Vietnamese companies involved in processing PRC jumbo rolls for export to the United States within sufficient time, we will consider conducting the inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: September 5, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-15094 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Performance Review Board Members

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the International Trade Administrations Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Robert Montague, International Trade Administration, Office of Human Resources Management, at (202) 482-2850, Room 7414, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank

Awards for members of the Senior Executive Service.

The Under Secretary for International Trade, Franklin L. Lavin, has named the following members of the International Trade Administration Performance Review Board:

1. Thomas A. McGinty, National Director (new).
2. Barbara E. Tillman, Senior Director (new).*
3. Seward L. Jones Jr., Director, Office of Multilateral Affairs (new).
4. Patricia A. Sefcik, Senior Director for Manufacturing (new).
5. Ronald A. Glaser, Human Resources Officer, Executive Secretary (new).
6. Sean M. Reilly, Chief of Staff, At-Large (new).
7. Matthew S. Borman, Deputy Assistant Secretary for Export Enforcement, Bureau of Industry and Security, Outside Reviewer (new).

Dated: September 8, 2006.

Deborah Martin,

Acting, Human Resources Officer.

[FR Doc. E6-15200 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coral Reefs—Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

* Joseph A. Spetrini, Deputy Assistant Director for Anti-Dumping and Countervailing Duty Policy and Negotiations, Alternate (new).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (or Bob.Leeworthy@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of Hawaii's coral reef habitats to specific segments of the U.S. population. This is a national survey using a panel based on a nationally representative, list-assisted, random digit-dial (RDD) sample drawn from all 10-digit telephone numbers in the U.S. The survey is designed to yield information that can be used to estimate non-use or passive economic use values for Hawaii's coral reef ecosystems. The survey addresses the public's preferences and economic values regarding the use of no-take areas as a management tool and their preferences regarding several alternative methods of restoring damaged coral reefs. A large scale pre-test of the survey has been conducted (200 survey responses) under OMB Approval Number 0648-0531, expiration date 8/31/2006.

II. Method of Collection

Members of the panel will complete the survey on-line using either WebTV technology supplied by Knowledge Networks, Inc. or their own Internet service.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15032 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Bottlenose Dolphin Conservation Outreach Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Michelle McGregor, (301) 713-1406 ext. 169 or michelle.mcgregor@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The objective of this survey is to assess the level of awareness on issues related to regulations preventing feeding/harassment of wild bottlenose

dolphins, which are protected under the Marine Mammal Protection Act. In particular, the survey is designed to determine what commercial operators and the general public know about specific regulations prohibiting feeding and harassment of bottlenose dolphins, and how they gained their knowledge and/or perceptions on the topic. The initial geographic region for this survey is Panama City, Florida, where numerous incidences of dolphin harassment and feeding have been documented. The intent, in the future, is to use this survey in other areas of the southeast region to gain a similar understanding and ensure outreach messages are appropriate for intended audiences.

The recordkeeping and reporting requirements at 50 CFR part 679 form the basis for this collection of information. The National Marine Fisheries Service will request information from local residents, tourists and commercial businesses through a one-time survey. This information, upon receipt, will be used to develop effective and better-targeted outreach efforts in order to enhance bottlenose dolphin conservation in Florida.

II. Method of Collection

Participants voluntarily complete paper questionnaires, and methods of submittal include on-site, mail, and facsimile transmission of paper forms.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15033 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Regional Economic Data Collection Program for Southwest Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chang Seung, (206) 526-4250 or Chang.Seung@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The regional or community economic analysis of proposed fishery management policies is required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Environmental Policy Act (NEPA), and Executive Order 12866,

among others. To satisfy these mandates and inform policymakers and the public of the likely regional economic impacts associated with fishery management policies, appropriate economic models and the data to implement these models are needed.

Much of the data required for regional economic analysis associated with Southwest Alaska fisheries are either unavailable or unreliable. Accurate fishery-level data on employment, labor income, and expenditures in the Southwest Alaska fishery and related industries are not currently available but are needed to estimate the effects of fisheries on the economy of Southwest Alaska. In this survey effort, data on these important regional economic variables will be collected and used to develop models that will provide more reliable estimates and significantly improve policymakers' ability to assess policy effects on fishery-dependent communities in Southwest Alaska. The survey will be for one-time only.

The survey (mailed) will be used to request data on employment and labor income from 2,200 vessel owners whose boats delivered fish to Southwest Alaska processors. In-person interviews and telephone calls (120) with businesses involved in the fishery and related industries will be used to obtain (a) Vessel expenditure/cost data; (b) regional economic data for non-fishery industries; and (c) regional economic data for fish processing sector.

II. Method of Collection

Mail surveys will be used.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,320.

Estimated Time Per Response: Mail survey: 10 minutes; phone call or local interview with fish processors: 30 minutes; phone calls with local small businesses: 10 minutes.

Estimated Total Annual Burden Hours: 393.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15034 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Professional Development Workshops and Formal Evaluation of NOAA Educational Materials

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 13, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Bruce Moravchik, 301-713-3061 ext. 219 or Bruce.Moravchik@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The project, *Professional Development Workshops and Formal Evaluation of NOAA Educational Materials*, has three primary goals:

(1) To provide a series of three one-day professional development opportunities whereby educators will learn more about coastal and ocean science, and about the wide variety of online tools and resources available to them via the NOAA Discovery Center and Ocean Explorer Web sites; (2) To develop and implement an outcomes-based evaluation of the three educator professional development workshops; and (3) To implement an outcomes-based evaluation of the online tools and resources available through the NOAA Discovery Center and Ocean Explorer Web sites.

II. Method of Collection

Paper pre- and post-workshop questionnaires will be collected on-site. Paper follow-up questionnaires will be collected via mail. Student questionnaires will be completed online. Focus groups will be completed on-site.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,620.

Estimated Time Per Response: Workshop pre-questionnaire, 15 minutes; post-questionnaire, 30 minutes; follow-up questionnaire, 2 hours; student questionnaire, 30 minutes; focus group, 2 hours.

Estimated Total Annual Burden Hours: 1,035.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15036 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-JS-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Initial Patent Applications

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 13, 2006.

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

- E-mail: Susan.Brown@uspto.gov. Include "0651-0032 comment" in the subject line of the message.
- Fax: 571-273-0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

• Federal e-Rulemaking Portal: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7700; or by e-mail at bob.spar@uspto.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

Article 1, Section 8, Clause 8 of the Constitution provides that Congress shall have the power * * * [t]o promote the progress of science and useful arts, by securing for limited times

to authors and inventors the exclusive right to their respective writings and discoveries.” Congress has exercised this grant of power under the Constitution to enact the patent statute, Title 35, U.S.C., and to establish the United States Patent and Trademark Office (USPTO).

The USPTO is required by 35 U.S.C. 131 to examine applications for patents. The patent statute and regulations require applicants to provide sufficient information (specification containing a description of the invention and at least one claim defining the property right sought by the applicant; a drawing or photograph, where necessary, for an understanding of the invention; a signed oath or declaration, and the necessary fees) to allow the USPTO to properly examine the application to determine whether it meets the criteria set forth in the patent statute and regulations to be issued as a patent. The USPTO administers the statute through various rules in 37 CFR 1.16 through 1.84.

The new utility, design, and provisional applications can be submitted to the USPTO in paper or they can be submitted electronically. Previously, applications were submitted electronically through the Electronic Filing System (EFS). In March 2006, the USPTO deployed EFS Web, a new Web based patent application and document submission solution. EFS-Web does not require special software and applicants can use their own systems, software, and processes to create the patent application documents. The EFS Web uses standard Web-based screens and prompts to assist the applicant in submitting their patent application documents.

The USPTO has expanded the types of applications that can be filed electronically. In addition to the new original utility and provisional applications that are already filed electronically, new original design

applications can now be filed electronically.

In addition to the filing, search, and examination fees that are already in the collection, two new patent fees from the Consolidated Appropriations Act of 2005 are being added into the collection at this time. This includes a new filing fee of \$75 for small entities filing original utility applications electronically on or after 12/8/04 and an application size fee that is paid for applications filed under 35 U.S.C. 111 on or after 12/8/04, in which the specification and the drawings exceed 100 sheets of paper.

Five other existing fees or surcharges that were previously overlooked are being added into the collection at this time. This includes surcharges for the late filing of the fees, oaths, or declarations and for the late filing of the coversheet for provisional applications. The other fees are for filing more than 3 independent claims, filing more than 20 claims, and for filing multiple dependent claims in a patent application.

Unlike the last renewal, the utility, design, and plant applications are no longer grouped together, but are broken out separately. This permits the USPTO to show exactly how many of the different applications have been filed. It also makes it easier to account for the electronic filings since the utility, design, and provisional applications can be filed electronically, but the plant applications are not filed electronically. The response and fee tables can also be more closely aligned to each other than they were previously.

There are 28 forms in this collection. The electronic Application Data Sheet has a form number, but the paper version does not since it is a suggested format and not an official paper form.

II. Method of Collection

By mail, facsimile (limited to petitions to accept delayed priority

claims and requests for continued prosecution applications), or hand delivery to the USPTO. New utility, design, and provisional applications can also be submitted electronically through the EFS.

III. Data

OMB Number: 0651-0032.

Form Number(s): PTO/SB/01/01A/02/02LR/03/03A/04/05/06/07/13/PCT/14/16/17/18/19/29/29A/101-110.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 543,590 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 24 minutes to 10 hours and 45 minutes (0.40 to 10.75 hours) to complete this information, depending on the request. This includes the time to gather the necessary information, prepare the application, petition, or CD submission, and submit the completed request to the USPTO. Given the newness of electronic filing, the USPTO believes that, for now, it will take the same amount of time to gather the necessary information, prepare the new utility, design, or provisional application, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

Estimated Total Annual Respondent Burden Hours: 4,748,122 hours per year.

Estimated Total Annual Respondent Cost Burden: \$1,443,429,088 per year. The USPTO expects that all of the information in this collection will be prepared by an attorney. Using the professional hourly rate of \$304 per hour for associate attorneys in private firms, the USPTO estimates that the total respondent cost burden for this collection is \$1,443,429,088 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Original New Utility Applications—No Application Data Sheet	10 hours and 45 minutes	162,400	1,745,800
Electronic Original New Utility Applications—No Application Data Sheet	10 hours and 45 minutes	69,600	748,200
Original New Plant Applications—No Application Data Sheet	10 hours and 45 minutes	1,115	11,986
Original New Design Applications—No Application Data Sheet	10 hours and 45 minutes	14,945	160,659
Electronic Original Design Applications—No Application Data Sheet	10 hours and 45 minutes	6,410	68,908
Original New Utility Applications—Application Data Sheet	10 hours and 36 minutes	40,600	430,360
Electronic Original New Utility Applications—Application Data Sheet ...	10 hours and 36 minutes	17,400	184,440
Original New Plant Applications—Application Data Sheet	10 hours and 36 minutes	285	3,021
Original New Design Applications—Application Data Sheet	10 hours and 36 minutes	3,740	39,644
Electronic New Design Applications—Application Data Sheet	10 hours and 36 minutes	1,605	17,013
Continuation/Divisional of an International Application—No Application Data Sheet	10 hours and 45 minutes	7,560	81,270
Utility Continuation/Divisional Applications	54 minutes	56,930	51,237
Plant Continuation/Divisional Applications	54 minutes	230	207

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Design Continuation/Divisional Applications	54 minutes	750	675
Continued Prosecution Applications—Design (Request Transmittal and Receipt)	24 minutes	260	104
Utility Continuation-in-Part Applications	5 hours and 15 minutes	17,720	93,030
Plant Continuation-in-Part Applications	5 hours and 15 minutes	70	368
Design Continuation-in-Part Applications	5 hours and 15 minutes	480	2,520
Provisional Application for Patent Cover Sheet	8 hours	96,680	773,440
Electronic Provisional Application for Patent Cover Sheet	8 hours	41,490	331,920
Petition to Accept Unintentionally Delayed Priority Claim	1 hour	920	920
Petition to Accept Non-Signing Inventors or Legal Representatives/Filing by Other Than all the Inventors or a Person not the Inventor.	1 hour	2,400	2,400
Total .....	.....	543,590	4,748,122

Estimated Total Annual Non-hour Respondent Cost Burden: \$695,587,260 per year. There are capital start-up, postage, recordkeeping, and drawing costs, as well as filing fees, associated with this information collection.

Applicants can use Compact Disk-Read Only Memory (CD-ROM) or Compact Disk-Recordables (CD-R) to submit patent applications containing large computer program listings to the USPTO. Therefore, the costs for purchasing blank CD-R media (CDs), cases and labels for the CDs, and a padded mailing envelope for shipping, are being added to the annual (non-hour) costs for this collection. Blank CD-R media with plastic jewel cases can be purchased for approximately \$10 for 10 blank CDs, or about \$1 per disc. The average cost of software for labeling CDs, including blank labels and case inserts, is approximately \$20. Padded 8.5 x 11-inch mailing envelopes for shipping the CDs cost approximately \$12 for a package of 12, or about \$1 per envelope. In sum, the USPTO estimates that the total costs for the blank CD-R media, the software for labeling the CDs, and the mailing envelope are approximately \$42 per year. The USPTO estimates that 3 patent applications will need to be submitted on CD per year, which when multiplied by the total cost of the media, the labeling software, and the mailing envelopes, equals \$126 in total costs. Therefore, the USPTO estimates that the total capital start-up costs for this collection will be \$126 per year.

The applications, the petition to accept a delayed priority claim, the petition to accept non-signing inventors or legal representatives, and the oversized program listing CD submissions may be submitted by mail through the United States Postal Service. The USPTO recommends that applicants file initial patent applications (which also include the continued prosecution, continuation

and divisional, continuation-in-part, and provisional applications) by Express Mail to establish the filing date (otherwise the filing date of the application will be the date that it is received at the USPTO). The USPTO estimates that the average cost for sending an initial application by Express Mail will be \$18.80, and that customers filing documents associated with these initial applications may choose this option to mail their submissions to the USPTO. The USPTO estimates that up to 403,765 submissions per year may be mailed to the USPTO at an average Express Mail rate of \$18.80, for a total postage cost of \$7,590,782.

The petitions for delayed priority claim or for acceptance of non-signing inventors or legal representatives can be sent by first-class mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 63 cents, and that customers filing these petitions may choose to mail their submissions to the USPTO. Therefore, the USPTO estimates that up to 3,320 submissions per year may be mailed to the USPTO at an average first-class postage cost of 63 cents, for a total postage cost of \$2,092 per year.

In the case of the oversized program listing CD submissions, the USPTO estimates that the average postage cost for these submissions will be 95 cents, to cover the costs of mailing the CD, the application transmittal form, and the cover letter. The USPTO estimates that 3 oversized program listing CD submissions will be received per year, for a total postage cost of \$3 per year.

The total postage cost for this collection is \$7,592,877 per year.

There are recordkeeping costs associated with the oversized program listing CD submissions and the electronic filing of new utility, design, and provisional applications. The USPTO advises applicants who submit applications with oversized computer

listings on CD to retain a back-up copy of the CD and a printed copy of the application transmittal form for their records. The USPTO estimates that it will take an additional 5 minutes for the applicant to produce this back-up CD copy and 2 minutes to print the copy of the application transmittal form, for a total of 7 minutes (0.12 hours) for each oversized submission. The USPTO estimates that approximately 3 applications per year will be submitted with oversized computer program listings, for a total of 0.36 hours per year for retaining the back-up CD and printed application transmittal form. The USPTO believes that these back-up copies will be prepared by paraprofessionals with an estimated hourly rate of \$90 per hour, for a recordkeeping cost for these back-up copies of \$32 per year.

In addition, the USPTO also strongly advises applicants who file their new utility, design, and provisional applications electronically to retain a copy of the file submitted to the USPTO as evidence of authenticity, in addition to keeping the acknowledgment receipt as clear evidence that the file was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the new utility, design, and provisional submissions and that approximately 136,505 new submissions per year (87,000 utility, 8,015 design, and 41,490 provisional applications) will use this option, for a total of 137 hours per year. Using the paraprofessional rate of \$90 per hour, the USPTO estimates that the recordkeeping cost for retaining this copy will be \$12,330 per year.

The total recordkeeping cost for this collection is \$12,362 per year.

Patent applicants can submit drawings with the utility, design, plant, and provisional applications. Applicants can prepare these drawings on their own or they can hire patent

illustration services firms to create them. As a basis for calculating the drawing costs, the USPTO believes that all applicants will have their drawings prepared by the patent illustration firms. Estimates for the drawings can vary greatly, depending on the number of figures that need to be produced, the total number of pages for the drawings, and the complexity of the drawings. The utility, plant, and design continuation and divisional applications use the same drawings as the initial filings, so they are not included in these totals. The continuation-in-part applications may use some of the same drawings as the initial applications and some new drawings may be submitted, so those numbers are included in these estimates. The drawings for the continued prosecution applications are also included in the drawing cost totals. There are no continuation, divisional, or continuation-in-part provisional applications.

The USPTO estimates that it can cost \$58 per sheet to produce the utility drawings and that on average, 11 sheets of drawings are submitted, for an average cost of \$638 to produce the utility drawings. Out of 307,720 utility applications submitted per year, the USPTO estimates that 91% or 280,025

applications will be submitted with drawings, for a total of \$178,655,950.

The USPTO estimates that it can cost \$68 per sheet to produce design drawings and that on average 4.8 sheets of drawings are submitted, for an average cost of \$326 to produce design drawings. Out of 27,440 design applications submitted per year, the USPTO estimates that 100% will be submitted with drawings, for a total of \$8,945,440.

The USPTO estimates that it can cost \$35 per sheet to produce plant drawings and that on average 2 sheets of drawings are submitted, for an average cost of \$70 to produce plant drawings. Out of 1,470 plant applications submitted per year, the USPTO estimates that 100% will be submitted with drawings, for a total of \$102,900.

The USPTO estimates that it can cost \$58 per sheet to produce provisional drawings and that on average 7.5 sheets of drawings are submitted, for an average cost of \$435 to produce provisional drawings. Out of 138,170 provisional applications submitted per year, the USPTO estimates that 78% or 107,773 applications will be submitted with drawings, for a total of \$46,881,255.

The USPTO estimates that at least \$234,585,545 could be added to the total

non-hour cost burden as a result of patent applicants using patent illustration firms to produce the drawings for their utility, design, plant, and provisional applications.

There is also annual nonhour cost burden in the way of filing fees associated with this collection. The filing, search, and examination fees for the utility, plant, design, and provisional applications (including the continuation and divisional, continued prosecution, and continuation-in-part applications) are determined by which filing status (other entity or small entity) the applicant has selected. The filing fees for the electronically-filed new utility applications for small entities are \$75, but for the rest of the applications the fees are the same as those for the paper applications. The small entity status does not apply to the petition to accept a delayed priority claim or to the petition to accept non-signing inventors or legal representatives/filing by other than all the inventors or a person not the inventor.

The total estimated filing costs of \$453,396,350 for this collection are calculated in the following charts. The first chart shows the filing, search, and examination fees for the various applications.

Item	Responses (yr)	Filing fee	Search fee	Examination fee	Total fees	Total non-hour cost burden (yr)
	(a)				(b)	(a) × (b)
Original New Utility Applications— No Application Data Sheet— Other Entity	113,680	\$300.00	\$500.00	\$200.00	\$1,000.00	\$113,680,000.00
Original New Utility Applications— No Application Data Sheet— Small Entity	48,720	150.00	250.00	100.00	500.00	24,360,000.00
Electronic Original New Utility Appli- cations—No Application Data Sheet—Other Entity	48,720	300.00	500.00	200.00	1,000.00	48,720,000.00
Electronic Original New Utility Appli- cations—No Application Data Sheet—Small Entity	20,880	75.00	250.00	100.00	425.00	8,874,000.00
Original New Plant Applications— No Application Data Sheet— Other Entity	780	200.00	300.00	160.00	660.00	514,800.00
Original New Plant Applications— No Application Data Sheet— Small Entity	335	100.00	150.00	80.00	330.00	110,550.00
Original New Design Applications— No Application Data Sheet— Other Entity	7,320	200.00	100.00	130.00	430.00	3,147,600.00
Original New Design Applications— No Application Data Sheet— Small Entity	7,625	100.00	50.00	65.00	215.00	1,639,375.00
Electronic Original New Design Appli- cations—No Application Data Sheet—Other Entity	3,145	200.00	100.00	130.00	430.00	1,352,350.00
Electronic Original New Design Appli- cations—No Application Data Sheet—Small Entity	3,265	100.00	50.00	65.00	215.00	701,975.00

Item	Responses (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Original New Utility Applications— Application Data Sheet—Other Entity	28,420	300.00	500.00	200.00	1,000.00	28,420,000.00
Original New Utility Applications— Application Data Sheet—Small Entity	12,180	150.00	250.00	100.00	500.00	6,090,000.00
Electronic Original New Utility Appli- cations—Application Data Sheet—Other Entity	12,180	300.00	500.00	200.00	1,000.00	12,180,000.00
Electronic Original New Utility Appli- cations—Application Data Sheet—Small Entity	5,220	75.00	250.00	100.00	425.00	2,218,500.00
Original New Plant Applications— Application Data Sheet—Other Entity	200	200.00	300.00	160.00	660.00	132,000.00
Original New Plant Applications— Application Data Sheet—Small Entity	85	100.00	150.00	80.00	330.00	28,050.00
Original New Design Applications— Application Data Sheet—Other Entity	1,830	200.00	100.00	130.00	430.00	786,900.00
Original New Design Applications— Application Data Sheet—Small Entity	1,910	100.00	50.00	65.00	215.00	410,650.00
Electronic New Design Applica- tions—Application Data Sheet— Other Entity	785	200.00	100.00	130.00	430.00	337,550.00
Electronic New Design Applica- tions—Application Data Sheet— Small Entity	820	100.00	50.00	65.00	215.00	176,300.00
Continuation/Divisional of an Inter- national Application—No Applica- tion Data Sheet—Other Entity	5,990	300.00	500.00	200.00	1,000.00	5,990,000.00
Continuation/Divisional of an Inter- national Application—No Applica- tion Data Sheet—Small Entity	1,570	150.00	250.00	100.00	500.00	785,000.00
Utility Continuation/Divisional Appli- cations—Other Entity	40,420	300.00	500.00	200.00	1,000.00	40,420,000.00
Utility Continuation/Divisional Appli- cations—Small Entity	16,510	150.00	250.00	100.00	500.00	8,255,000.00
Plant Continuation/Divisional Appli- cations—Other Entity	160	200.00	300.00	160.00	660.00	105,600.00
Plant Continuation/Divisional Appli- cations—Small Entity	70	100.00	150.00	80.00	330.00	23,100.00
Design Continuation/Divisional Appli- cations—Other Entity	365	200.00	100.00	130.00	430.00	156,950.00
Design Continuation/Divisional Appli- cations—Small Entity	385	100.00	50.00	65.00	215.00	82,775.00
Continued Prosecution Applica- tions—Design (Request Trans- mittal and Receipt)—Other Entity	125	200.00	100.00	130.00	430.00	53,750.00
Continued Prosecution Applica- tions—Design (Request Trans- mittal and Receipt)—Small Entity	135	100.00	50.00	65.00	215.00	29,025.00
Utility Continuation-in-Part Applica- tions—Other Entity	12,580	300.00	500.00	200.00	1,000.00	12,580,000.00
Utility Continuation-in-Part Applica- tions—Small Entity	5,140	150.00	250.00	100.00	500.00	2,570,000.00
Plant Continuation-in-Part Applica- tions—Other Entity	50	200.00	300.00	160.00	660.00	33,000.00
Plant Continuation-in-Part Applica- tions—Small Entity	20	100.00	150.00	80.00	330.00	6,600.00
Design Continuation-in-Part Applica- tions—Other Entity	235	200.00	100.00	130.00	430.00	101,050.00
Design Continuation-in-Part Applica- tions—Small Entity	245	100.00	50.00	65.00	215.00	52,675.00
Provisional Application for Patent Cover Sheets—Other Entity	36,500	200.00	N/A	N/A	200.00	7,300,000.00
Provisional Application for Patent Cover Sheets—Small Entity	60,180	100.00	N/A	N/A	100.00	6,018,000.00

Item	Responses (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Electronic Provisional Application for Patent Cover Sheets—Other Entity	15,690	200.00	N/A	N/A	200.00	3,138,000.00
Electronic Provisional Application for Patent Cover Sheets—Small Entity	25,800	100.00	N/A	N/A	100.00	2,580,000.00
Petition to Accept Unintentionally Delayed Priority Claim	920	1,300.00	N/A	N/A	1,300.00	1,196,000.00
Petition to Accept Non-Signing Inventors or Legal Representatives/ Filing by Other Than all the Inventors or a Person not the Inventor	2,400	200.00	N/A	N/A	200.00	480,000.00
Totals	543,590	.....	.....	.....	.....	\$345,837,125.00

The second chart calculates the additional fees incurred when an application is filed with additional sheets or excess claims. The USPTO

estimates that these fees apply to 311,905 of the 543,590 total applications filed per year. This chart is a subset of the first chart and adds an additional

\$89,020,075 to the annualized (non-hour) costs; however, it does not change the number of responses. These fees are also determined by the filing status.

Item	Responses (yr) (a)	Filing fee for additional sheets and claims	Average fee (b)	Total non-hour cost burden (yr) (a) × (b)
Provisional Application Size Fee for Each Provisional Application for Patent Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets—Other Entity.	2,400	\$200.00 per each 50 Sheets over 100.	\$500.00	\$1,200,000.00
Provisional Application Size Fee for Each Provisional Application for Patent Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets—Small Entity.	2,300	\$100.00 per each 50 Sheets over 100.	260.00	598,000.00
Utility and Plant Applications, with independent claims in excess of 3—Other Entity.	95,000	\$200.00 for each claim over 3	400.00	38,000,000.00
Utility and Plant Applications, with independent claims in excess of 3—Small Entity.	36,000	\$100.00 for each claim over 3	200.00	7,200,000.00
Utility and Plant Applications, filed with Claims in Excess of 20—Other Entity.	115,000	\$50.00 for each claim over 20	200.00	23,000,000.00
Utility and Plant Applications, filed with Claims in Excess of 20—Small Entity.	50,000	\$25.00 for each claim over 20	300.00	15,000,000.00
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 Sheets—Other Entity.	7,500	\$250.00 for each additional 50 sheets over 100.	425.00	3,187,500.00
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 Sheets—Small Entity.	3,500	\$125.00 for each additional 50 sheets over 100.	225.00	787,500.00
Plant Application Size Fee for Each Original New Plant Application, filed with Each Additional 50 Sheets Exceeding 100 Sheets—Other Entity.	25	\$250.00 for each additional 50 sheets over 100.	275.00	6,875.00
Plant Application Size Fee for Each Original New Plant Application, filed with Each Additional 50 Sheets Exceeding 100 Sheets—Small Entity.	10	\$125.00 for each additional 50 sheets over 100.	265.00	2,650.00
Design Application Size Fee for Each Original New Design Application, filed for each Additional 50 Sheets that Exceeds 100 Sheets—Other Entity.	110	\$250.00 for each additional 50 sheets over 100.	265.00	29,150.00
Design Application Size Fee for Each Original New Design Application, filed for each Additional 50 Sheets that Exceeds 100 Sheets—Small Entity.	60	\$125.00 for each additional 50 sheets over 100.	140.00	8,400.00
Totals	311,905	.....	.....	\$89,020,075.00

The third chart calculates the surcharges and fees incurred when an application, the search or examination fee, or the oath or declaration is filed

late, when the application is filed with multiple dependent claims, or when the application is filed with a non-English specification. The USPTO estimates that

these fees apply to 153,040 of the 543,590 total applications filed per year. This chart is a subset of the first chart and adds an additional \$18,539,150 to

the annualized (non-hour) costs; however, it does not change the number of responses. Except for the fee for the

non-English specification, these fees are also determined by the filing status.

Item	Responses (yr)	Surcharge fee for late filing, multiple dependent claims, or non-English specification fees	Total non-hour cost burden (yr)
	(a)		(a) × (b)
Surcharge for Late Filing of Provisional Application for Patent Cover Sheets—Other Entity	3,910	\$50.00	\$195,500.00
Surcharge for Late Filing of Provisional Application for Patent Cover Sheets—Small Entity	5,650	25.00	141,250.00
Utility and Plant Applications, filed with Multiple Dependent Claims—Other Entity	8,000	360.00	2,880,000.00
Utility and Plant Applications, filed with Multiple Dependent Claims—Small Entity	3,600	180.00	648,000.00
Utility, Plant, and Design Applications, Filed with a Surcharge for Late Filing, Search or Examination Fee, or Oath/Declaration—Other Entity	90,000	130.00	11,700,000.00
Utility, Plant, and Design Applications, Filed with a Surcharge for Late Filing, Search, or Examination Fee, or Oath/Declaration—Small Entity	38,000	65.00	2,470,000.00
Non-English Specification	3,880	130.00	504,400.00
Totals	153,040	.....	18,539,150.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of capital start-up, postage, recordkeeping, and drawing costs, in addition to the filing fees, is \$695,587,260 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 31, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E6-15048 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-16-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, September 20, 2006, 9:30 a.m.–12 p.m.

PLACE: Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- I. Chair's Opening Remarks.
- II. Consideration of Prior Meeting's Minutes.
- III. Committee Reports.
- IV. CEO Report.
- V. Public Comment.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, September 18, 2006.

FOR FURTHER INFORMATION CONTACT: David Premo, Public Affairs Associate, Public Affairs, Corporation for National and Community Service, 10th Floor, Room 10302E, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606-6717. Fax (202) 606-3460. TDD: (202) 606-3472. E-mail: dpremo@cns.gov.

Dated: September 7, 2006.

Frank R. Trinity,
General Counsel.

[FR Doc. 06-7605 Filed 9-8-06; 11:01 am]

BILLING CODE 6050--\$-P

DEPARTMENT OF DEFENSE

Office of the Secretary

No. DOD-2006-HA-0195]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Health Affairs) announces the proposed extension of an information collection and seeks public comment on the provisions thereof. Comments Are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 13, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 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 submission 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Assistant Secretary of Defense for Health Affairs (OASD), TRICARE Operations Division, Attn: Danita Hunter, 5111 Leesburg Pike, Suite 810A, Falls Church, VA 22041-3206, or call (703) 681-0039.

Title and OMB Number: Women, Infant, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720-0030.

Needs and Uses: The proposed information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals and households.

Annual Burden Hours: 187.5.

Number of Respondents: 375.

Responses per Respondent: 2.

Average Burden per Response: 15 minutes.

Frequency: Initially and Every Six Months.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of the program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improved the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Respondents are individuals who are members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with,

employed by, or accompanying the armed forces at these locations who desire to receive supplemental food and nutrition education services. To be eligible for the DoD special supplemental food program, a person must be a member of the armed forces on duty at stations outside the U.S. (and its territories and possessions) or an eligible civilian serving with, employed by, or accompanying the armed forces outside the U.S. (and its territories and possessions). Additionally, the person must be found to be at nutritional risk. Specifically, to be certified as eligible to receive benefits under the program, a person must:

- Meet specified program income guidelines published by the Secretary of Health and Human Services, and
- Meet one of the criteria listed determined to be indicative of nutritional risk.

Determinations of income eligibility and nutritional risk will be made to the extent practicable using applicable standards used by the USDA in determining eligibility for the domestic Women, Infants, and Children (WIC) program. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the state of Alaska.

Dated: September 5, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-7590 Filed 9-11-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF-2006-0014]

Proposed Collection; Comment Request

AGENCY: Air Force Recruiting Service, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Recruiting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 13, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name, docket number and title 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: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense, Air Force Recruiting Service, (AFRS/RSOP), 550 D Street West, Suite 1, Randolph AFB TX 78150-4527, Attn: *Enlisted Accessions Branch* or call 210-565-0349.

Title: Associated Form; and OMB Number: Personal Interview Record, AETC Form 1319; Financial Status of Applicant, AETC Form 1325; Request for Evaluation and Information, AETC Form 1419; OMB Number 0701-0079.

Needs and Uses: The information collection requirement is necessary for use by recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and education are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information.

Affected Public: Individual or households.

Annual Burden Hours: 88,536.

Number of Respondents: 108,500.

Responses per Respondent: 1.

Average Burden per Response: 49 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:**Summary of Information Collection**

Respondents are civilian non prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be readily assured of the qualifications of the applicant.

Dated: September 5, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-7591 Filed 9-11-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE**Defense Contract Audit Agency****Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards**

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Senior Executive Service Performance Review Boards.

SUMMARY: This notice announces the appointment of members to the Defense Contract Audit Agency (DCAA) Performance Review Boards. The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, Defense Contract Audit Agency, regarding final performance ratings and performance awards for DCAA SES members.

DATES: *Effective Date:* September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Rita Blakeslee, Chief, Human Resources Management Division, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060-6219, (703) 767-1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DCAA career executives appointed to serve as members of the DCAA Performance Review Boards. Appointees will serve one-year terms effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Joseph Garcia, Assistant Director, Operations, DCAA, chairperson.
Mr. Ken Saceoccia, Assistant Director, Policy and Plans, DCAA, member.
Mr. John Farenish, General Counsel, DCAA, Member.

Regional Performance Review Board

Mr. Michael Steen, Regional Director, MidAtlantic Region, DCAA, chairperson.
Mr. Ed Nelson, Regional Director, Northeastern Region, DCAA, member.
Mr. Paul Phillips, Regional Director, Eastern Region, member.

Dated: September 5, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-7589 Filed 9-11-06; 8:45 am]

BILLING CODE 5001-06-M

DELAWARE RIVER BASIN COMMISSION**Notice of Commission Meeting and Public Hearing**

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, September 27, 2006. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:15 a.m. Topics of discussion will include a presentation on proposed revisions to the State of New Jersey's Flood Plain Regulations; general discussion of Basin-wide flood mitigation and flood loss reduction planning; a presentation on preliminary findings of a U.S. Fish & Wildlife Service dwarf wedgemussel habitat study; a presentation by the Water Management Advisory Committee Chair on a recommended policy for water transfers and a proposed water loss accountability program; and a second-year status report on implementation of the Commission's 2004 *Water Resources Plan for the Delaware River Basin*.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Matamoras Municipal Authority D-81-78 CP-5*. An application to replace

the withdrawal of water from Well No. 8 in the applicant's public water supply distribution system with a withdrawal from Well No. 8A, because Well No. 8 has become an unreliable source of supply. The applicant requests that the maximum total withdrawal from all wells remain unchanged, at 11.7 million gallons per thirty days (mg/30 days). The replacement well is located in the Pleistocene Outwash Formation in the Delaware River Watershed in Matamoras Borough, Pike County, Pennsylvania.

2. *Joseph Jackewicz, Sr. D-91-53-2*. An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of 219.8 mg/30 days to supply the applicant's agricultural irrigation system from replacement Well No. Townsend 3, eight existing wells and one existing surface water intake. The project is located in the Tidbury Creek, Cypress Branch and Double Run watersheds in the Town of Magnolia, Kent County, Delaware.

3. *Maidencreek Township Authority D-91-58 CP-4*. An application for approval of a ground water withdrawal project to supply up to 14.39 mg/30 days of water to the applicant's public water supply distribution system from new Well No. 5 in the Allentown Formation, and to retain the existing withdrawal from all wells of 22.7 mg/30 days. Well No. 5 is proposed as a redundant source to provide flexibility and reliability in operation of the applicant's public water supply distribution system. The project is located in the Maiden Creek Watershed in Maiden Creek Township, Berks County, Pennsylvania.

4. *Solvay Solaxis D-69-84-2*. An application for the approval of a ground water withdrawal project to increase the allocation of water from 2 mg/30 days to 60 mg/30 days to the docket holder's industrial supply distribution system through two existing wells (Wells Nos. 417 and 418) and to supply up to 14.91 mg/30 days of water to the docket holder's ground water remediation program through four new wells (Wells Nos. RW1 through RW4). The project is located in the Delaware River Watershed in West Deptford Township, Gloucester County, New Jersey.

5. *Reading Regional Airport Authority D-86-38 CP-2*. An application to upgrade and expand an existing 0.175 million gallon per day (mgd) secondary wastewater treatment plant (WWTP) to 0.42 mgd. The project is located at the western end of the existing WWTP site off Leiscz's Bridge Road between Reading Regional Airport and the Schuylkill River in Bern Township,

Berks County Pennsylvania. The project service area includes the Reading Regional Airport and associated development, the West Shore area, the Water District area and the Saint Joseph Medical Center area, all in Bern Township. Much of the existing plant will be replaced by new treatment facilities which includes Sequencing Batch Reactors biological processing, aerobic sludge digesters and gas chlorination prior to discharge to the Schuylkill River at the existing discharge point. Please note the docket number change. A Notice of Application Received was issued for this application on April 2, 2004 under D-2004-16.

6. *Antietam Valley Municipal Authority D-87-45 CP-2*. An application to modify a 1.225 mgd WWTP to more effectively process hydraulic surges due to wet weather-related infiltration and inflow (I & I) to the collection system. The WWTP will continue to serve predominantly residential portions of St. Lawrence Borough, Mount Penn Borough, and Exeter and Lower Alsace townships, all within Berks County, Pennsylvania. The WWTP is located on Butter Lane in St. Lawrence Borough just east of the intersection of State Route 562 and U.S. Route 422. The WWTP will continue to discharge to Antietam Creek in the Schuylkill River Watershed through the existing outfall. No increase in treatment capacity is proposed, as the docket holder will continue its efforts to control I & I.

7. *Waste Management Disposal Services of Pennsylvania, Inc. D-88-54-3*. An application to modify a landfill leachate treatment plant (LTP) discharge to the tidal Delaware River via a constructed discharge cove in DRBC Water Quality Zone 2. The 0.1 mgd LTP serves the GROWS and Tullytown Sanitary Landfills and is located off Bordertown Road in Falls Township, Bucks County, Pennsylvania. The LTP utilizes best available treatment technology to remove organic and inorganic contaminants, with the exception of total dissolved solids (TDS). The docket holder has requested that its docket be modified to allow an interim average concentration of up to 15,000 milligrams per liter (mg/l) of TDS in the plant's discharge, an increase from the current limit of 10,000 mg/l as an average. Approximately 3,000 mg/l of TDS is added to the leachate treatment process to facilitate ammonia stripping, metals prescription and sludge conditioning. The proposed LTP discharge is expected to increase background TDS in the estuary by less than 0.5 percent. An environmental study will be conducted to demonstrate

that no adverse impact will occur to aquatic life in the discharge cove before an application to increase the LTP effluent TDS concentration to 19,100 mg/l is considered. The project involves no expansion of the treatment facilities or treatment capacity.

8. *Mount Airy #1, LLC D-89-37-2*. An application for approval of a ground water withdrawal project to supply up to 9.5 mg/30 days of water to the applicant's distribution system from new Wells Nos. 1 and 2. The project is located in the Long Run Member of the Catskill Formation in the Forest Hills Run Watershed in Paradise Township, Monroe County, Pennsylvania.

9. *Town of Smyrna D-93-72 CP-2*. An application to replace the withdrawal of water from Well No. 1A in the applicant's water supply system because it has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 3 and existing Wells Nos. 1 and 2A be increased from 33.99 mg/30 days to 34 mg/30 days. The project is located in the Columbia/Cheswold Formation in the Smyrna River Watershed in the Town of Smyrna, Kent County, Delaware.

10. *Degussa Corporation D-96-11-2*. An application to expand the industrial waste treatment plant's (IWTP) existing discharge to the Delaware River from 0.95 mgd to 1.15 mgd. In conjunction with the expanded discharge, the applicant also has requested a new determination of the IWTP's allowable Total Dissolved Solids limit. The facility, which will continue to serve only the applicant's silica production operations, is located in the City of Chester, Delaware County, Pennsylvania.

11. *Moyer Packing, Rendering and Beef Facility D-96-21-2*. An application to re-establish the DRBC's industrial wastewater treatment plant (IWTP) effluent Total Dissolved Solids (TDS) determination of 3,100 mg/l, issued to Moyer Packing Company (MOPAC) in 1985. The TDS determination was later replaced by an osmotic pressure limit contained in the facility's NPDES Permit. DRBC staff has determined that the effluent TDS limit of 3,100 mg/l is not protective of a downstream agricultural use and is recommending that the Commission rescind the TDS limit currently in effect and impose the Commission's basinwide TDS standard of 1000 mg/l, unless the applicant provides the downstream irrigation user with an alternative water source. No increase of MOPAC's 0.75 mgd IWTP capacity is proposed. The IWTP will continue to serve only the MOPAC meat packing and rendering facility, which is located in Franconia Township,

Montgomery County, Pennsylvania. IWTP effluent will continue to discharge to Skippack Creek in the Schuylkill River Watershed through the existing outfall.

12. *Green-Waltz Water Company/Nestle Waters North America Inc. D-98-55-3*. An application for approval of a ground water withdrawal project to supply up to 4.8 mg/30 days of water for bulk water supply to the applicant's bottling plant from new Spring Water Borehole B-2, in the Martinsburg Formation. The applicant has requested an increase in total allocation from 11.7 mg/30 days to 16.5 mg/30 days. The project is located in the Waltz Creek Watershed in Washington Township, Northampton County, Pennsylvania.

13. *City of Easton D-99-62 CP*. An application to increase the applicant's surface water withdrawal allocation from 10 mgd to 12 mgd (360 mg/month) via its intake on the Delaware River at the northeast corner of the City of Easton, Northampton County, Pennsylvania. The proposed expansion is needed to serve increased population in the applicant's existing service area which includes the City of Easton; Wilson, Glendon and West Easton Boroughs; Palmer and Forks Townships; and portions of Williams, Bethlehem and Lower Nazareth Townships; all in Northampton County, Pennsylvania. No additional treatment or storage facilities are proposed.

14. *Upper Saucon Township D-2000-51 CP-2*. An application for approval of a ground water withdrawal project to supply up to 32.16 mg/30 days of water to the docket holder's public supply distribution system through one new well (Well No. CC2) and two existing wells (Wells Nos. CC1 and Abandoned Mine Shaft). The individual allocation for the Abandoned Mine Shaft Well is a reduction from the previous allocation of 30 mg/30 days to 3 mg/30 days; however, the proposed total allocation for all sources is an increase from the previous total allocation for all sources of 30 mg/30 days. The project is located in the Brunswick Formation in the Saucon Creek Watershed in Upper Saucon Township, Lehigh County, Pennsylvania.

15. *Little Washington Wastewater Co. D-2002-42-2*. An application for expansion of the White Haven Borough WWTP from 0.45 mgd to 0.6 mgd. The expansion is proposed to accommodate wastewater flows from areas formerly served by the aging Hickory Hills and Ag-Mar WWTPs, in accordance with a Consent Order and Agreement between PADEP and Foster Township. The WWTP will continue to discharge to the Lehigh River, which is tributary to the

Lower Delaware River Special Protection Waters. The facility is located in White Haven Borough, Luzerne County, Pennsylvania.

16. *Great Wolf Lodge D-2003-25-2.*

An application for the approval of the addition of a 60,000 gallon equalization tank and associated modifications to the existing 90,000 gpd WWTP. The WWTP will continue to discharge to Scot Run, a tributary of the Pocono Creek, which is a tributary of the Brodhead Creek. The Brodhead Creek is a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Pocono Township, Monroe County, Pennsylvania.

17. *Alsace Township D-2006-5 CP-1.*

An application to construct a 0.071 mgd WWTP to process domestic wastewater from 201 homes in Alsace Township that are currently served by on-lot septic systems. The extended aeration plant will be constructed at the intersection of Alsace Avenue and Kegerise Drive in Alsace Township, Berks County, Pennsylvania. WWTP effluent will be discharged to an unnamed tributary of Little Manatawny Creek in the Schuylkill River Watershed.

18. *Delaware River Joint Toll Bridge Commission D-2006-7 CP-1.*

An application for approval of a bridge modification project, located in a recreational area which is included in the DRBC Comprehensive Plan. The U.S. Route 1 Toll Bridge connects the Borough of Morrisville, Bucks County, Pennsylvania with the City of Trenton, Mercer County, New Jersey and is located at the base of DRBC Water Quality Zone 1E. The bridge will be widened at a point where it passes over the Delaware Canal, formerly known as Roosevelt State Park.

19. *Green Walk Trout Hatchery D-2006-8-1.*

An application for approval of a ground water withdrawal project to supply up to 12.96 mg/30 days of water to the applicant's commercial trout hatchery from existing Wells Nos. W-2, W-5 and W-6. The total allocation will be limited to 12.96 mg/30 days. Ground water withdrawals will be used to augment the flow of Greenwalk Creek and provide cold, oxygenated water to the applicant's trout stocking facility. The project is located in the Waltz Creek Watershed in Washington Township, Northampton County, Pennsylvania.

20. *Ingersoll-Rand Company D-2006-14-1.*

An application for the approval of an existing groundwater remediation discharge project located at the Ingersoll-Rand facility in Phillipsburg, New Jersey. The existing remediation system discharges approximately 0.090 mgd via Outfall 002 to Lopatcong Creek, which converges with the Delaware

River at River Mile 182, within a reach classified as "Significant Resource Waters." The facility is located in the Town of Phillipsburg and Lopatcong Township, Warren County, New Jersey.

21. *Clement Pappas & Co., Inc. D-2006-15-1.* An application for the approval of an existing 2.0 mgd cooling water discharge that serves the applicant's food processing facility. The food processing operation consists of bottling fruit juices and cranberry sauces. The cooling water is discharged to Foster Run, which is a tributary to the Cohansey River. The facility is located in Upper Deerfield Township, Cumberland County, New Jersey.

22. *Cove Haven Inc., d/b/a Caesars Brookdale on the Lake Resort D-2006-19-1.* An application for the approval of the existing Caesars Brookdale on the Lake Resort's WWTP discharge of 0.084 mgd. The WWTP will continue to discharge to Brookdale Lake, which discharges to Scot Run. Scot Run is a tributary to the Pocono Creek, which is tributary to the Brodhead Creek. The Brodhead Creek is a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Pocono Township, Monroe County, Pennsylvania.

23. *Cove Haven Inc., d/b/a Caesars Paradise Stream Resort D-2006-20-1.* An application for approval of an existing 0.1 mgd discharge from the WWTP that serves the Caesars Paradise Stream Resort. The WWTP will continue to discharge to Paradise Creek, which is a tributary to the Brodhead Creek. The Brodhead Creek is a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Paradise Township, Monroe County, Pennsylvania.

24. *White Pines Partners, L.P. D-2006-22-1.* An application for approval of a ground water withdrawal project to supply up to 4.968 mg/30 days of water to the applicant's Island Green golf course irrigation system from new Well PW-1. The project is located in the Wissahickon Schist Formation in the Pennypack Creek Watershed in the City of Philadelphia, Pennsylvania.

25. *Council Rock School District D-2006-24 CP-1.* An application for approval of a ground water withdrawal project to supply up to 2.722 mg/30 days of water to the applicant's athletic field irrigation system from new Wells Nos. 1 and 2. The project is located in the Stockton Formation in the Neshaminy Creek Watershed in Northampton Township, Bucks County, Pennsylvania and within the Southeastern Pennsylvania Ground Water Protected Area.

In addition to the public hearing on the dockets listed above, the Commission's 1:30 p.m. business meeting will include: a public hearing and consideration of a resolution to extend the Special Protection Waters designation for the Lower Delaware River; a public hearing and consideration of a resolution approving the Commission's Water Resources Program for Fiscal Years 2007-12; a resolution authorizing the Executive Director to enter into an agreement with the National Oceanic and Atmospheric Administration for the purpose of installing snow pack gauges in the Upper Basin; a resolution authorizing the Executive Director to enter into an agreement for consulting services in connection with the acquisition of a data management system; and a public hearing and consideration of a resolution approving the DRBC Fiscal Year 2007-08 Budget and Work Plan.

The meeting will also include: adoption of the Minutes of the Commission's July 19, 2006 business meeting; announcements of upcoming advisory committee meetings and other events; a report by the Executive Director; a report by the Commission's General Counsel; and an opportunity for public dialogue.

Draft dockets scheduled for public hearing on September 27, 2006 will be posted on the Commission's Web site, <http://www.drbc.net>, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609-883-9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609-883-9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: September 5, 2006.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E6-15035 Filed 9-11-06; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF ENERGY**Energy Information Administration****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Uranium Data Program Forms EIA-851A, "Domestic Uranium Production Report—Annual," EIA-851Q, "Domestic Uranium Production Report—Quarterly," and EIA-858, "Uranium Marketing Annual Survey," to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

DATES: Comments must be filed by October 12, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to John Asalone, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202-395-7285 or e-mail to John_A._Asalone@omb.eop.gov is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395-4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kara Norman. To ensure receipt of the comments by the due date, submission by FAX (202-287-1705) or e-mail

(kara.norman@eia.doe.gov) is also recommended. The mailing address is Statistics and Methods Group (EI-70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585-0670. Kara Norman may be contacted by telephone at (202) 287-1902.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e.,

the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA-851A, "Domestic Uranium Production Report—Annual," EIA-851Q, "Domestic Uranium Production Report—Quarterly," and EIA-858, "Uranium Marketing Annual Survey".

2. Energy Information Administration.

3. OMB Number: 1905-0160.

4. Revision and three year extension.

5. Mandatory.

6. EIA's Uranium Data Program collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include uranium exploration, reserves, production, processing, and marketing. The data are used for analyses and publications. Respondents include firms and individuals that comprise the U.S. uranium industry.

7. Business or other for-profit.

8. 1,185 hours annually.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, September 6, 2006.

Jay H. Casselberry,

Energy Information Administration.

[FR Doc. E6-15056 Filed 9-11-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

July 26, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06-66-000.

Applicants: Scurry County Wind L.P.

Description: Scurry County Wind, LP submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 7/21/2006.

Accession Number: 20060726-0095.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00-3614-005; ER04-611-003.

Applicants: BP Energy Company; BP West Coast Products, LLC.

Description: BP Energy Co, *et al.* submit an update to a 5/3/06 supplemental information filing and on 7/25/06 submit the original signature page of the supplemental affidavit to this filing.

Filed Date: 7/24/2006; 07/25/2006.

Accession Number: 20060726-0048.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Docket Numbers: ER01-316-021.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits its Index of Customers for second quarter of 2006, pursuant to Commission letter order issued 6/1/01.

Filed Date: 7/24/2006.

Accession Number: 20060726-0097.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Docket Numbers: ER04-925-009.

Applicants: Merrill Lynch

Commodities, Inc.

Description: Merrill Lynch Commodities, Inc submits a notice of non-material change in circumstances.

Filed Date: 7/24/2006.

Accession Number: 20060726-0099.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Docket Numbers: ER05-1501-003.

Applicants: California Independent System Operator Corporation.

Description: The California Independent System Operator Corp submits an informational filing relating to their 3/22/06 conformed Simplified & Reorganized Tariff.

Filed Date: 7/21/2006.

Accession Number: 20060726-0094.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER06–20–005.
Applicants: E.ON U.S.; Louisville Gas & Electric Company; Kentucky Utilities Company.

Description: E.ON U.S. LLC, Louisville Gas & Electric Co & Kentucky Utilities Co submit a complete and clean revised version of its OATT, including all changes submitted to FERC on 7/19/06.

Filed Date: 7/21/2006.

Accession Number: 20060726–0101.

Comment Date: 5 p.m. Eastern Time on Friday, August 04, 2006.

Docket Numbers: ER06–1268–000.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Co submits its Second Revised FERC Rate Schedule 146.

Filed Date: 7/21/2006.

Accession Number: 20060725–0062.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER06–1269–000.

Applicants: PPL Electric Utilities Corporation.

Description: PPL Electric Utilities submits a notice of termination for an Interconnection Agreement with PPL Electric and Masonic Homes, designated as Service Agreement No. 700.

Filed Date: 7/21/2006.

Accession Number: 20060725–0060.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Docket Numbers: ER06–1273–000.

Applicants: Wolverine Trading LLC.

Description: Wolverine Trading, LLC requests a petition for acceptance of its initial tariff, waivers and blanket authority for FERC Electric Tariff, Original Volume 1.

Filed Date: 7/24/2006.

Accession Number: 20060726–0096.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Docket Numbers: ER06–1274–000.

Applicants: Duke Power Company LLC.

Description: Duke Power Co, LLC submits two Network Integration Service Agreements for Network Integration Transmission Service with the City of Kings Mountain, NC and the Town of Dallas, NC.

Filed Date: 7/24/2006.

Accession Number: 20060726–0098.

Comment Date: 5 p.m. Eastern Time on Monday, August 14, 2006.

Docket Numbers: ER06–1275–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits its 115kV Interconnection Project Wholesale Distribution Load Interconnection Facilities Agreement etc. with the City of Moreno Valley.

Filed Date: 7/21/2006.

Accession Number: 20060726–0100.

Comment Date: 5 p.m. Eastern Time on Friday, August 11, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6–15114 Filed 9–11–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Kerr-Philpott Project, SEPA–46; Correction

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order; correction.

SUMMARY: The Southeastern Power Administration published a document in the **Federal Register** of August 28, 2006 (71 FR 50902), containing notice of interim approval of new rate schedules for Southeastern's Kerr-Philpott System. The document omitted rate schedule VA–3–A.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635, (706) 213–3835.

Dated: September 6, 2006.

Jon C. Worthington,

Deputy Assistant Administrator for Power Marketing Liaison.

Wholesale Power Rate Schedule VA–3–A

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Virginia and North Carolina to whom power may be scheduled pursuant to contracts between the Government, Virginia Electric and Power Company (hereinafter called the Company), the Company's Transmission Operator, currently PJM Interconnection LLC (hereinafter called PJM), and the Customer. The Government is responsible for providing the scheduling. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: \$2.35 per kilowatt of total contract demand per month.

Energy Charge: 9.38 mills per kilowatt-hour.

The Capacity Charge and the Energy Charge will be subject to annual adjustment on January 1 of each year based on transfers to plant in service for the preceding Fiscal Year that are not included in the proposed

repayment study. The adjustment will be for each increase of \$1,000,000 to plant in service an increase of \$0.01 per kilowatt per month added to the capacity charge and 0.04 mills per kilowatt-hour added to the energy charge.

Additional rates for Transmission and Ancillary Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company or PJM. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Ancillary Services: 3.63 mills per kilowatt-hour of energy as of February 2006, is presented for illustrative purposes.

The initial charge for transmission and ancillary services will be the Customer's ratable share of the charges for transmission, distribution, and ancillary services paid by the Government. The charges for transmission and ancillary services are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving the Company's or PJM's Open Access Transmission Tariff (OATT).

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission, ancillary services, and distribution charges paid by the Government in behalf of the Customer. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Tandem Transmission Charge: \$1.69 per kilowatt of total contract demand per month, as an estimated cost as of February 2006.

The tandem transmission charge will recover the cost of transmitting power from a project to the border of another transmitting system. This rate will be a formulary rate based on the cost to the Government for transmission of power from the Philpott project to the border of the Virginia Electric and Power Company System and the cost to the Government for transmission of power from the John H. Kerr Project to the border of the Carolina Power & Light System. These charges could be recovered through a capacity charge or an energy charge, as determined by the Government.

Transmission and Ancillary Services: The charges for Transmission and Ancillary Services shall be governed by and subject to refund based upon the determination in the proceeding involving the Company's or PJM's Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the

Company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. The applicable energy loss factor for transmission is specified in the OATT.

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company or PJM under Section 205 of the Federal Power Act or Southeastern Power Administration under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

[FR Doc. E6-15057 Filed 9-11-06; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8218-7]

State Innovation Grant Program, Preliminary Notice on the Development of a Solicitation for Proposals for 2007 Awards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U. S. Environmental Protection Agency, National Center for Environmental Innovation (NCEI) is giving preliminary notice of its intention to solicit proposals for a 2007 grant program to support innovation by state environmental agencies—the "State Innovation Grant Program." In addition, EPA is asking each State Environmental Regulatory Agency to designate a point of contact at the management level (in addition to the Commissioner or Cabinet Secretary level) who will be the point of contact for further communication about the upcoming solicitation. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year's competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year's competition. EPA anticipates publication of a Solicitation Announcement of Federal Funding Opportunity on the Federal government's grants opportunities Web site (<http://www.grants.gov>) to announce the availability of the next solicitation approximately four weeks after publication of this announcement.

DATES: State Environmental Regulatory agencies will have 30 days from the date of this pre-announcement notice in the **Federal Register** publication until

October 12, 2006 to respond with point of contact information for the person within the State Environmental Regulatory Agency (in addition to Commissioner or Cabinet Secretaries) who will be designated to receive future notices about the State Innovation Grants. We will automatically transmit notice of availability of the solicitation to people in State agencies identified for previous solicitations.

ADDRESSES: Information should be sent to: State Innovation Grant Program; National Center for Environmental Innovation; Office of Policy, Economics, and Innovation; U.S. Environmental Protection Agency (1807T), 1200 Pennsylvania Avenue, NW., Washington DC 20460. Responses may also be sent by fax to (202) 566-2220, addressed to the "State Innovation Grant Program," or by e-mail to:

Innovation_State_Grants@EPA.gov. We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address or fax number, or you may call Sherri Walker at (202) 566-2186. For point of contact information, please provide: name, title, department and agency, street or post office address, city, state, zip code, telephone, fax number, and e-mail address. EPA will acknowledge all responses it receives to this notice.

SUPPLEMENTARY INFORMATION:

Background

In April 2002, EPA issued its plan for future innovation efforts, published as *Innovating for Better Environmental Results: A Strategy to Guide the Next Generation of Innovation at EPA* (EPA 100-R-02-002; <http://www.epa.gov/innovation/strategy/>). The Agency's *Innovation Strategy* presents a framework for environmental innovation consisting of four major elements:

- (1) Strengthen EPA's innovation partnership with States;
- (2) Focus on priority environmental issues;
- (3) Diversify environmental protection tools and approaches;
- (4) Foster more "innovation-friendly" organizational culture and systems.

This assistance program strengthens EPA's partnership with the States by supporting innovation compatible with the *Innovation Strategy*. EPA would like to help States build on previous experience and undertake strategic innovation projects that promote larger-scale models for "next generation" environmental protection and promise better environmental results. EPA is interested in funding projects that go

beyond a single facility experiment to promote change that is “systems-oriented” and provides better results from a program, process, or sector-wide innovation. EPA is particularly interested in innovation that promotes integrated (cross-media) environmental management with high potential for transfer to other States.

Since 2002, EPA has sponsored four State Innovation Grant Program competitions that asked for State project pre-proposals that support innovation generally related to environmental permitting programs. This has included alternatives to permitting and the establishment of incentives to go beyond compliance with permit requirements. To date, projects have clustered primarily around three target areas: Environmental Results Programs (ERP), Environmental Management Systems (EMS), and the National Environmental Performance Track (PT) Program and similar state performance-based environmental leadership programs. Twenty-nine awards to States have been made from the four prior competitions. These projects amount to approximately \$5 million in assistance to States. Among the grant projects, including those with pending awards: 14 are for development of Environmental Results Programs, 8 relate to Environmental Management Systems and permitting (one project a hybrid of EMS and ERP), 5 create or enhance Performance-Based Environmental Leadership programs, 2 are for Watershed-based permitting, and 1 was for permit process streamlining through innovative information technology applications. For more information on last year’s solicitation, the proposals received, and the award decisions, please see the Web site at: <http://www.epa.gov/innovation/stategrants>.

Proposed General Topic Areas for Solicitation

To increase the likelihood of strategic impact with what we anticipate to be limited funds, EPA proposes to continue with the general theme of “innovation in permitting,” and additionally to continue with the focus on the three topic areas similar to the last competition: (1) Projects that support the development of state Environmental Results Programs (ERP); (2) projects which involve the application of Environmental Management Systems (EMS) including those that explore the relationship of EMS to permitting or otherwise promote the use of EMS to improve environmental performance beyond permit requirements (see *EPA’s Strategy for Determining the Role of*

EMS in Regulatory Programs at <http://www.epa.gov/ems> or http://www.epa.gov/ems/docs/EMS_and_the_Reg_Structure_41204Fpdf); (3) projects that support state performance-based environmental leadership programs or state support for implementation of the National Environmental Performance Track Program, particularly including the development and implementation of incentives. EPA’s focus on a small number of topics within this general subject area effectively concentrates the limited resources available for greater strategic impact. Project selections and awards will be subject to funding availability. In addition, EPA may contemplate a very limited number of projects otherwise related to the general theme of innovation in permitting, in particular as they may address EPA Regional and State environmental permitting priorities.

EPA encourages communication from States about potential thematic areas for the future. Please note that these grants will not be applied to the development or demonstration of new environmental technologies, nor will NCEI fund projects that propose development or upgrading of information technology systems for anything other than a very *minor* component of the project. Projects will be much less likely to be funded through the State Innovation Grant Program if agency resources pertinent to the topic are already available through another EPA program.

Competition Limited to the State Environmental Regulatory Agency

The competition will be limited to the principal Environmental Regulatory Agency within each State, although these agencies are encouraged to partner with other agencies within the State that have environmental mandates (e.g., energy, agriculture, natural management, transportation, public health). EPA will accept only one proposal from an individual State and it must be submitted by the principal Environmental Regulatory Agency from that State. States are also encouraged to partner with other States and Tribes to address cross-boundary issues, to encourage collaborative environmental partnering within industrial sectors or in certain topical areas (e.g., agriculture), and to create networks for peer-mentoring. A multi-state or State-Tribal proposal will be accepted in addition to an individual State proposal, but a State may appear in no more than one multi-State or State-Tribal proposal in addition to its individual proposal. EPA regrets that because of the limitation in available funding it is not yet able to open this competition to

Native American Tribal environmental agencies but we strongly encourage Tribal agencies to join with adjacent States in project proposals.

Request for Designation of a Primary Point of Contact

EPA asks that each State Environmental Regulatory Agency designate a manager as a primary point-of-contact who we will add to the EPA notification list for further announcements about the State Innovation Grant Program. If your point of contact from previous State Innovation Grant solicitations is to be your contact for this year’s competition, there is no need to send that information again, as all previously designated points of contact will remain on our notification list for this year’s competition. We are asking that any new name be submitted with the approval of the highest levels of management within an Agency (Commissioner, Secretary, or their deputies) within 30 days after publication of this notice in the **Federal Register**. Please submit this information to EPA by mail, fax, or e-mail prior to October 12, 2006 in the following manner.

By mail to: State Innovation Grant Program, National Center for Environmental Innovation, U.S. Environmental Protection Agency (1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

By fax to: State Innovation Grant Program, (202) 566-2220.

By e-mail to: Innovation_State_Grants@EPA.gov.

We encourage e-mail responses. If you have questions about responding to this notice, please contact EPA at this e-mail address of fax number, or you may call Sherri Walker at (202) 566-2186. For point-of-contact information, please provide: name, title, department and agency, mailing address (street or P.O. Box), city, State, zip code, telephone, fax number, and e-mail address. EPA will acknowledge all responses it receives to this notice.

Opportunity for Dialogue

Between now and the initiation of the competition with the release of the solicitation, States are encouraged to discuss potential projects with their EPA Regional contact to ascertain whether the scope of a potential project is suitable for funding under this program. Responses to questions that come to us during the period between this pre-announcement and the release of the solicitation along with helpful resource materials will be posted on the State Innovation Grant Web site at

http://www.epa.gov/innovation/stategrants . States are also invited to communicate with NCEI about ideas for	future competition themes by contacting the EPA Headquarters contact listed below. The contacts for the EPA Regions	and the EPA HQ National Center for Environmental Innovation are as follows:
Anne Leiby, U.S. EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, (617) 918-1076, leiby.anne@epa.gov , States: CT, MA, ME, NH, RI, VT.	Grace Smith, U.S. EPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007-1866, (212) 637-3589, smith.grace@epa.gov , States & Territories: NJ, NY, PR, VI.	
Nicholas DiNardo, U.S. EPA Region 3, 1650 Arch Street (3EA40), Philadelphia, PA 19103, (215) 814-3365, dinardo.nicholas@epa.gov , States: DC, DE, MD, PA, VA, WV.	Bonita Johnson, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562-9388, johnson.bonita@epa.gov , States: AL, FL, GA, KY, MS, NC, SC, TN.	
Marilou Martin, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3507, (312) 353-9660, martin.marilou@epa.gov , States: IL, IN, MI, MN, OH, WI.	Craig Weeks, U.S. EPA Region 6, Fountain Place, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 665-7505, weeks.craig@epa.gov , States: AR, LA, NM, OK, TX.	
Chrissy Wolfersberger, U.S. EPA Region 7, 901 North 5th Street, Kansas City, KS 66101, (913) 551-7854, wolfersberger.chris@epa.gov , States: IA, KS, MO, NE.	Whitney Trulove-Cranor, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466, (303) 312-6099, trulove-cranor.whitney@epa.gov , States: CO, MT, ND, SD, UT, WY.	
Loretta Barsamian, U.S. EPA Region 9, 75 Hawthorne Street (SPE-1), San Francisco, CA 94105, (415) 947-4268, barsamian.loretta@epa.gov , States and Territories: AS, AZ, CA, GU, HI, NV.	Bill Glasser, U.S. EPA Region 10, 1200 Sixth Avenue (ENF-T), Seattle, WA 98101, (206) 553-7215, glasser.william@epa.gov , States: AK, ID, OR, WA.	

Headquarters Office: Sherri Walker, U.S. EPA (MC 1807T), Office of the Administrator, National Center for Environmental Innovation, State Innovation Grants Program, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-2186, (202) 566-2220 fax.

For courier delivery only: Sherri Walker, U.S. EPA, EPA West Building, Room 4214D, 1301 Constitution Avenue, NW., Washington, DC 20005.

Dated: September 6, 2006.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. E6-15082 Filed 9-11-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2004-0076; FRL-8218-3]

Extension of Comment Period for Notice of Data Availability for EGU NO_x Annual and NO_x Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to extend comment period.

SUMMARY: In response to requests from the American Forest and Paper Association, the EPA is extending the comment period for the notice of data availability (NODA) for EGU NO_x Annual and NO_x Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan

Trading Programs (CAIR FIP) that was published on August 4, 2006 (71 FR 44283) for an additional 30 days. The comment period will now end on October 5, 2006.

DATES: The EPA is establishing a comment period ending on October 5, 2006. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible).

ADDRESSES: Submit your objections, identified by Docket Number OAR-2004-0076 by one of the following methods:

A. *Federal Rulemaking Portal:* <http://www.regulations.gov>. Today's action is not a rulemaking but you may use the Federal Rulemaking Portal to submit objections to the NODA. To submit objections, follow the on-line instructions for submitting comments.

B. *Mail:* Air Docket, ATTN: Docket Number OAR-2004-0076, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

C. *E-mail:* A-AND-R-Docket@epa.gov.

D. *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public

Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT:

General questions concerning today's action and technical questions concerning heat input or fuel data should be addressed to Brian Fisher, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Ave., Mail Code 6204 J, Washington, DC 20460. Telephone at (202) 343-9633, e-mail at fisher.brian@epa.gov.

If mailing by courier, address package to Brian Fisher, 1310 L St., NW., RM # 713G, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: Docket:

All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, 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 Air Docket is (202) 566-1742.

Extension of Comment Period

In the August 4, 2006 NODA, EPA provided notice that it had placed in the CAIR FIP docket allocation tables for EGU NO_x annual and EGU NO_x ozone season allocations for control periods 2009-2014. The allocation tables also included inventories of heat input and inventories of potentially exempt units. In addition, EPA also submitted a TSD describing the allocation table data fields to the docket.

The EPA originally provided a 30-day period for the unit owners, unit operators, and the public to submit objections regarding individual units' treatment as potentially covered or not covered by CAIR and, for units treated as potential CAIR units, the data used in the allocation calculations and the allocations resulting from such calculations. In response to requests from the American Forest and Paper Association, EPA is extending the comment period for an additional 30 days. Please refer to the August 4, 2006 notice for a complete description of the data on which EPA is soliciting comment.

Dated: September 5, 2006.

Brian McLean,

Director, Office of Air and Radiation.

[FR Doc. E6-15084 Filed 9-11-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8218-4]

Proposed CERCLA Administrative Agreement for Recovery of Remedial Design Response Costs; Del Amo Superfund Site, Waste Pits Operable Unit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Agreement for Recovery of Response Costs ("Agreement," Region 9 Docket No. 9-2006-0016) pursuant to Section 122(h) of CERCLA concerning the Del Amo Superfund Site, Waste Pits Operable Unit (the "Site"), located in Los

Angeles, California. The settling parties to the Agreement are Shell Oil Company and the United States General Services Administration.

The Agreement fully compensates EPA for past response costs related to the remedial design of the Waste Pits Operable Unit of the Del Amo Site. The settling parties performed work on the remedial design pursuant to a 1998 Unilateral Administrative Order ("UAO"). The UAO did not provide for the recovery of EPA oversight costs. The Agreement provides for a total recovery of \$1,208,551.25. The Agreement also provides the settling parties with contribution protection under CERCLA 113(f)(2) for response cost paid under the Agreement.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments will be available for public inspection at the Agency's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before October 12, 2006.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972-3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD-7) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Del Amo Superfund Site, Waste Pits Operable Unit Los Angeles, California, and USEPA Docket No. 9-2006-0016.

FOR FURTHER INFORMATION CONTACT: Michele Benson, Office of Regional Counsel, telephone (415) 972-3918, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 30, 2006.

Keith A. Takata,

Director, Superfund Division, Region 9.

[FR Doc. E6-15085 Filed 9-11-06; 8:45 am]

BILLING CODE 6560-50-P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Release of Charting the Course for Ocean Science in the United States: Research Priorities for the Next Decade

ACTION: Notice of release of *Charting the Course for Ocean Science in the United States: Research Priorities for the Next Decade* and request for public comment.

SUMMARY: This notice announces the release of the *Charting the Course for Ocean Science in the United States: Research Priorities for the Next Decade* and Request for Public Comment by the National Science and Technology Council's (NSTC) Joint Subcommittee on Ocean Science and Technology (JSOST). This draft document describes the ocean research priorities for the United States for the next decade.

Dates and Addresses: *Charting the Course for Ocean Science in the United States: Research Priorities for the Next Decade*, a draft document that describes the ocean research priorities for the United States for the next decade is now available for public review (http://ocean.ceq.gov/about/sup_jsost_public_comment.html). Please note that all comments submitted will be available for public viewing. The NSTC JSOST must receive comments on this draft document no later than the close of business on October 20, 2006.

Address for comments: Only electronic (e-mail) comments will be accepted. Individuals who wish to provide comments should refer to the guidelines for comment submission available at http://ocean.ceq.gov/about/sup_jsost_public_comment.html. Comments should be sent to: public-comment@jsost.org.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Shelby Walker, Joint Subcommittee on Ocean Science and Technology, CCSP/USGCRP Office, 1717 Pennsylvania Ave., Suite 250, Washington, DC 20006. Telephone: (202) 419-3464. E-mail: swalker@usgrcp.gov.

SUPPLEMENTARY INFORMATION: As part of the reformulation of ocean policy, the U.S. Ocean Action Plan developed a governance structure that coordinates the tasks and goals of all of the Federal agencies involved in ocean science and management. This multi-tiered governance structure has the goal of advancing ocean science and use in an integrated and productive manner. To that end, the JSOST, as directed by the OAP and governed by the Committee on Ocean Policy (COP), the NSTC, and the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI), is developing an Ocean Research Priorities Plan and Implementation Strategy. The goal of the Ocean Research Priorities Plan and Implementation Strategy is to formulate the priorities for ocean science and technology initiatives across the wide scope of societal interests and to define the fundamental principles for guiding actions and programs in support of the

research priorities. This draft document, *Charting the Course for Ocean Science in the United States: Research Priorities for the Next Decade*, describes the national ocean research priorities and was formulated using the input from a public comment period on the ocean research priorities planning materials, a public workshop held April 18–20, 2006, in Denver, CO, and a series of internal reviews. The NSTC JSOST now seeks input and comment from all relevant communities on the national ocean research priorities. Additional information on the development of the national ocean research priorities and the public comment period is available at: <http://ocean.ceq.gov/about/jsost.html>.

M. David Hodge,

Operations Manager.

[FR Doc. 06–7600 Filed 9–11–06; 8:45 am]

BILLING CODE 3170–W6–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 2006, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- Report on System Performance.

Open Session

A. Approval of Minutes

- June 8, 2006 (Open and Closed).

B. Business Reports

- June 30, 2006 Financial Reports.

- Report on Insured and Other Obligations.

- Quarterly Report on Annual Performance Plan.

C. New Business

- Proposed 2007 and 2008 Budgets.
- Strategic Plan FY 2007–2012 and Annual Performance Plan FY 2007–2008.
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2007.
- Amendment to FCSIC Bylaws.

Dated: September 6, 2006.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E6–15074 Filed 9–11–06; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 7, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 13, 2006. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to: PRA@fcc.gov. To submit your comments by U.S. mail, mark it to the attention of Leslie F. Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–C216, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to PRA@fcc.gov or contact Leslie F. Smith at 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0874

Title: Consumer Complaint Form and Obscene, Profane, and Indecent Complaint Form.

Form Number(s): FCC Form 475 and FCC Form 475–B.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions; Federal Government; State, local or tribal government.

Number of Respondents: 1,330,104 (FCC Form 475: 58,772; FCC Form 475–B: 1,271,332).

Estimated Time per Response: 30 minutes per form.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 665,052 (FCC Form 475: 29,386 hours; FCC Form 475–B: 635,666 hours).

Total Annual Cost: None.

Privacy Impact Assessment: Yes.

Needs and Use: Consumers use FCC Form 475, Consumer Complaint Form, to delineate precisely the issue(s) concerning the policies and practices of common carriers that they are disputing. FCC Form 475 asks the complainants to provide contact information, including their address, telephone number, and e-mail address, and to briefly describe the complaint, including the common carrier against whom the complaint is lodged, the consumer's account number(s), the date(s) on which the incident(s) occurred, and the type of resolution the consumer is seeking. The Commission uses the information to resolve the consumer's informal complaint(s).

The information on FCC Form 475 may also be used to assess the practices of common carriers as part of any investigative work performed by Federal

and State law enforcement agencies to monitor common carrier practices and to promote compliance with Federal and State requirements. The information may ultimately become the foundation for FCC enforcement actions and/or rulemaking proceedings, as appropriate. The Commission now intends to create a new, separate FCC form, described below, that will be used to collect complaint data regarding junk faxes, unsolicited e-mail messages, and telemarketing calls. Thus, the existing Form 475 will be amended slightly to reflect the fact that it will no longer be used for these types of complaints.

FCC Form 475-B, Obscene, Profane, and Indecent Complaint Form, is used by consumers to lay out precisely their complaint(s) and issue(s) concerning the practices of the telecommunications entities, which consumers believe may have aired obscene, profane, and/or indecent programming. FCC Form 475-B will remain unchanged.

OMB Control Number: 3060-1088

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, *Report and Order and Third Order on Reconsideration*, CG Docket No. 05-338, FCC 06-42.

Form Number: FCC Form 1088.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000,000 (4 million facsimile advertisement senders + 1 million complainants, 100,000 of which will file complaints using proposed new form).

Estimated Time per Response: 15 minutes.

Frequency of Response: Annually, monthly, and on occasion reporting requirements; Recordkeeping; Third party disclosure.

Total Annual Burden: 13,130,000 hours (13,080,000 hours for fax advertisement senders + 50,000 hours for complainants using proposed new form).

Total Annual Cost: \$60,000,000.

Privacy Impact Assessment: Yes.

Needs and Uses: On April 5, 2006, the Commission adopted a *Report and Order and Third Order on Reconsideration*, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278 and 05-338, FCC 06-42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The *Report and Order*

and Third Order on Reconsideration contains information collection requirements: (1) *Opt-out Notice and Do-Not-Fax Requests Recordkeeping*—senders of unsolicited facsimile advertisements to include a notice on the first page that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) *Established Business Relationship Recordkeeping*—the Junk Fax Prevention Act provides that the sender, e.g., a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an “established business relationship” (EBR) with the recipient; (3) *Facsimile Number Recordkeeping* in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) *Express Invitation or Permission Recordkeeping* where, in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement. Section 227 of the Communications Act of 1934, as amended, and the FCC's parallel rules restrict various telemarketing and advertising activities. The new Junk Fax/Telemarketing Form, FCC Form 1088, is designed specifically for complaints that involve: (1) Junk faxes, (2) telemarketing (including do-not-call violations), and (3) other related issues such as prerecorded messages, automatic telephone dialing systems, and unsolicited commercial e-mail messages to wireless telecommunications devices (cell phones, pagers). Upon the adoption of the TCPA rules, approximately 80,000 respondents utilized the Consumer Complaint Form 475 to file general complaints resulting in a total hourly annual burden of 40,000 hours. Based on these figures, the Commission estimates that 100,000 respondents would use the proposed new form, requiring 50,000 hours annually.

FCC Form 1088 will allow the Commission to collect detailed information from consumers concerning possible violations of the Communications Act and the FCC's fax and telemarketing rules, which will enable the Commission to investigate rule violations more efficiently and to initiate enforcement actions against violators, as appropriate. By collecting their complaints and related information in a single, comprehensive template, the form will provide a

standardized way for consumers to file complaints, reducing or eliminating the need for further documentation or questions from FCC investigators to determine whether violations have occurred. This ensures that consumers can present their complaints in a way that maximizes the FCC's ability to take enforcement actions against violators, protecting complainants and other consumers from unlawful telemarketing and faxing which is intrusive, uninvited, and possibly costly. Furthermore, the form's format avoids the need for complainants to compose narratives that describe unwanted telemarketing or faxing, and instead permits complainants to answer questions, principally by simply selecting options presented on the form, which should reduce the time to file a complaint. The form will allow the Commission to gather and to review this information more efficiently. The information the form collects may ultimately become the foundation for enforcement actions and/or rulemaking proceedings, as appropriate.

FCC Form 1088 asks the complainant's contact information, including name, address, telephone number and e-mail address; then presents a “gateway” question to determine the general topic of the complaint: (1) A fax; or (2) a call or message to a residential telephone, business telephone, emergency telephone or patient telephone, wireless telecommunications device, or any service for which the called party is charged. The form asks additional questions geared to the specific type of incident reported. The form poses certain mandatory threshold questions that must be answered for the Commission to determine whether a violation has occurred. It also presents optional questions for complainants who wish to provide the Commission with more detailed information that a complainant believes may assist the Commission in investigating the complaint. In short, complainants will only encounter those questions directly applicable to their self-selected issues, and only be required to answer a limited number of questions (typically, not more than 10) necessary to establish whether a violation has, in fact, occurred. No complainant will have to answer all questions. Finally, a complainant may attach documentation attesting to the accuracy of the information provided to the Commission. The Commission needs this documentation for any possible enforcement actions. The Commission believes the new form to be a logical

extension of its Junk Fax and Telemarketing rulemaking efforts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6-15194 Filed 9-11-06; 8:45 am]

BILLING CODE 6712-01-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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Central Financial Holdings, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank (in organization), both of Tampa, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire 99 percent of the voting shares of Summit Acquisition Corporation, and thereby indirectly acquire voting shares of Summit Bank & Trust (in organization), both of Broomfield, Colorado.

In connection with this application, Summit Acquisition Corporation; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank & Trust (in organization), both of Broomfield, Colorado.

C. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Community First Bancorp, Inc.*; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, both of Fairview Heights, Illinois.

D. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *BOR Bancorp*; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Rothville, both of Rothville, Missouri.

Board of Governors of the Federal Reserve System, September 7, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6-15070 Filed 9-11-06; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Training of Latin American Health Care Workers; Cooperative Agreement

AGENCY: Office of the Secretary, Office of Public Health Emergency Preparedness, HHS.

ACTION: Notice.

Funding Opportunity Title: Training of Latin American Health Care Workers through the Gorgas Memorial Institute, Republic of Panamá.

Announcement Type: Single-Source, Cooperative Agreement.

Funding Opportunity Number: Not applicable.

Catalog of Federal Domestic Assistance Number: The Office of Management and Budget (OMB) Catalog of Federal Domestic Assistance (CFDA) number is 93.019.

Authority: The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and the Pandemic Influenza Act, 2006, Pub. L. 109-148, 119 Stat. 2680, 2786 (2005); section 2811 of the Public Health Service Act (PHS Act), 42 U.S.C. 300hh-11.

SUMMARY: This project will support the Gorgas Memorial Institute (GMI) to: (a) Develop a regional training center in Panamá and (b) train community health workers and clinicians (physicians, nurses, and auxiliary medical workers) and select public-health professionals from Central and South America, (c) facilitate partnerships (“twinning”) between U.S. universities and their Latin American counterparts to develop human resources for health in Latin America, and (d) harness the energies of U.S. and other non-governmental organizations by partnering with them to advance community health training and program efforts in Latin America. These efforts will contribute to improved and expanded provision of prevention and primary health care, and they will help engage significantly more areas of these countries to prepare for and respond to public health emergencies such as pandemic influenza.

The training efforts of this project will place greater emphasis on the training of nurses and community health workers, rather than physicians, to reap the greatest improvement in expanded coverage and improved access to community, preventive and primary health care in underserved parts of Latin America (*i.e.*, underserved rural and poor urban communities). In addition, as a result, the healthcare work force will be better prepared to respond to public health emergencies such as pandemic influenza. Key to the selection of recipients for this training will be their availability and willingness to commit to providing their health and medical care skills in underserved areas within the region. In addition to all appropriate medical care and health education or communication subjects, training supported by this project will emphasize infectious diseases, epidemiology, disease surveillance and outbreak response, among other subjects so graduates of training programs will be prepared to play contributing roles to any pandemic preparation and response.

SUPPLEMENTARY INFORMATION: While a number of Latin American countries have made significant strides in improving the quality of health care for their citizens, and extending that care into underserved areas, a number of countries and regions still suffer from a shortage of appropriately trained health-care workers and clinicians. Though all levels of medical care (primary, secondary and tertiary) warrant further investment and effort to meet Latin Americans’ present and growing need for medical care, this need is perhaps

most acute among rural and disadvantaged communities, where essential prevention and primary care are absent or sparse. From a public-health perspective, focusing public investment on basic and essential primary care maximizes benefits, and provides the greatest contribution for the greatest number of people.

Compounding the pre-existing and wide ranging needs for basic community, preventive and primary health care in this region are new threats from emerging infectious diseases that are looming on the horizon. The H5N1 strain of avian flu has become the most threatening influenza virus in the world, and any large-scale outbreak of this disease among humans would have grave consequences for global public health, including in Latin America. Influenza experts have warned that the re-assortment of different H5N1 viruses over the past seven years greatly increases the potential for the viruses to be transmitted more easily from person to person. Medical practitioners have also discovered several other, new avian viruses transmissible to humans. In the fight against avian and pandemic influenza, early detection and response is the first line of defense, and greater numbers of appropriately trained community and clinical health-care workers would play a vital role in helping respond to such public-health emergencies.

No funds provided under this cooperative agreement may support any activity that duplicates another activity supported by any component of HHS. Funds provided under this cooperative agreement may not supplant funding provided by other sources. Grantees must coordinate all funded activities with the HHS Office of Public Health Emergency Preparedness (OPHEP).

DATES: To receive consideration, HHS must receive applications no later than 5 p.m., eastern time, on September 26, 2006.

I. Funding Opportunity Description

Authority: The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and the Pandemic Influenza Act, 2006, Pub. L. 109-148, 119 Stat. 2680, 2786 (2005); section 2811 of the Public Health Service Act (PHS Act), 42 U.S.C. 300hh-11.

Purpose: This program proposes that GMI:

(a) Co-sponsor and develop a regional training center in Panamá for health workers, medical clinicians (auxiliary health-care workers, community health aides, nurses, physician assistants,

nurse practitioners, and physicians) and select public-health professionals from Central and South America.

Development of such a center is understood to include the recruitment and retention of faculty and administrative staff, the development of curricula, and all appropriate inter-face with Panamanian, regional and international educational systems and peer groups.

(b) Train significant and increasing numbers of community health workers and clinicians (physicians, nurses, and auxiliary medical workers) and select public-health professionals from Central and South American countries.

(c) Through this partnership with HHS, explore and lead, where possible, the creation of partnerships between U.S. universities and Latin American Counterpart institutions to further develop and train community-level health-care human resources, and identify policy and program options that can contribute to the greater expansion and sustainability of community-level health-care workers in currently underserved areas. Additional funds from HHS could be available in the future to further expand the number of these partnerships.

(d) With HHS, investigate and develop approaches for collaborating with Latin American, U.S. and/or international non-governmental organizations (NGOs) to help advance the training of the community and field health and medical personnel of these NGOs.

(e) With HHS, investigate and develop approaches for collaborating with Latin American and U.S. NGOs to link, bridge and supplement these NGOs' community health initiatives, where possible, through GMI's provision of logistical support and a base of operations for the NGOs', working in agreement with GMI.

(f) Identify organizations of U.S.-based emigrants and their Latin American places of origin throughout the countries of Central and South America, and pursue efforts to build or expand community health complements to any community assistance initiatives these organizations may be providing.

(g) With HHS, international health organizations and NGOs, pursue coordinated efforts on health campaigns of public-health priority for which a campaign strategy approach offers merit (e.g., immunization promotion including seasonal influenza immunization, polio eradication, oral rehydration therapy, etc.). Any campaigns should utilize the best available approaches to researching,

development, implementation and evaluation.

GMI will design and implement new teaching methods directed to the community, to adopt healthy lifestyles towards prevention.

Measurable outcomes of the program will be the following:

(a) Development or establishment of teaching curricula, engagement in appropriate Panamanian and international teaching/educational networks to ensure high educational standards; the hiring of appropriately trained teaching and administrative staff; and the establishment of all appropriate management, fiscal, and business operations to support and sustain such a training institute.

(b) Periodic reports of the number of people who have completed training; such reports should include details on the numbers of those who have dropped out midway, and those who have completed the training; pre- and post-test scores on key competency subject areas; numbers trained by type of health-care or clinical worker; town and country of origin of incoming students, as well as where those same students work and reside at six- and twelve-month intervals following the completion of their training; and the results of follow-up questionnaires sent to graduates that solicit feedback on their training and its appropriateness, and suggestions for how the school might improve its training. Any information Gorgas provides to HHS on training participants should remove individuals' personal data from the reports so that participants' privacy will be maintained.

(c) The number of partnerships with U.S. institutions explored, as well as the number for which formal partnerships have been created, where substantive exchange of training expertise, faculty, and/or students is documented and described.

(d) The number of studies and recommendations of program and policy options available to Latin American countries that would contribute to expanded, sustained community-level health-care personnel.

(e) The number of partnerships with Latin American, U.S. and/or international NGOs that are explored, and the number of such partnerships developed and formally established.

(f) Detailed descriptions of the base-of-operations and logistics resources that GMI had developed and is maintaining, along with details of how it has gone about communicating the availability of these resources to NGOs.

(g) The number of Latin American, U.S. and/or international NGOs that

have used GMI provision of base-of-operations and logistics support in a given time period, and details on the nature and extent of such utilization.

(h) The number of health campaigns in which GMI participates, with detailed description(s) of the role(s) played by GMI along with the level of effort it contributed to each of these efforts.

(i) Quantify and detail the number of organizations of U.S.-based emigrants with which GMI has identified and partnered with, to enhance their community-health activities, and provide details of those community-health activities.

(j) The number of scholarships awarded to low income students, who will be participating in these trainings. Any information Gorgas provides to HHS on training participants should remove individuals' personal data from the reports so that participants' privacy will be maintained.

Grantee Activities

It is anticipated the grantee will undertake a variety of activities to realize the aforementioned purposes and outcomes. A list of what some of these activities might include follows.

1. Establishing/developing teaching curricula;
2. Engaging in appropriate Panamanian and international teaching or educational networks to ensure high educational standards;
3. Hiring appropriately trained teaching and administrative staff;
4. Establishing all appropriate management, fiscal, and business operations to support and sustain an efficient and effective training institute;
5. Establishing an efficient performance monitoring and reporting system and submitting periodic reports to HHS;
6. Pursuing and developing partnerships with U.S. educational institutions in expanding GMI's knowledge, contacts and resources for improving and expanding community training and sustainability of health workers;
7. Pursuing and developing partnerships with Latin American, U.S. and/or international NGOs to provide these NGOs' healthcare staff with appropriate training;
8. Ensuring an appropriate level of facilities that can function as a base of operation for NGOs, with appropriate contingency plans for expanding this level of facilities as interest and demand for it could grow;
9. In partnership with HHS, Panamanian Ministry of Health and NGOs, acquire didactic teaching

resources and equipment that will allow appropriate training.

10. Identify, provide and assemble logistics resources for NGOs to enhance their community-health and outreach activities;

11. In partnership with HHS, and NGOs, identify appropriate topics for health campaigns and participate in the implementation and assessment of those campaigns;

12. Identify and approach fraternal organizations of U.S.-based emigrants that provide assistance to communities in Latin America, and partner with these groups to enhance their community-health activities.

13. In partnership with HHS, Panamanian Ministry of Health and NGOs, identify scholarships or fellowships to participating healthcare personnel attending these courses.

This cooperative agreement will provide total funding of \$2,500,000 for all aspects of the described project.

HHS will be substantially involved with the design and implementation of the grantee's described activities. As noted earlier, this grant is being issued and will be managed by the Office of Public Health Emergency Preparedness (OPHEP) and administered by OPHS, with substantive guidance from the Office of Global Health Affairs (OGHA). In HHS international public health efforts, OGHA collaborates with OPHEP on programs, issues and initiatives (e.g., Avian Influenza, disease surveillance, etc.). When international emergency preparedness and risk mitigation issues are being addressed, OGHA and OPHEP collaborate to ensure that these issues are sufficiently addressed.

HHS staff activities for this program are as follows:

1. Provide assistance in the design and implementation with any of the aforementioned objectives and activities, including the identification of U.S. Universities, and NGOs.
2. Provide liaison through HHS employees at U.S. Embassy(ies) in any participating or collaborating countries, as appropriate, and as relevant to the achievement of the purposes of this cooperative agreement.
3. Organize an orientation meeting with the grantee to discuss applicable U.S. Government, HHS, and National Strategic Plan expectations (as stated in the RFA), regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the Senior Coordinator for Avian and Pandemic Influenza at the U.S. Department of State.

4. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement.

5. Review and approve the grantee's work plan and detailed budget;

6. Review and approve the grantee's monitoring-and-evaluation plan, including for compliance with the strategic-information guidance established by OMB and HHS;

7. Meet on a monthly basis with the grantee to assess monthly expenditures in relation to approved work plan and modify plans, as necessary.

8. Meet on a quarterly basis with the grantee to assess quarterly technical and financial progress reports and modify plans, as necessary.

9. Meet with the grantee to review the final progress report.

10. Provide technical assistance, as mutually agreed upon. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information and project management.

11. Provide in-country administrative support to help the grantee meet U.S. Government financial and reporting requirements approved by OMB under 0920-0428 (Public Health Service Form 5161).

12. Assist in assessing program operations and in implementing approaches to accurately monitor the progress and evaluate the overall effectiveness of the program.

II. Award Information

This project will be supported through the cooperative agreement mechanism. HHS/OPHEP anticipates making only one award for this proposed work. The anticipated start date is September 15, 2006 to run through to September 14, 2007. HHS/OPHEP anticipates providing \$2,500,000 for the 12-month budget period. The total amount that the Gorgas Memorial Institute for Health Studies may request is \$2,500,000. The funds in this cooperative agreement may not support indirect costs.

Approximate Current Fiscal Year Funding: \$2,500,000.

Approximate Total Project Period Funding: This cooperative agreement will provide total funding of \$2,500,000 for a 12-month budget period. Funds under this cooperative agreement shall not apply to indirect costs.

Approximate Number of Awards: One.

Ceiling of Individual Award Range: Maximum dollar amount for the 12-month budget period is \$2,500,000, and

will not include payment of any indirect costs.

Throughout the project period, the commitment of HHS to the continuation of funding will depend on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), demonstrated commitment of the recipient to the principles of the terms and spirit of this agreement.

III. Eligibility Information

1. Eligible Applicants

The only eligible applicant that can apply for this funding opportunity is the Gorgas Memorial Institute for Health Studies of Panamá. The Republic of Panamá has legacy of biomedical triumphs that began with the building of the Panama Canal. Recognizing the outstanding achievements of William Crawford Gorgas in eliminating Yellow Fever and controlling other tropical infections that made possible the construction of the Panama Canal, Panamanian President Belisario Porras proposed in 1920, the creation of the Gorgas Memorial Institute and Laboratories (GMI). GMI opened its doors in 1928, and since then has produced ground-breaking and internationally recognized work in the field of tropical medicine, emerging and re-emerging diseases.

As a public health, training, and research institution, GMI offers strengths in several areas that are essential to the effective realization of this proposal's objectives and activities.

- **Staffing:** GMI has 178 workers that include trainers, physicians, scientists, technical staff and administrative staff. GMI scientific and technical expertise resides in its excellent group of professionals, six of whom are PhDs and eleven of whom are M.D.s. One of the physicians is a former Minister of Health. GMI has two veterinary physicians and many technicians with master degrees in science. GMI has a specialist in geo-reference and a group trained in field isolation of dangerous organisms from animal tissues (developed during the Hanta virus epidemics). There is also an excellent administrative, medical library and informatics staff.

- **Scientific and technical expertise:** GMI is the national reference for influenza, dengue and other pathogenic viruses. It is the reference laboratory for Central America and Panama for HIV/AIDS, measles, Hanta virus and viral encephalitis. Its parasitologists have worked and continue to work in malaria, leishmania and Chagas' disease. GMI has a long and solid

reputation in virology, easily confirmed by many distinguished virologists in the United States. The Gorgas Department of Virology has been extremely productive through its collaborations with the Yale University Arbovirus Research Unit, the University of Texas at Galveston and the CDC. GMI began working with influenza in 1976 and has contributed influenza isolates to the WHO, one of which is used in the current influenza vaccines. All these are health concerns of pressing significance for rural and underserved areas.

- **Laboratory:** It has well-established laboratories of virology, parasitology, immunology, genomics, entomology and food and water chemistry. GMI is the national reference laboratory for malaria, tuberculosis and all viral and bacterial diseases. GMI also has departments of epidemiology and biostatistics, chronic disease studies, health policy, and health and human reproduction studies. In addition to all these areas of expertise, GMI is also the locus of the national human subjects committee (National Institutional Review Board). A BLS-3 laboratory currently under construction is part of a modernization plan that will significantly enhance the capability of GMI laboratories to provide training in the role that laboratory services play in community health care delivery.

- **Location:** The unique geographic characteristics of Panamá and its transportation (air, sea and land) infrastructure make it an extremely central and accessible location for people from Central and South America who would attend for training.

- **Strategic Partnerships:** GMI has a history of developing effective relations and partnerships with leading organizations including the Smithsonian Museum, the U.S. Department of Agriculture (USDA), and HHS/CDC-MERTU in Guatemala, among others.

- **Historical Medical Collaboration Between the United States and Panamá via GMI:** American and Panamanian physicians and scientist have produced significant contributions since 1928, and those relationships continue up to present.

2. Cost-Sharing or Matching Funds

Cost participation is encouraged. HHS will pay \$2,500,000, while GMI is encouraged to provide an amount that will be specified in their proposal. GMI's contribution may include indirect expenses and in-kind contributions. The types of resources GMI could contribute may include but are not limited to: Personnel time and costs, provision of existing and physical space and

structures, and the remodeling (and associated costs) of those physical facilities that are to be converted to teaching facilities, and the development of a staging area for NGOs. If applicants receive funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months, they must detail how the disparate streams of financing complement each other.

3. Other

If an applicant requests a funding amount greater than the ceiling of the award range, HHS will consider the application non-responsive, and the application will not enter into the review process. HHS will notify the applicant that the application did not meet the submission requirements.

Special Requirements

If the application is incomplete or non-responsive to the special requirements listed in this section, the application will not enter into the review process. HHS will notify the applicant that the application did not meet submission requirements. HHS will consider late applications non-responsive. Please see section on "Submission Dates and Times."

Section 503, Departments of Labor, Health and Human Services and Education, and Related Agencies, Appropriations Act, 2006, Pub. L. 109-149, 119 Stat. 2833 provides that an organization that engages in lobbying activities is not eligible to receive Federal funds constituting a grant, loan, or an award.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453-8822 or writing to the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wooten Parkway, Suite 550, Rockville, MD 20852. Applicants may also fax a written request to the OPHS Office of Grants Management at (240) 453-8823 to obtain a hard copy of the application kit. Applications must be prepared using Form OPHS-1.

2. Content and Form of Submission

Application: Applicants must submit a project narrative in English, along with the application forms, in the following format:

- If possible, the length of the proposal should not exceed 50 pages;
- Font size: 12-point, un-reduced;
- Single-spaced;

- Paper size: 8.5 by 11 inches;
- Page-margin size: one inch;
- Number all pages of the application sequentially from page one (Application Face Page) to the end of the application, including charts, figures, tables, and appendices;
- Print only on one side of page; and
- Hold application together only by rubber bands or metal clips, and do not bind it in any way.

The narrative should address activities to be conducted over the entire project period and must include the following items in the order listed:

- *Understanding of the requirements.* The application shall include a discussion of your organization's understanding of the need, purpose and requirements of this cooperative agreement. The discussion shall be sufficiently specific, detailed and complete to clearly and fully demonstrate that the applicant has a thorough understanding of all the technical requirements of this announcement.

- *A Project Plan.* The project plan must demonstrate that the organization has the technical expertise to carry out the work or task requirements of this announcement. The plan must contain sufficient detail to clearly describe the proposed means for conducting the "Grantee Activities" described in Section I, and shall include a complete explanation of the methods and procedures the applicant will use. The project plan shall include discussions of the following elements:

- Objectives;
- Methods to accomplish the purposes of the cooperative agreement and the "Grantee Activities";
- Detailed time line for accomplishment of each activity;
- Ability to respond to emergencies;
- Ability to respond to situations on weekends and after hours; and
- Coordination with HHS, U.S. educational institutions, and NGOs.

- *Staffing and Management Plan.* The applicant must provide a project staffing and management plan, which must include time lines and sufficient detail to ensure that it can meet the Federal Government's requirements in a timely and efficient manner.

- The applicant must provide resumes that identify the educational and experience level of any individual(s) who will perform in a key position and other qualifications to show the key individuals' ability to comply with the minimum requirements of this announcement;

- The applicant must provide a summary of the qualifications of non-key personnel. Resumes must be limited to three pages per person; and

- The proposed staffing plan must demonstrate the applicant's ability to recruit, retain, or replace personnel who have the knowledge, experience, local-language skills, training and technical expertise commensurate with the requirements of this announcement. The plan must demonstrate the applicant's ability to provide bi-lingual personnel to train and mentor host-country participants.

- *Performance Measures.* The applicant must provide measures of effectiveness that will demonstrate accomplishment of the objectives of this cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcomes. The applicant must submit a section on measures of effectiveness with its application, and they will be an element for evaluation.

- *Budget Justification.* The budget justification must comply with the criteria for applications. The applicant must submit, at a minimum, a cost proposal fully supported by information adequate to establish the reasonableness of the proposed amount.

The applicant may include additional information in the application appendices, which will not count toward the narrative page limit. This additional information includes the following:

- Curricula Vitae, Resumes, Organizational Charts, Letters of Support, etc. An agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com>, or call 1-866-705-5711.

Additional requirements that could require submission of additional documentation with the application appear in section VI.2.—Administrative and National Policy Requirements.

3. Submission Dates and Times

The Office of Public Health and Science (OPHS) will assist with the administration of the grant and provides multiple mechanisms for the submission of applications, as described in the following sections. To be considered for review, applications must be received by the Office of Grants

Management, Office of Public Health and Science, Department of Health and Human Services by 5 p.m. eastern time on the date specified in the dates section of the announcement. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date in this announcement supersedes the instructions in the OPHS-1.

Submission Mechanisms

The applicant will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using any of these mechanisms. Any application submitted to the OPHS Office of Grants Management after the deadline described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any

problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, <http://www.grants.gov>.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (eastern time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed "Invalid" by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application

validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, <https://egrants.osops.dhhs.gov>, or may be requested from the OPHS Office of Grants Management at (240) 453-8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however, these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the

due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management, where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS-1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

5. Funding Restrictions

Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB-21 (Institutes of Higher Education); OMB Circular A-122

(Nonprofit Organizations) and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars can be found on the Internet at <http://www.whitehouse.gov/omb>. No pre-award costs are allowed. Restrictions, which applicants must take into account while preparing the budget, are as follows:

- Alterations and renovations (A&R) are prohibited under grants/cooperative agreements to foreign recipients. "Alterations and renovations" are defined as work that changes the interior arrangements or other physical characteristics of an existing facility or of installed equipment so that it can be used more effectively for its currently designated purpose or adapted to an alternative use to meet a programmatic requirement. Recipients may not use funds for A&R (including modernization, remodeling, or improvement) of an existing building.

- Reimbursement of pre-award costs is not allowed.

- Recipients may spend funds for reasonable program purposes, including personnel, travel, supplies, and services. Recipients may purchase equipment if deemed necessary to accomplish program objectives; however, they must request prior approval in writing from HHS/OPHEP officials for any equipment whose purchase price exceeds \$10,000 USD.

- The costs generally allowable in grants/cooperative agreements to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the WHO Secretariat, HHS will not pay indirect costs (either directly or through sub-award) to organizations located outside the territorial limits of the United States, or to international organizations, regardless of their location.

- Recipients may contract with other organizations under this program; however, the applicant must perform a substantial portion of the project activities (including program management and operations) for which it is requesting funds. Contracts will require prior approval in writing from HHS/OPHEP.

- Recipients may not use funds awarded under this cooperative agreement to support any activity that duplicates another activity supported by any component of HHS.

- Applicants shall state all requests for funds in the budget in U.S. dollars. Once HHS makes an award, HHS will not compensate foreign recipients for currency-exchange fluctuations through the issuance of supplemental awards.

- The funding recipient must obtain an audit of these funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

6. Other Submission Requirements

None.

V. Application Review Information

Criteria

HHS will evaluate applications against the following factors:

Factor 1: Project Plan (35 Points)

HHS will evaluate the extent to which the proposal demonstrates that the organization has the technical and institutional expertise to carry out the work/task requirements described in this announcement. HHS will evaluate the applicant's project plan to determine the extent to which it provides a clear, logical and feasible technical approach to meeting the goals of this announcement in terms of workflow, resources, communications and reporting requirements for accomplishing work in each of the operational task areas.

Factor 2: Staffing and Management Plan (35 Points)

(a) *Personnel*. HHS will evaluate the relevant educational, work experience and local-language qualifications of key personnel, senior project staff, and subject-matter specialists to determine the extent to which they meet the requirements listed in this announcement.

(b) *Staffing Plan*. HHS will evaluate the staffing plan to determine the extent to which the applicant's proposed organizational chart reflects proper staffing to accomplish the work described in this announcement, and the extent of the applicant's ability to recruit, retain, or replace personnel who have the knowledge, experience, local-language skills, training and technical expertise to meet requirements of the positions.

Factor 3: Performance Measures (15 Points)

HHS will evaluate the applicant's description of performance measures, including measures of effectiveness, to determine the extent to which the

applicant proposes objective and quantitative measures that relate to the performance goals stated in the Purpose section of this announcement, and whether the proposed measures will accurately measure the intended outcomes.

Factor 4: Understanding of the Requirements (15 Points)

HHS will evaluate the extent of the applicant's understanding of the operational tasks identified in this announcement to ensure successful performance of the work in this project. Because the focus of the work will include interaction with other countries in Central and South America, the applicant must demonstrate an understanding of the cultural, ethnic, political and economic factors that could affect successful implementation of this cooperative agreement.

The applicant's proposal must also demonstrate understanding of the functions, capabilities and operating procedures of U.S. educational institutions, as well as U.S., Latin American and International NGOs, and describe the applicant's ability to work with and within those organizations.

2. Review and Selection Process

HHS/OPHEP will review applications for completeness. An incomplete application or an application that is non-responsive to the eligibility criteria will not advance through the review process. HHS will notify applicants if their applications did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the AV.1. "Criteria" section above.

VI. Award Administration Information

1. Award Notices

The successful applicant will receive a Notice of Award (NoA). The NoA shall be the only binding, authorizing document between the recipient and HHS. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

2. Administrative and National Policy Requirements

A successful applicant must comply with the administrative requirements outlined in 45 CFR part 74 and part 92 as appropriate. The Fiscal Year 2006 Appropriations Act requires that when issuing statements, press releases,

requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the issuance shall clearly state the percentage and dollar amount of the total costs of the program or project to be financed with Federal money and the percentage and dollar amount of the total costs of the project or program to be financed by non-governmental sources.

3. Reporting Requirements

The applicant must provide HHS with an original, plus two hard copies, as well as an electronic copy of the following reports in English:

1. A quarterly progress report, due no less than 30 days after the end of each quarter of the budget period. The quarterly progress report must contain the following elements:

- a. Activities and Objectives for the Current Budget Period;
- b. Financial Progress for the Current Budget Period;
- c. Proposed Activity Objectives for the New Budget Period;
- d. Budget;
- e. Measures of Effectiveness; and
- f. Additional Requested Information.

2. A progress report, due 90 days after the end of the budget period, which must contain a detailed summary of the elements required in the quarterly progress report;

3. A final performance report, due no more than 90 days after the end of the project period; and

4. A Financial Status Report (FSR) SF-269 is due 90 days after the close of the 12-month budget period.

Recipients must mail the reports to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For program technical assistance, contact: Craig Carlson, MPH, Office of Public Health Emergency Preparedness, Department of Health and Human Services, Telephone: 202-205-5228, E-mail: craig.carlson@hhs.gov.

For financial, grants management, or budget assistance, contact: DeWayne Wynn, Grants Management Specialist, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20857, Telephone: (240) 453-8822, E-Mail Address:

DeWayne.Wynn.os@hhs.gov.

Dated: September 6, 2006.

W. Craig Vanderwagen,

Assistant Secretary for Public Health Emergency Preparedness, Department of Health and Human Services.

[FR Doc. E6-15018 Filed 9-11-06; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Eisenberg Center Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality." In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on July 5, 2006 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.

DATES: Comments on this notice must be received by October 12, 2006.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036, Rockville, MD 20850. Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427-1477.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Eisenberg Center Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality".

AHRQ's newly-established Eisenberg Center is an innovative effort aimed at improving communication of findings to a variety of audiences ("customers"), including consumers, clinicians, payers, and health care policy makers. The Eisenberg Center, one of three components of AHRQ's Effective Health Care Program announced in September 2005, is directed through a contract by the Oregon Health and Science University, Department of Medicine, located in Portland, Oregon. The Eisenberg Center intends to employ the latest survey research techniques to (1) determine how well its products and services are meeting customers' current and anticipated needs; (2) identify problem areas with existing products and services and determine what improvements should be made to improve these products and services; and (3) identify and develop new products and services.

To address customer requirements and to evaluate current and future AHRQ products and services, the Eisenberg Center must periodically determine how well the Eisenberg Center products and services are meeting customers' current and anticipated needs. Work conducted under this clearance will improve the products and services the Center develops for AHRQ for a three year period. The health care environment changes rapidly and requires a quick response from AHRQ to provide appropriately refined products and services. A generic clearance for this work will facilitate AHRQ's timely response to customers' needs.

Methods of Collection

Participation in survey testing will be fully voluntary and non-participation will have no affect on eligibility for, or receipt of, future AHRQ health services research support, on future opportunities to participate in research or to obtain informative research results. Specific estimation procedures, when used, will be described when we notify OMB as to actual studies conducted under the clearance.

Estimated Annual Respondent Burden

Type of survey	Number of respondents	Average hours per response	Total hours
Focus groups for needs assessment	30	1	30
Individual interviews for needs assessment	50	.75	37.5

Type of survey	Number of respondents	Average hours per response	Total hours
Formative focus groups for information tools	120	1	120
Cognitive testing of information tools	500	1	500
Clinician interviews for information tools	160	.75	120
Decision aid laboratory testing	100	1	100
Formative focus groups for decision aids	60	1	60
Automated/web-based surveys for product evaluation	600	.163	98
Telephone interviews for product evaluation	100	1	100
Focus groups for product evaluation	20	1	20
Totals	1,740	NA	1,186

Estimated Costs to the Federal Government

The maximum cost to the Federal Government is \$750,000 annually for FY 2007, FY 2008, and FY 2009. Most of the work will be carried out through contracts. The costs were estimated at \$200 for each face-to-face interview, \$100 for each telephone interview, \$5,000 for each focus group, \$10,000 for Web-based surveys, and \$20,000 for each laboratory testing module. Any deviation from these limits will be noted in reports made to OMB with respect to a particular study or studies conducted under the clearance.

Request for Comments

In accordance with the above-cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of health care information dissemination functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 31, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06-7585 Filed 9-11-06; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D-0344]

Draft Guidance for Industry on Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling." This document is intended to provide recommendations to sponsors of new drug applications (NDAs), and biologic license applications (BLAs) for therapeutic biologics (drugs) on carrying out in vitro or in vivo drug-drug interaction studies. The draft guidance reflects the current view that the metabolism and transport of a new drug should be defined during drug development and that its interactions with other drugs should be explored as part of an adequate assessment of the safety and effectiveness of the drug.

DATES: Submit written or electronic comments on the draft guidance by November 13, 2006. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Shiew-Mei Huang, Center for Drug Evaluation and Research (HFD-850), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 4550, Silver Spring, MD 20993-0002, 301-796-1541, or
Toni Stifano, Center for Biologics Evaluation and Research (HFM-600), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-6190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Drug Interaction Studies—Study Design, Data Analysis, and Implications for Dosing and Labeling." FDA previously published two guidance documents on the use of in vitro and in vivo approaches to study metabolism and metabolic drug-drug interactions entitled "Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies in Vitro" and "In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling." The draft guidance, when finalized, will replace these guidance documents. This draft guidance discusses study design, choice of interacting drugs, data analysis, and provides recommendations for dosing and labeling.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking

on drug metabolism/transport and drug-drug interactions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: September 5, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6-15058 Filed 9-11-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. FLETC-2006-0003]

Advisory Committee to the Office of State and Local Training

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee to the Office of State and Local Training (OSL) will meet on October 4, 2006, in Brunswick, GA. The meeting will be open to the public.

DATES: The Advisory Committee to the Office of State and Local Training will meet Wednesday, October 4, 2006, from 8 a.m. to 3 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 138 Glynco Parkway, Brunswick, GA. Send written material, comments, and/or requests to make an oral presentation to Reba Fischer, Designated Federal Officer

(DFO), 1131 Chapel Crossing Road (TH 396), Glynco, GA 31524. Written materials, comments, and/or requests to make an oral presentation at the meeting should reach the contact person listed below by September 22, 2006. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by September 22, 2006. Comments must be identified by FLETC-2006-0003 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* reba.fischer@dhs.gov. Include docket number in the subject line of the message.

- *Fax:* (912) 267-3531. (Not a toll-free number).

- *Mail:* Reba Fischer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Advisory Committee to the Office of State and Local Training, go to www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Reba Fischer, Designated Federal Officer, 912-267-2343, reba.fischer@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 1 *et seq.* (Pub. L. 92-463). The mission of the Advisory Committee to the Office of State and Local Training is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its State, local, campus, and tribal law enforcement customers.

Draft Agenda

The draft agenda for this meeting includes briefings and discussion on training; new initiatives; training validation; strategic goals; and the training needs of State, local, campus, and tribal law enforcement officers.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

At the discretion of the Co-chairs, members of the public may make an oral presentation during the meeting. If you would like to make an oral presentation at the meeting, please notify Reba Fischer. If you would like a copy of your material distributed to each member of the Committee in advance of the meeting, please submit 25 copies to Reba Fischer by September 22, 2006.

Visitors must pre-register attendance to ensure adequate seating. Please provide your name and telephone number by close of business on September 22, 2006, to Reba Fischer (contact information above).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Reba Fischer (contact information above) as soon as possible.

Dated: September 1, 2006.

Seymour Jones,

Deputy Assistant Director, Office of State and Local Law Enforcement Training.

[FR Doc. E6-15075 Filed 9-11-06; 8:45 am]

BILLING CODE 4810-32-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket Number DHS-2006-0047]

Privacy Act; Systems of Records

AGENCY: Office of Security, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, Office of Security, proposes to add a new system of records to the Department's inventory, entitled the "Personal Identity Verification Management System." This system will support the administration of the HSPD-12 program that directs the use of a common identification credential for both logical and physical access to federally controlled facilities and information systems. This system will enhance security, increase efficiency, reduce identify fraud, and protect personal privacy.

DATES: The established system of records will be effective October 12,

2006, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments identified by docket number DHS-2006-0047 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 401-4514 (not a toll-free number).

Mail: Cynthia Sjoberg, Office, DHS HSPD-12 Program Manager, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Cynthia Sjoberg, DHS HSPD-12 Program Manager, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528 by telephone (202) 772-5096 or facsimile (202) 401-4514; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202 by telephone (571) 227-3813 or facsimile (571) 227-4171.

SUPPLEMENTARY INFORMATION:

The Department of Homeland Security (DHS), Office of Security is publishing a Privacy Act system of records notice to cover its collection, use and maintenance of records relating to its role in the collection and management of personally identifiable information for the purpose of issuing credentials (ID badges) to meet the requirements of the Homeland Security Presidential Directive-12 (HSPD-12) and in furtherance of the Office of Security's mission for the Department. Until now, pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, Sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), the Office of Security has been relying on legacy Privacy Act systems for this purpose.

DHS established the Office of Security to protect and safeguard the Department's personnel, property, facilities, and information. The Office of Security develops, coordinates, implements, and oversees the Department's security policies, programs, and standards; delivers security training and education to DHS personnel; and provides security support to DHS components when necessary. In addition, the Office of Security coordinates and collaborates with the Intelligence Community on security issues and the protection of information. The Office of Security works to integrate security into every aspect of the Department's operations.

The Office of Security is divided into seven divisions, as follows, and in order of relevance to this notice:

- **Security Operations:** This division implements and maintains the Department's badging and credentialing programs and ensures that the Department is in full compliance with all applicable laws. It is within this Division and area of responsibility that the Office of Security is giving notice of its intent to create the Personal Identity Verification Management System (PIVMS) pursuant to HSPD-12;

- **Personnel Security:** background investigations, adjudications, and security clearances for DHS employees, as well as for State and local government personnel and private-sector partners;

- **Administrative Security:** the protection of classified and sensitive but unclassified information;

- **Physical Security:** security surveys, vulnerability assessments, and access control for DHS facilities;

- **Special Security Programs:** Sensitive Compartmented Information (SCI) and Special Access Programs;

- **Internal Security and Investigations:** protection against espionage, foreign intelligence service elicitation activities, and terrorist collection efforts directed against the Department; investigations of crimes against the Department's personnel and property;

- **Training and Operations Security:** integrated security training policy and programs.

The PIVMS records will cover all DHS employees, contractors and their employees, consultants, volunteers engaged by DHS who require long-term access to federal buildings and emergency "first responders" who work in federally controlled facilities. The personal information to be collected will consist of data elements necessary to identify the individual and to perform background or other investigations concerning the individual. The PIVMS will collect several data elements from the PIV card applicant, including: date of birth, Social Security Number, organizational and employee affiliations, fingerprints, digital color photograph, digital signature and phone number(s) as well additional verification information. The Office of Security has designed this system to align closely with their current business practices.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that a Federal agency maintains in a "system of records." A "system of records" is a group of any

records under the control of an agency from which the agency retrieves information by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Office of Security Personal Identity Verification Management System is such a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the Personal Identity Verification Management System.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

DHS-OS-2006-047

SYSTEM NAME:

Personal Identity Verification Management System (PIVMS).

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

Data covered by this system are maintained at the following location: DHS Data Center, Ashburn, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The PIVMS records will cover all DHS employees, contractors and their employees, consultants, volunteers engaged by DHS who require long-term access to federal buildings and emergency "first responders" who work in federally controlled facilities. Individuals who require regular, ongoing access to agency facilities, information technology systems, or information classified in the interest of national security.

The system does not apply to occasional visitors or short-term guests to whom DHS will issue temporary identification and credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on individuals issued a PIV credential by DHS include the following data fields: full name; Social Security number; date of birth; current address; digital signature; digital color photograph; fingerprints; biometric identifiers (two fingerprints);

organization/office of assignment; employee affiliation; telephone number(s); copies of identity source documents; signed SF 85 or equivalent; PIV card issue and expiration dates; PIV request form; PIV registrar approval digital signature; PIV card serial number; emergency responder designation; computer system user name; user access and permission rights, authentication certificates; digital signature information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Federal Information Security Act (Pub.L. 104–106, Sec. 5113); E-Government Act (Pub.L. 104–347, sec. 203); the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); and the Government Paperwork Elimination Act (Pub.L. 105–277, 44 U.S.C. 3504); Homeland Security Presidential Directive-12 (HSPD–12); Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; Federal Property and Administrative Act of 1949, as amended; the Intelligence Reform and Terrorism Prevention Act of 2004, P.L. 108–458, Section 3001 (50 U.S.C. 435b) and the Homeland Security Act of 2002, P.L. 107–296, as amended.

PURPOSE(S):

The primary purposes of the system are: (a) To ensure the safety and security of DHS facilities, systems, or information, and our occupants and users; (b) To verify that all persons entering Federal facilities, using Federal information resources, are authorized to do so; (c) to track and control PIV cards issued to persons entering and exiting the DHS facilities or using DHS systems.

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. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the

litigation and the use of such records by DOJ is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

B. To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; (b) any employee of the agency in his or her official capacity; (c) any employee of the agency in his or her individual capacity where agency or the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

C. Except as noted on Forms SF 85, 85–P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

D. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

E. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

F. To agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

G. To a Federal State, local, foreign, or tribal or other public authority 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 record 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.

H. To the Office of Management and Budget when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

I. To a Federal State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

J. To notify another Federal agency when, or verify whether, a PIV card is no longer valid.

K. To the news media or the general public, factual information the disclosure of which would be in the public interest and which would not constitute an unwarranted invasion of personal privacy, consistent with Freedom of Information Act standards.

L. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS Headquarters in the Offices of Security and Human Capital and at the DHS Data Center in Ashburn, VA Records maintain and store the records in electronic media and paper files.

RETRIEVABILITY:

Records may be retrieved by name of the individual, Social Security number

and/or by any other unique individual identifier.

SAFEGUARDS:

The Office of Security protects all records from unauthorized access through appropriate administrative, physical, and technical safeguards. Access is restricted on a "need to know" basis, utilization of SmartCard access, and locks on doors and approved storage containers. DHS buildings have security guards and secured doors. DHS monitors all entrances through electronic surveillance equipment. Personally identifiable information is safeguarded and protected in conformance with all Federal statutory and OMB guidance requirements. All access has role-based restrictions, and individuals with access privileges have undergone vetting and suitability screening. DHS encrypts data storage and transfer. DHS maintains an audit trail and engages in random periodic reviews to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect personally identifiable information.

RETENTION AND DISPOSAL:

This is a new program and the Records Management Office (RMO) has not finalized its retention policy. The DHS RMO will develop a records retention schedule for approval by the NARA pertaining to this program. Once NARA has approved the records retention schedule, DHS will amend this document to include the retention period for the records.

SYSTEM MANAGER AND ADDRESS:

DHS HSPD-12 Program Manager, Office of Security, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

NOTIFICATION PROCEDURE:

A request for access to records in this system may be made by writing to the System Manager, or the Director of Departmental Disclosure, in conformance with 6 CFR part 5, which provides the rules for requesting access to records maintained by the Department of Homeland Security.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee, contractor, or applicant; sponsoring agency; former sponsoring agency; other Federal agencies; contract employer; former employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 1, 2006.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E6-15044 Filed 9-11-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket Number DHS-2006-0025]

Privacy Act; Systems of Records

AGENCY: Office of Security, Department of Homeland Security.

ACTION: Notice of Privacy Act system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, the Department of Homeland Security, Office of Security, proposes to add a new system of records to the Department's inventory, entitled "Office of Security File System." This system will support the administration of a program which provides security for the Department by safeguarding and protecting the Department's personnel, property, facilities, and information. **DATES:** The established system of records will be effective October 12, 2006, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments identified by docket number DHS-2006-0025 by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Fax: (202) 401-4514 (not a toll-free number).

Mail: Marc E. Frey, Senior Advisor, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT:

Marc E. Frey, Senior Advisor, Office of Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528 by telephone (202) 772-5096 or facsimile (202) 401-4514; Hugo Teufel III, Chief Privacy Officer, 601 S. 12th Street, Arlington, VA 22202 by telephone (571) 227-3813 or facsimile (571) 227-4171.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of Security is publishing a Privacy Act system of records notice to cover its collection, use and maintenance of records relating to its security mission for the Department. Until now, pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107-296, sec. 1512, 116 Stat. 2310 (Nov. 25, 2002) (6 U.S.C. 552), the Office of Security has been relying on legacy Privacy Act systems for this purpose.

DHS established the Office of Security to protect and safeguard the Department's personnel, property, facilities, and information. The Office of Security develops, coordinates, implements, and oversees the Department's security policies, programs, and standards; delivers security training and education to DHS personnel; and provides security support to DHS components when necessary. In addition, the Office of Security coordinates and collaborates with the Intelligence Community on security issues and the protection of information. The Office of Security works to integrate security into every aspect of the Department's operations. The Office of Security is divided into seven divisions, as follows:

- **Personnel Security:** Background investigations, adjudications, and security clearances for DHS employees, as well as for State and local government personnel and private-sector partners;
- **Administrative Security:** The protection of classified and sensitive but unclassified information;
- **Physical Security:** Security surveys, vulnerability assessments, and access control for DHS facilities;
- **Special Security Programs:** Sensitive Compartmented Information (SCI) and Special Access Programs;
- **Internal Security and Investigations:** Protection against espionage, foreign intelligence service elicitation activities, and terrorist collection efforts directed against the Department; investigations of crimes against the Department's personnel and property;
- **Training and Operations Security:** Integrated security training policy and programs;
- **Security Operations:** Badging and credentialing programs.

The Office of Security records will cover not only DHS employees, but also contractors, consultants, volunteers, student interns, visitors, and others who have access to DHS facilities. The personal information to be collected will consist of data elements necessary to identify the individual and to

perform background or other investigations concerning the individual. The system has been designed to closely align with the Office of Security's business practices.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Office of Security File System is such a system of records.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency. Below is the description of the Office of Security File System.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

DHS-OS-001

SYSTEM NAME:

Office of Security File System.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

The records maintained by the Office of Security are located within the headquarters facilities of the Department of Homeland Security (DHS), Washington, DC 20528.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in, or of interest to, DHS Office of Security activities, operations, or programs, including, but not limited to: current and former DHS employees; applicants for employment with DHS (including student interns); contractors and consultants providing services to DHS; State and local government personnel and private-sector individuals who maintain an access control card permitting access to a DHS facility or access to information

technology systems that process national or homeland security information; DHS employees and contractors who may be a subject of a counter-terrorism, counterintelligence, or counter-espionage, or law enforcement investigation; senders of unsolicited communications that raise a security concern to the Department or its personnel; state and local government personnel and private-sector individuals who serve on an advisory committee and board sponsored by DHS; and state and local government personnel and private-sector individuals who are authorized by DHS to access sensitive or classified homeland security information, classified facilities, communications security equipment, and information technology systems that process national or homeland security classified information. The system also includes individuals accused of security violations or found in violation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the management and operation of the DHS personnel security and suitability program, including but not limited to, completed standard form questionnaires issued by the Office of Personnel Management; originals or copies of background investigative reports; supporting documentation related to the background investigations and adjudications; and other information relating to an individual's eligibility for access to classified or sensitive information.

Records relating to management and operation of DHS programs to safeguard classified and sensitive but unclassified information, including but not limited to, document control registries; courier authorization requests; non-disclosure agreements; record(s) of security violations; record(s) of document transmittal(s); and requests for secure storage and communications equipment.

Records relating to the management and operation of DHS special security programs, including but not limited to, requests for access to sensitive compartmented information (SCI); and foreign travel and foreign contact registries for individuals with SCI access.

Records relating to the management and operation of the DHS internal security program, including but not limited to, inquiries relating to suspected security violation(s); recommended remedial actions for possible security violation(s); reports of investigation regarding security violations; statements of individuals; affidavits; correspondence; and other

documentation pertaining to investigative or analytical efforts by the DHS Office of Security to identify threats to the Department's personnel, property, facilities, and information; intelligence reports and database results relating to DHS personnel, applicants or candidates for DHS employment or a DHS contract, or other individuals interacting or having contact with DHS personnel or contractors; foreign contact registries for individuals; or unsolicited communications with DHS personnel or contractors that raise a security concern.

Records relating to the management and operation of the Office of Security's physical security, operations security, and security training and awareness programs, including but not limited to, briefing and course registries; facility access registries; access control card requests; and credential registries.

Additionally, specific information from standard forms used to conduct background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Act of 2002; National Security Act of 1947; 44 U.S.C. Chapters 21, 29, 31, 33, and 35; 5 U.S.C. Sections 301, 3301, and 7902; 40 U.S.C. 1315; Executive Orders 10450, 10865, 12333, 12356, 12958, as amended, 12968, 13142, 13284; the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458, Section 3001 (50 U.S.C. 435b).

PURPOSE(S):

The records in this system are used in the management and implementation of Office of Security programs and activities that support the protection of the Department's personnel, property, facilities, and information. These purposes include, but are not limited to, investigation and adjudication of personnel security and suitability determinations and access to classified national security information and sensitive but unclassified information; verification of access to classified national security information; determination of access to DHS facilities; certification of storage and processing facilities for classified national security information meet required standards; audit of contracts involving classified national security information; inventory of communications security equipment, materials/keys for such equipment, and classified publications; analysis, identification, and addressing of efforts to infiltrate the Department or collect classified or sensitive information; production of access control cards and audit of access to DHS facilities; notification of DHS personnel in

emergency situations; maintenance of a central databank for investigations of misconduct involving the Department, its personnel, or its property. The records may be used to document security violations and supervisory actions taken.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To designated officers and employees of Federal, State, local or international agencies in connection with the hiring or continued employment of an individual, the conduct of a suitability or security investigation of an individual, the grant, renewal, suspension, or revocation of a security clearance, or the certification of security clearances, to the extent that DHS determines the information is relevant and necessary to the hiring agency's decision;

B. To designated officers and employees of Federal, State, local or international agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for DHS to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit;

C. Except as noted on national security questionnaires, such as Forms SF 85, 85-P, and 86, records to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority charged with investigating or prosecuting a violation or enforcing or implementing a law where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law (e.g. criminal, civil or regulatory);

D. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable national security directives,

or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

E. To an organization or individual in either the public or private sector where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

F. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee;

G. To the United States Office of Personnel Management, the Merit Systems Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties;

H. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains;

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

J. To the Department of Justice (DOJ) or in a proceeding before a court or adjudicative body before which DHS is authorized to appear, when: (a) DHS, or any component thereof; or, (b) any employee of DHS in his or her official capacity; or, (c) any employee of DHS in his or her individual capacity where the DOJ or DHS has agreed to represent the employee; or (d) the United States, where DHS determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ or by DHS before a court or adjudicative body is deemed by DHS to be relevant and necessary to the litigation, provided, however, that in each case, DHS determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

K. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

L. To any source or potential source from which information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records maintained by the Office of Security are located within the headquarters of DHS, Washington, DC 20528.

The records are maintained in paper files and on electronic media.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual, social security number, or other unique individual identifier.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a "need-to-know," utilization of password protection features, and locks on doors and approved storage containers. Buildings have security guards and secured doors, and all entrances are monitored by electronic surveillance equipment. Classified information is appropriately stored in accordance with applicable requirements.

RETENTION AND DISPOSAL:

The files are destroyed in accordance with legal requirements and the disposition instructions in the General Records Schedule 18 issued by the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

DHS Privacy Office, Director of Departmental Disclosure, U.S. Department of Homeland Security, 245 Murray Lane, SW., Building 410, Washington, DC 20528.

NOTIFICATION PROCEDURE:

A request for access to records in this system may be made by writing to the

System Manager, the Director of Departmental Disclosure, in conformance with 6 CFR part 5, which provides the rules for requesting access to records maintained by the Department of Homeland Security.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information in security files may be obtained from other sources, including the following: Current and former DHS employees (including student interns); applicants for employment with DHS; contractors and consultants providing services to DHS; DHS personnel that maintain an access control card permitting access to a DHS facility; DHS personnel who may be a subject of a criminal, counter-terrorism, counter-espionage, or other criminal investigation; senders of unsolicited communications to the Department or its personnel; foreign nations who have contact with DHS, its personnel or its offices; State and local government personnel and private-sector individuals who serve on an advisory committee and board sponsored by DHS; State and local government personnel and private-sector individuals who are authorized by DHS to access sensitive or classified homeland security information, classified facilities, communications security equipment, and information technology systems which process national or homeland security classified information; State and local government personnel and private-sector individuals who require a DHS access control device that permits access to information technology systems which process national or homeland security classified information; law enforcement agencies; other government agencies; previous employers, colleagues, neighbors, references, informants or other sources; and representatives from educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

In accordance with 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5), the personnel security case files in this system of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act of 1974, as amended.

Dated: September 1, 2006.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E6-15045 Filed 9-11-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Naturalization Oath Ceremony; Form N-445, OMB Control No. 1615-0054.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted 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 November 13, 2006.

Written comments and suggestions regarding items 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, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail add the OMB Control Number 1615-0054 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 collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Notice of Naturalization Oath Ceremony.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-445. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information furnished on this form refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 53,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at <http://uscis.gov/graphics/formfee/forms/pr/index.htm>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529, (202) 272-8377.

Dated: September 6, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6-15039 Filed 9-11-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Application for Waiver of Grounds of Inadmissibility, Form I-601, OMB Control Number 1615-0029.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted 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 November 13, 2006.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail add the OMB Control Number 1615-0029 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 collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Title of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-601. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit USCIS Web site at <http://uscis.gov/graphics/formfee/forms/pr/index.htm>. We may also be contacted at USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: September 6, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6-15040 Filed 9-11-06; 8:45 am]

BILLING CODE 4410-10-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Regarding the Coyote Springs Investments Multiple Species Habitat Conservation Plan, Lincoln County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), the Fish and Wildlife Service (Service) as the lead agency, advises the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) regarding the proposed Coyote Springs Investment LLC (Applicant) Multiple Species Habitat Conservation Plan (MSHCP) and issuance of an incidental take permit (Permit) for endangered and threatened species in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant proposes to develop a planned community in southern Lincoln County and implement conservation features (Project). The Applicant intends to request a Permit for incidental take of federally listed threatened or endangered species, including desert tortoise (*Gopherus agassizii*) as well as Evaluation List species. Evaluation List species include species that have been petitioned for listing; State-listed species; species that have been nominated for inclusion by technical specialists; and other species of concern that co-occur with federally listed species. The Service plans to refine the species list as a part of the scoping process. In accordance with the Act, the Applicant will prepare a MSHCP containing proposed measures to minimize and mitigate incidental take that could result from the Project.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS. The proposed action is approval of the MSHCP and issuance of the Permit.

DATES: Public scoping meetings will be held:

1. September 26, 2006, 4 p.m. to 7 p.m., Lincoln County Alamo Annex, 100 S First W Street, Alamo, Nevada 89001, 775-725-3356.

2. September 27, 2006, 4 p.m. to 7 p.m., Moapa Recreation Center, 1340 E Highway 168, Moapa, Nevada 89025, 702-864-2423.

Written comments from all interested parties must be received on or before October 12, 2006.

ADDRESSES: Comments and requests for information related to the preparation of the EIS should be sent to Robert D. Williams, Field Supervisor, U.S. Fish and Wildlife Service, 1340 Financial

Boulevard, Suite 234, Reno, Nevada 89502; or fax 775-861-6301. Comments may be submitted electronically to fw8leocomments@fws.gov. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Jeannie Stafford, at 775-861-6300.

SUPPLEMENTARY INFORMATION: Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Jeannie Stafford (See **ADDRESSES**) at 775-861-6300 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

A Notice of Intent to prepare an EIS was published in the **Federal Register** for this project on December 4, 2001 (**Federal Register** Volume 66, No. 233, pages 63065 to 63066). This second notice is being published because the amount of land included in the MSHCP has been modified. The MSHCP described in the 2001 NOI included privately-owned, developable lands, and leased land in Lincoln County and Clark County, Nevada. The MSHCP described in this NOI includes private, developable lands in Lincoln County only, as well as leased lands in both Lincoln and Clark Counties.

The Applicant has initiated discussions with the Service regarding preparation of an MSHCP and issuance of a Permit for their activities, which include residential and commercial development, construction, and maintenance. The Applicant has also initiated discussions with the Bureau of Land Management (BLM) regarding land leases, and with the U.S. Army Corps of Engineers regarding project wetland permitting. Land leased and owned by the Applicant occupies most of the eastern portion of Coyote Springs Valley straddling the Pahrnagat Wash and the Kane Springs Wash in Lincoln County. It consists of approximately 13,800 acres of land leased from the BLM in Lincoln and Clark Counties, and approximately 22,140 acres of developable private land in Lincoln County. The area is bordered by the Delamar Mountains to the north, the Meadow Valley Mountains to the east, and U.S. 93 to the west. The development area extends approximately 9 miles (14.48 kilometers) north of the Lincoln County/Clark County line. Leased land is bordered by SR 168 to the south in Clark County. Accordingly, BLM will be a

cooperating agency for the environmental review. These lands are located in portions of Townships 11, 12, and 13 South and Ranges 63 and 64 East. The surrounding land is primarily owned and managed by the BLM and the Service. South of the development area, the Applicant's lands are being developed in Clark County and are not covered under this MSHCP.

Some of the Applicant's future activities have the potential to impact species subject to protection under the Act. Section 9 of the Act (16 U.S.C. 1538) and Federal regulations prohibit the "take" of a fish or wildlife species listed as endangered or threatened. Under the Act, the following activities are defined as take: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1532). However, under section 10(a) of the Act, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species are at 50 CFR 17.32 and 50 CFR 17.22, respectively. An applicant for a Permit under section 10 must prepare and submit to the Service for approval a Plan containing a multifaceted strategy for minimizing and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided.

The Service will conduct an environmental review of the MSHCP and prepare an EIS. The Applicant has selected ENTRIX as the lead consultant to prepare the EIS under the supervision of the Service, which will be responsible for the scope and content of the NEPA document. NEPA requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the environmental review. Alternatives considered for analysis in an EIS may include: Variations in the scope of proposed activities; variations in the location, amount, and types of conservation measures; variations in activity duration; or, a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources,

socioeconomic conditions, and other environmental issues that could occur with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS identifies avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

The EIS will consider the proposed action, no action, and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. The alternatives to be considered for analysis in the EIS may address combinations of covered species, different permit effective periods, or a combination of elements.

Written comments from interested parties are welcome to ensure that the issues of public concern related to the proposed action are identified. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the **ADDRESSES** section of this notice. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. Public meetings will be held as noted in the **DATES** section above.

The Service requests that comments be specific. In particular, the Service is requesting information regarding (1) potential direct, indirect, and cumulative impacts of implementation of the proposed action; (2) other possible alternatives that meet the purpose and need; (3) potential adaptive management and/or monitoring provisions; (4) existing environmental conditions in the area; (5) other plans or projects that might be relevant to this proposed project; and (6) potential minimization and mitigation efforts.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 et seq.), Council on the Environmental Quality Regulations (40 CFR parts 1500-1518), other applicable Federal laws and regulations, and applicable policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. It is estimated that the draft EIS will be available for public review during the first quarter of 2007.

Dated: September 5, 2006.

Ken McDermond,

*Deputy Manager, California/Nevada
Operations Office, Sacramento, California.*
[FR Doc. E6-15050 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: This notice publishes approval of the Tribal-State Compact between the State of Oklahoma and Caddo Nation of Oklahoma.

DATES: *Effective Date:* September 12, 2006.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compact for the purpose of engaging in class III gaming activities on Indian lands. This Compact authorizes the Caddo Nation of Oklahoma to engage in certain class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games.

Dated: August 23, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6-15031 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-4N-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: This notice publishes approval of the Memorandum of

Incorporation of Most Favored Nations Amendments to the Tribal-State Compact for class III gaming between the State of Washington and Lummi Nation.

DATES: *Effective Date:* September 12, 2006.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

SUPPLEMENTARY INFORMATION: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compact for the purpose of engaging in class III gaming activities on Indian lands. This Amendment authorizes the limited transport of escorted minors across the gaming floor and additional hours of operation for the tribe.

Dated: August 23, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6-15024 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-4N-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compact taking effect.

SUMMARY: Notice is given that the Tribal-State gaming compact between the Wichita and Affiliated Tribes and the State of Oklahoma is considered approved and is in effect.

DATES: *Effective Date:* September 12, 2006.

FOR FURTHER INFORMATION CONTACT:

George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

SUPPLEMENTARY INFORMATION: Under Section 11(d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the **Federal Register** notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III

gaming activities on Indian lands. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove this compact before the date that is 45 days after the date it was submitted. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), this compact is considered approved but only to the extent it is consistent with IGRA. This compact authorizes the Wichita and Affiliated Tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games, and takes effect on the date the approval is published in the **Federal Register**.

Dated: August 23, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6-15027 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-4N-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-910-06-0777XX]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council meeting will be held as indicated below.

DATES: The three councils will meet on Thursday, November 2, 2006, from 8 a.m. to 5 p.m., and Friday, November 3, 2006, from 8 a.m. to 2 p.m., at the Silver Legacy, 407 N. Virginia Street, Reno, Nev. 89501-1138, 775-239-4777.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, Chief, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861-6586; or Debra Kolkman at telephone (775) 289-1946.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. Agenda topics include a presentation and discussion of the accomplishments during 2006 and the outlook for 2007 for the BLM in Nevada; opening remarks and closeout reports of the three Resource Advisory Councils (RACs); breakout meetings of each group category; breakout meetings of the three RACs; discussion of a recreation subgroup of the existing RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the Councils may raise. A detailed agenda will be available at <http://www.nv.blm.gov> or by calling (775) 289-1946, after October 12, 2006. All meetings are open to the public. The public may present written comments to the three RAC groups or the individual RACs. The public comment period for the Council meeting will be at 3 p.m. on Thursday, November 2. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kolkman at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 289-1946.

Dated: August 28, 2006.

Ron Wenker,

State Director, Nevada.

[FR Doc. E6-15063 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-056-5853-EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the Formerly Classified Lands by the Southern Nevada Public Land Management Act

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer for sale, by public auction, 81 parcels of Federal public land aggregating approximately 2,577.60 acres, more or less, in the Las Vegas Valley, Nevada.

The sale will be under the authority of the Southern Nevada Public Land Management Act of 1998, 112 Stat. 2343, as amended by Title IV of the Clark County Conservation of Public Land and Natural Resources Act of 2002, 116 Stat. 1994, (SNPLMA). The SNPLMA sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, and BLM land sale and mineral conveyance regulations at 43 CFR parts 2710 and 2720. Maps, the approved appraisal reports, the draft environmental assessment (EA) and other supporting documentation are available for review at the BLM, Las Vegas Field Office (LVFO), Las Vegas, Nevada. Information is also available online at <http://www.nv.blm.gov>.

DATES: Comments regarding: (1) The proposed SNPLMA sale of the 2,577.60 acres in the Las Vegas Valley; and (2) the draft environmental assessment (EA), must be received by BLM on or before October 27, 2006.

Sealed bids must be received not later than 4:30 p.m. PST, March 2, 2007, at the address of the Las Vegas Field Office listed below. The sale by public auction will begin at 10 a.m., PST, March 7, 2007.

ADDRESSES: Written comments regarding the proposed sale may be submitted to BLM at the following address: Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

Comments received by e-mail, facsimile or telephone will *not* be considered as comments properly filed.

The address for oral bidding registration, and the location of the public auction is: Cashman Center, 850 Las Vegas Boulevard North, Las Vegas, NV 89101.

The public auction will take place inside the Cashman Theater located in the southwest corner of the Cashman Center with entrance to the Theater between Parking Lots "B" and "C". Registration will take place in the Theater Lobby. Cashman Center charges a \$3 per vehicle parking fee. Parking Passes will be provided to those individuals who pre-register and those who pick-up a Sale Packet at the LVFO prior to the day of the sale. Passes will accompany the sale packet that is sent to everyone on the sale mailing list. Give the Pass to the attendant when you enter the parking area.

Directions to the Cashman Center from Boulder City, Henderson, or the Southeast Area of Las Vegas: Take U.S. 95 North. Exit on Las Vegas Blvd. North.

Turn right on Washington Ave. Turn right on Washington to Cashman Center (850 Las Vegas Blvd. North).

Directions to the Cashman Center from Reno or the Northwest Area of Las Vegas: Take U.S. 95 South. Exit on Las Vegas Blvd. North (Las Vegas Blvd./Cashman Center). Turn left to Cashman Center (850 Las Vegas Blvd. North).

FOR FURTHER INFORMATION CONTACT: You may contact the Las Vegas Field Office at (702) 515-5000 and ask to have your call directed to a member of the Sales Team.

SUPPLEMENTARY INFORMATION: This public sale is in conformance with the Las Vegas Resource Management Plan, approved on October 5, 1998. BLM has determined that the proposed action conforms with land use plan decision LD-1 under the authority of FLPMA.

The public lands will be offered for sale competitively on March 7, 2007, at an oral auction for not less than the appraised fair market value (FMV) for each parcel. The parcels described below will be auctioned under the terms and conditions of this Notice of Realty Action (NORA).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.

Section 15, NE¹/₄NW¹/₄NE¹/₄SW¹/₄,
SW¹/₄NW¹/₄NE¹/₄SW¹/₄,
SE¹/₄NW¹/₄NE¹/₄SW¹/₄,
SW¹/₄NE¹/₄NW¹/₄SW¹/₄,
SW¹/₄NW¹/₄NW¹/₄SW¹/₄,
NE¹/₄SW¹/₄NW¹/₄SW¹/₄,
NW¹/₄SW¹/₄NW¹/₄SW¹/₄,
SE¹/₄SW¹/₄NW¹/₄SW¹/₄,
NW¹/₄SW¹/₄SE¹/₄NE¹/₄,
SW¹/₄SW¹/₄SE¹/₄NE¹/₄,
NE¹/₄SW¹/₄SW¹/₄NE¹/₄,
NW¹/₄SW¹/₄SW¹/₄NE¹/₄,
SW¹/₄SW¹/₄SW¹/₄NE¹/₄,
SE¹/₄SW¹/₄SW¹/₄NE¹/₄.

T. 22 S., R. 60 E.

Section 16, NW¹/₄NE¹/₄NE¹/₄SE¹/₄,
NE¹/₄NW¹/₄NE¹/₄SE¹/₄,
NW¹/₄NW¹/₄NE¹/₄SE¹/₄,
SW¹/₄NW¹/₄NE¹/₄SE¹/₄,
SE¹/₄NW¹/₄NE¹/₄SE¹/₄,
NE¹/₄NE¹/₄NW¹/₄SE¹/₄,
SE¹/₄NE¹/₄NE¹/₄SE¹/₄,
NE¹/₄SE¹/₄NE¹/₄SE¹/₄,
NW¹/₄SE¹/₄NE¹/₄SE¹/₄,
SE¹/₄SE¹/₄NE¹/₄SE¹/₄,
SE¹/₄SW¹/₄NE¹/₄SE¹/₄,
SW¹/₄SW¹/₄NE¹/₄SE¹/₄,
SE¹/₄SE¹/₄NW¹/₄SE¹/₄,
SW¹/₄SE¹/₄NW¹/₄SE¹/₄,
SW¹/₄SW¹/₄NW¹/₄SE¹/₄,
NE¹/₄NE¹/₄SE¹/₄SE¹/₄,
SE¹/₄NE¹/₄SE¹/₄SE¹/₄,
SW¹/₄NE¹/₄SE¹/₄SE¹/₄, E¹/₂
NE¹/₄NW¹/₄SE¹/₄SE¹/₄, E¹/₂
NW¹/₄NW¹/₄SE¹/₄SE¹/₄,
SE¹/₄NW¹/₄SE¹/₄SE¹/₄,
NE¹/₄SE¹/₄SE¹/₄SE¹/₄,
NW¹/₄SE¹/₄SE¹/₄SE¹/₄,
SW¹/₄SE¹/₄SE¹/₄SE¹/₄,
SE¹/₄SE¹/₄SE¹/₄SE¹/₄,
NE¹/₄SW¹/₄SE¹/₄SE¹/₄.

- NW¹/₄SW¹/₄SE¹/₄SE¹/₄,
 SW¹/₄SW¹/₄SE¹/₄SE¹/₄,
 SE¹/₄SW¹/₄SE¹/₄SE¹/₄, N¹/₂
 NE¹/₄SE¹/₄SW¹/₄SE¹/₄,
 NE¹/₄NE¹/₄SW¹/₄SE¹/₄, E¹/₂
 NW¹/₄NE¹/₄SW¹/₄SE¹/₄,
 SE¹/₄NE¹/₄SW¹/₄SE¹/₄,
 NE¹/₄NW¹/₄SW¹/₄SE¹/₄, E¹/₂
 NW¹/₄NE¹/₄NE¹/₄SW¹/₄,
 NW¹/₄SE¹/₄NE¹/₄SW¹/₄,
 NE¹/₄SE¹/₄SE¹/₄SW¹/₄,
 SW¹/₄SE¹/₄SE¹/₄SW¹/₄,
 SE¹/₄SE¹/₄SE¹/₄SW¹/₄.
- Section 28, N¹/₂ SE¹/₄SW¹/₄NE¹/₄,
 NW¹/₄NE¹/₄SE¹/₄NE¹/₄.
- T. 22 S., R. 60 E.
 Section 17, W¹/₂SW¹/₄SE¹/₄SW¹/₄,
 SW¹/₄SE¹/₄SW¹/₄SW¹/₄.
- T. 22 S., R. 60 E.
 Section 24, S¹/₂SW¹/₄NW¹/₄SE¹/₄NE¹/₄,
 NE¹/₄NE¹/₄NE¹/₄SE¹/₄, S¹/₂
 NE¹/₄NE¹/₄SE¹/₄, N¹/₂ SE¹/₄NE¹/₄SE¹/₄.
- T. 22 S., R. 60 E.
 Section 25, E¹/₂NW¹/₄NE¹/₄SW¹/₄.
- T. 22 S., R. 60 E.
 Section 26, NW¹/₄NE¹/₄NE¹/₄NW¹/₄,
 NE¹/₄NW¹/₄NE¹/₄NW¹/₄,
 W¹/₂SE¹/₄SW¹/₄SE¹/₄.
- T. 22 S., R. 60 E.
 Section 27, SE¹/₄SE¹/₄NW¹/₄NW¹/₄,
 SW¹/₄SE¹/₄NW¹/₄NW¹/₄,
 SE¹/₄SW¹/₄NW¹/₄NW¹/₄,
 NE¹/₄NE¹/₄SW¹/₄NW¹/₄.
- T. 22 S., R. 61 E.
 Section 14, W¹/₂NW¹/₄NE¹/₄NW¹/₄SW¹/₄,
 SW¹/₄NE¹/₄NW¹/₄SW¹/₄,
 SE¹/₄NW¹/₄NW¹/₄SW¹/₄,
 E¹/₂SW¹/₄NW¹/₄NW¹/₄SW¹/₄,
 NW¹/₄SW¹/₄NW¹/₄SW¹/₄,
 E¹/₂SW¹/₄SW¹/₄NW¹/₄SW¹/₄,
 E¹/₂NE¹/₄SW¹/₄NW¹/₄SW¹/₄,
 E¹/₂NW¹/₄SE¹/₄NW¹/₄SW¹/₄,
 W¹/₂NE¹/₄SE¹/₄NW¹/₄SW¹/₄.
- T. 22 S., R. 61 E.
 Section 20, SW¹/₄SW¹/₄.
- T. 22 S., R. 61 E.
 Section 29, W¹/₂NW¹/₄NE¹/₄SW¹/₄,
 W¹/₂SW¹/₄NE¹/₄SW¹/₄,
 SE¹/₄NE¹/₄NW¹/₄SW¹/₄,
 W¹/₂NE¹/₄NW¹/₄SW¹/₄,
 NE¹/₄NW¹/₄NW¹/₄SW¹/₄,
 NW¹/₄SE¹/₄NW¹/₄SW¹/₄,
 SW¹/₄NW¹/₄SW¹/₄, W¹/₂SW¹/₄SE¹/₄SW¹/₄.
- T. 22 S., R. 61 E.
 Section 30, NE¹/₄NW¹/₄NW¹/₄SE¹/₄,
 SW¹/₄NE¹/₄NW¹/₄SE¹/₄,
 NW¹/₄NW¹/₄NE¹/₄SE¹/₄,
 SW¹/₄NW¹/₄NE¹/₄SE¹/₄,
 NW¹/₄SW¹/₄NE¹/₄SE¹/₄,
 NE¹/₄SE¹/₄NW¹/₄SE¹/₄.
- T. 23 S., R. 61 E.
 Section 10, S¹/₂SW¹/₄SW¹/₄NW¹/₄,
 SE¹/₄SW¹/₄NW¹/₄, SW¹/₄SE¹/₄NW¹/₄,
 S¹/₂SW¹/₄NE¹/₄SW¹/₄, SE¹/₄NE¹/₄SW¹/₄,
 S¹/₂NE¹/₄SE¹/₄SW¹/₄,
 N¹/₂SW¹/₄SE¹/₄SW¹/₄, S¹/₂SE¹/₄SE¹/₄SW¹/₄,
 S¹/₂NE¹/₄NW¹/₄SE¹/₄,
 S¹/₂NW¹/₄NW¹/₄SE¹/₄, NW¹/₄SW¹/₄SE¹/₄,
 S¹/₂NE¹/₄SW¹/₄SE¹/₄,
 N¹/₂SW¹/₄SW¹/₄SE¹/₄.
- T. 23 S., R. 61 E.
 Section 09, NW¹/₄SW¹/₄SE¹/₄,
 S¹/₂NE¹/₄SW¹/₄SE¹/₄, S¹/₂SW¹/₄SW¹/₄SE¹/₄,
 SE¹/₄SW¹/₄SE¹/₄, S¹/₂SW¹/₄SE¹/₄SE¹/₄,
 N¹/₂SE¹/₄SE¹/₄SE¹/₄.
- T. 23 S., R. 61 E.
- Section 15, NW¹/₄NW¹/₄NW¹/₄,
 S¹/₂NW¹/₄NW¹/₄,
 E¹/₂NW¹/₄NW¹/₄NE¹/₄NW¹/₄,
 E¹/₂SW¹/₄NW¹/₄NE¹/₄NW¹/₄,
 E¹/₂NW¹/₄NE¹/₄NW¹/₄, NE¹/₄NE¹/₄NW¹/₄,
 S¹/₂NW¹/₄, S¹/₂NE¹/₄NW¹/₄,
 SW¹/₄NW¹/₄SW¹/₄NE¹/₄,
 SW¹/₄SW¹/₄NE¹/₄, SW¹/₄SE¹/₄SW¹/₄NE¹/₄,
 N¹/₂SW¹/₄, NW¹/₄SW¹/₄SW¹/₄,
 N¹/₂NE¹/₄SW¹/₄SW¹/₄,
 SW¹/₄NE¹/₄SW¹/₄SW¹/₄,
 W¹/₂SE¹/₄NE¹/₄SW¹/₄SW¹/₄,
 N¹/₂SW¹/₄SW¹/₄SW¹/₄,
 N¹/₂SW¹/₄SW¹/₄SW¹/₄SW¹/₄,
 N¹/₂NE¹/₄NW¹/₄SE¹/₄SW¹/₄,
 N¹/₂NW¹/₄NW¹/₄SE¹/₄SW¹/₄,
 NE¹/₄SE¹/₄SW¹/₄,
 E¹/₂NW¹/₄SE¹/₄SE¹/₄SW¹/₄,
 E¹/₂SE¹/₄SE¹/₄SW¹/₄, NW¹/₄NW¹/₄SE¹/₄,
 NW¹/₄NE¹/₄NW¹/₄SE¹/₄.
- T. 23 S., R. 61 E.
 Section 16, S¹/₂NE¹/₄NW¹/₄NW¹/₄,
 S¹/₂NW¹/₄NW¹/₄NW¹/₄, S¹/₂NW¹/₄NW¹/₄,
 NE¹/₄NE¹/₄NW¹/₄, S¹/₂NE¹/₄NW¹/₄,
 NW¹/₄SW¹/₄NW¹/₄, S¹/₂NE¹/₄SW¹/₄NW¹/₄,
 S¹/₂SW¹/₄NW¹/₄, N¹/₂NW¹/₄SE¹/₄NW¹/₄,
 N¹/₂NW¹/₄NW¹/₄NE¹/₄, NE¹/₄NW¹/₄NE¹/₄,
 S¹/₂SW¹/₄NW¹/₄NE¹/₄,
 N¹/₂SE¹/₄NW¹/₄NE¹/₄, S¹/₂SE¹/₄NE¹/₄NE¹/₄,
 S¹/₂NW¹/₄SW¹/₄NE¹/₄,
 N¹/₂NE¹/₄SW¹/₄NE¹/₄, SW¹/₄SW¹/₄NE¹/₄,
 S¹/₂SE¹/₄SW¹/₄NE¹/₄, SE¹/₄NE¹/₄,
 N¹/₂NW¹/₄SW¹/₄, SW¹/₄NW¹/₄SW¹/₄,
 N¹/₂SE¹/₄NW¹/₄SW¹/₄,
 W¹/₂NW¹/₄NE¹/₄SW¹/₄, SW¹/₄NE¹/₄SW¹/₄,
 SW¹/₄SW¹/₄, NW¹/₄SE¹/₄SW¹/₄,
 S¹/₂SE¹/₄SW¹/₄, S¹/₂NW¹/₄NE¹/₄SW¹/₄,
 NE¹/₄NW¹/₄SE¹/₄,
 NE¹/₄NW¹/₄SE¹/₄, S¹/₂NE¹/₄SW¹/₄NE¹/₄,
 NE¹/₄NE¹/₄SW¹/₄SE¹/₄,
 NE¹/₄SW¹/₄SE¹/₄, SW¹/₄SW¹/₄SE¹/₄,
 N¹/₂SE¹/₄SW¹/₄SE¹/₄, SE¹/₄SE¹/₄.
- T. 23 S., R. 61 E.
 Section 20, N¹/₂NW¹/₄NE¹/₄NE¹/₄,
 NE¹/₄NE¹/₄NE¹/₄, N¹/₂SW¹/₄NE¹/₄NE¹/₄,
 SE¹/₄NE¹/₄NE¹/₄, S¹/₂NW¹/₄SE¹/₄NE¹/₄,
 N¹/₂SE¹/₄SE¹/₄NE¹/₄, and the NE¹/₄SE¹/₄,
 SE¹/₄SE¹/₄, excepting therefrom
 approximate 30 acres described in BLM
 ROW grant N-78339.
- T. 23 S., R. 61 E.
 Section 21, W¹/₂, N¹/₂NW¹/₄NE¹/₄,
 W¹/₂SW¹/₄NW¹/₄NE¹/₄,
 N¹/₂NE¹/₄SW¹/₄NW¹/₄NE¹/₄,
 N¹/₂NW¹/₄SE¹/₄NW¹/₄NE¹/₄,
 N¹/₂NW¹/₄NE¹/₄NE¹/₄,
 N¹/₂SW¹/₄NW¹/₄NE¹/₄NE¹/₄,
 N¹/₂NW¹/₄NE¹/₄NE¹/₄NE¹/₄,
 W¹/₂NW¹/₄SW¹/₄NE¹/₄,
 W¹/₂NE¹/₄NW¹/₄SW¹/₄NE¹/₄,
 SE¹/₄NW¹/₄SW¹/₄NE¹/₄, S¹/₂SW¹/₄NE¹/₄,
 S¹/₂SW¹/₄SE¹/₄NE¹/₄, SE¹/₄SE¹/₄NE¹/₄,
 N¹/₂NW¹/₄SE¹/₄, S¹/₂SW¹/₄NW¹/₄SE¹/₄,
 SE¹/₄NW¹/₄SE¹/₄, NE¹/₄SE¹/₄, S¹/₂SE¹/₄.
- T. 23 S., R. 61 E.
 Section 22, E¹/₂NE¹/₄NE¹/₄NW¹/₄,
 E¹/₂SE¹/₄NE¹/₄NW¹/₄, S¹/₂SW¹/₄NW¹/₄,
 E¹/₂NE¹/₄SE¹/₄NW¹/₄, S¹/₂SE¹/₄NW¹/₄.
- T. 23 S., R. 61 E.
 Section 25, NW¹/₄.
- T. 23 S., R. 61 E.
 Section 26, N¹/₂, N¹/₂NE¹/₄SE¹/₄,
 N¹/₂NW¹/₄SE¹/₄, N¹/₂NE¹/₄SW¹/₄.
- T. 23 S., R. 61 E.
 Section 27, NE¹/₄.
- Consisting of 81 parcels containing
 2,577.60 acres, more or less.

Maps delineating the individual proposed sale parcels and current appraisals for each parcel are available for public review at the BLM LVFO, and online at <http://www.propertydisposal.gsa.gov>.

In addition to the lands described herein, other parcels that have been previously noticed for sale, but did not sell, may be offered at this sale.

Terms and Conditions of Sale

Minerals for each parcel will be reserved in accordance with BLM's approved Mineral Potential Report dated January 22, 1999. Information pertaining to the reservation of minerals is specific to each parcel. This information is located in the case file and available for public review by visiting the BLM Las Vegas Field Office. For parcels that include only "no known value" mineral interests, an offer to purchase these listed parcels will constitute an application for mineral conveyance. In conjunction with the final payment, an applicant for "no known value" mineral parcels will be required to pay a \$50.00 non-refundable filing fee for processing the conveyance of the "no known value" mineral interests which will be sold simultaneously with the surface interests. If the Mineral Potential Report indicates the presence of leaseable or saleable minerals, those mineral interests will be reserved to the United States.

Registration for oral bidding for those who have not pre-registered will begin at 8 a.m., PST, March 7, 2007, and will end at 10 a.m., PST. Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in the proposed terms and conditions of sale, as stated herein.

The following numbered terms and conditions will appear on the conveyance documents for these parcels, as follows:

1. All parcels described above will have discretionary leaseable and saleable mineral deposits on the lands in Clark County, if any, reserved to the United States, in accordance with BLM's approved Mineral Potential Report, dated January 22, 1999. Permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such leaseable and saleable minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by

authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All parcels are subject to valid existing rights.

4. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.

5. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any

hazardous substances has been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

Parcels may also be subject to applications received prior to publication of this NORA if processing the application would have no adverse effect on the marketability or the federally approved Fair Market Value (FMV) of a parcel. Encumbrances that may appear on the BLM public files for the parcels proposed for sale are available for review during business hours, 7:30 a.m. PDT to 4:30 p.m. PDT, Monday through Friday, at the BLM LVFO.

All parcels are subject to reservations for roads, public utilities and flood control purposes in accordance with the local governing entities' Transportation Plans.

No warranty of any kind, express or implied, is given by the United States as to title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, all parcels are subject to the requirements of section 120(h) of the CERCLA.

Sealed bids under 43 CFR 2711.3-1(c) may be submitted for any parcel. Sealed bids must be received at the BLM LVFO, no later than 4:30 p.m., PST, March 2, 2007. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the federally approved FMV, and a separate bid must be submitted for each parcel.

As required by 43 CFR 2711.3-1(c), each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for 20 percent of the amount bid. The highest qualifying sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer. All sealed bids will be opened and recorded at 2 p.m. PST on March 5, 2007 at the BLM office on 4701 N. Torrey Pines Drive in Las Vegas. The high sealed bid amount will be posted on the auction order list and will be the starting bid amount at the oral auction.

Interested parties who will not be bidding at the public auction are not required to register and may proceed directly to the Cashman Theater. If you are at the auction to conduct business with the high bidders or are there to

observe the process, should seating become limited, you may be asked to relocate to the balcony or another area in order to provide seating in the theater for all bidders before the auction begins.

All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m. PST on the day of the sale and will end at 10 a.m. PST. You are encouraged to pre-register by mail or fax by completing the form located in the Sale Packet. The form is also available at the BLM LVFO. You may also pre-register online at <http://www.auctionrp.com>.

Prior to receiving a bidder number on the day of the sale, all registered bidders must submit a certified check, bank draft, postal money order, or cashier's check in the amount of \$10,000. This is a bid guarantee. In addition to the \$10,000 bid guarantee, prospective bidders for the parcel designated Serial Number N-81971 must submit a bid guarantee of 20 percent of the federally approved FMV for that parcel in order to be eligible to bid on that parcel. The check must be made payable in U.S. dollars to the order of the Bureau of Land Management. On the day of the sale, pre-registered bidders may go to the Express Registration Desk, present their Photo Identification, the required \$10,000 bid guarantee, or the 20 percent FMV bid guarantee for Serial Number N-81971, and receive a bidder number. Bidders that have not pre-registered must go to the standard Registration Line where additional information will be requested along with your Photo Identification and the required \$10,000 bid guarantee, or the 20 percent FMV bid guarantee for Serial Number N-81971. Upon completion of registration you will be given a bidder number.

At auction, the highest qualifying bid for any parcel will be declared the apparent high bid. Under 43 CFR 2711.3-1(d), the apparent high bidder must submit a deposit of not less than 20 percent of the successful bid by 3 p.m. PST on the day of the sale either in the form of cash (U.S. dollars), or in the form of a personal check, bank draft, cashier's check, postal money order or any combination thereof, made payable in U.S. dollars to the order of the Bureau of Land Management. The deposit *must* be delivered no later than 3 p.m. PST the day of the sale to the BLM Collection Officers at the Cashman Theater. Deposits will NOT be accepted at the LVFO.

Following the auction, all monies submitted with sealed bids and bid guarantees will be returned to the unsuccessful bidders upon presentation of their photo identification at the designated area. If the apparent high

bidder so chooses, the bid guarantee may be applied to the required deposit. Failure to submit the deposit following the sale under 43 CFR 2711.3-1(d) will result in forfeiture of the bid guarantee. If you offer to purchase more than one parcel and fail to submit the bid deposit following the sale on any single parcel, BLM will retain your bid guarantee, and may cancel the sale of all of the parcels for which you were declared the apparent high bidder.

The remainder of the full bid price for each parcel must be paid within 180 calendar days of the competitive sale date, i.e., September 4, 2007, in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management.

Personal checks will not be accepted. Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance due on or before September 4, 2007, shall be made a minimum of two weeks prior to the date you wish to make payment. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire 20 percent deposit to be forfeited to the BLM. Forfeiture of the 20 percent deposit is by operation of 43 CFR 2711.3-1(d). No exceptions will be made. BLM cannot accept the full price at any time following the 180th day after the sale (September 4, 2007).

Within 30 days of the sale, BLM will either accept or reject all bids received. Under 43 CFR 2711.3-1(f), a bid is the bidder's offer to BLM to purchase the parcel. No contractual or other rights against the United States may accrue until BLM officially accepts your offer to purchase, and you submit the full bid price by the 180th day following the sale (September 4, 2007). See 43 CFR 2711.3-1(d) and (f). BLM will send out "High Bidder Declared" letters within 30 days of the sale informing you whether your offer to purchase has been accepted or rejected by BLM. All name changes and supporting documentation must be received at BLM by 4:30 p.m. PST, April 6, 2007, otherwise, the patent will be issued to the name on the Bidder Statement completed at the sale on March 7, 2007. No name changes will be accepted after 4:30 pm PST, April 6, 2007. To change the name, high bidders must notify the BLM-LVFO in writing and re-submit a new Bidder Statement (available at BLM) completed by the intended patentee.

1031 Exchanges: BLM will not sign any documents related to your 1031 Exchange Transactions. The timing for completion of the exchange is your responsibility in accordance with IRS

regulations. BLM is not a party to your 1031 Exchange.

Requests for BLM Escrow Instructions must be received by BLM prior to 30 days before the bidder's scheduled closing date. There are no exceptions.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations. In general, the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons. See 43 CFR 2711.3-1(f).

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying lands or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must be presented to the BLM Sales staff at 4701 N. Torrey Pines Dr., Las Vegas, NV 89130 and is subject to verification by the BLM prior to consummation of the sale. Registered bidders must provide to BLM, within 30 days from sale, proof of citizenship, or proof of current corporate status in good standing filed within the United States. Citizenship is evidenced by presenting a birth certificate, passport, or Immigration/Naturalization papers. Copies of qualifying documents will be taken. Failure to submit the above requested documents could result in cancellation of the sale.

Additional Information

If not sold, any parcel described above in this NORA may be identified for sale at a later date without further legal notice. Unsold parcels may be offered for sale in a future online Internet auction. Internet auction procedures will be available at <http://www.auctionrp.com>. If unsold on the Internet, parcels may be put up for sale at future oral and online Internet auctions without additional legal notice.

Upon publication of this NORA and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale, including parcels that have been published in a previous NORA. However, land use applications may be considered after completion of the sale for parcels that are not sold through oral or online Internet auction procedures provided the authorization

will not adversely affect the marketability or value of the parcel.

In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, state, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or state law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Environmental Assessment. The SNPLMA parcels proposed for sale were analyzed in an Environmental Impact Statement (EIS), entitled "Las Vegas Land Disposal Boundary EIS", approved December 23, 2004. This EIS is available for public review at the BLM LVFO. An Environmental Assessment (EA) for this sale, which tiers to the EIS, has also been prepared for public review and comment at the BLM LVFO. BLM will be accepting public comment on the EA during the time for comment on the proposed sale up to 45 days after publication in the **Federal Register**.

Other information concerning the sale, including the appraisals, reservations, sale procedures and conditions, CERCLA and other environmental documents will be available for review at the BLM LVFO, or by calling (702) 515-5000 and asking to speak to a member of the Sales Team. Most of this information will also be available on the Internet at <http://propertydisposal.gsa.gov>.

Public Comments: The general public and interested parties may submit

written comments regarding the proposed sale to the Field Manager, BLM LVFO, up to October 27, 2006. Only written comments submitted by postal service or overnight mail to the Field Manager—BLM LVFO will be considered properly filed. E-mail, facsimile or telephone comments will not be considered as properly filed. Any adverse comments regarding the proposed sale will be reviewed by the Nevada BLM State Director, or other authorized official of the Department of the Interior who may sustain, vacate, or modify this realty action in whole or in part, if applicable. Any comments received during this process, as well as the name and address of the commenter, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commenter to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Termination of R&PP Classification—SNPLMA Withdrawal

Recreation and Public Purposes Act, 43 U.S.C. 869 *et seq.* (R&PP), application number N-79029, which was previously published in **Federal Register**, Vol. 70, No. 196, page 59367, has been withdrawn. R&PP lease number N-59496 was previously published in **Federal Register** 60 FR 33843, and has been relinquished by the applicant. This NORA officially terminates the R&PP classification and segregation for those parcels. This NORA hereby provides notice that land previously leased and/or segregated for R&PP purposes is no longer required and is now part of this sale. However, pursuant to Section 4(c) of SNPLMA, as amended, these parcels are withdrawn, subject to valid existing rights, from entry and appropriation under the public land laws, location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws, until such time as the Secretary of Interior terminates the withdrawal or the lands are conveyed by the Federal Government. (Authority: 43 CFR 2711.1-2(a) and (c))

Dated: July 20, 2006.

Sharon DiPinto,

Acting Field Manager.

[FR Doc. E6-15019 Filed 9-11-06; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-06-054]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 18, 2006 at 1 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
 2. Minutes.
 3. Ratification List.
 4. Inv. No. 731-TA-702 (Second Review) (Ferrovanadium and Nitrided Vanadium from Russia)—briefing and vote. (The Commission is currently scheduled to submit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 28, 2006.)
 5. Outstanding Action Jackets: none.
- In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 7, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06-7613 Filed 9-8-06; 12:08 pm]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Meeting

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

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will meet October 11-12, 2006, in Washington, DC. This meeting is open to the public.

Time and Date: ACCSH will meet from 8 a.m. to 5 p.m., Wednesday and Thursday, October 11-12, 2006.

Place: ACCSH will meet in Room N-3437 A/B/C of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: For general information about ACCSH and

ACCSH meetings: Michael Buchet, OSHA, Directorate of Construction, Room N-3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202)-693-2020. For information about submitting comments or requests to speak, and for special accommodations for the meeting: Veneta Chatmon, OSHA, Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

SUPPLEMENTARY INFORMATION: ACCSH will meet October 11-12, 2006, in Washington, DC. The agenda for this meeting includes:

- Welcoming Remarks—OSHA, Office of the Assistant Secretary.
- Remarks—OSHA, Directorate of Construction.
- Standards Update: Hexavalent Chromium, Silica, Assigned Protection Factors.
- ACCSH consideration of draft proposed rules: Cranes and Derricks, Respirator Qualitative Fit-Test Protocol.
- Committee governance and work group assignments/tasks.
- OSHA's role in the National Response Plan, a comprehensive all-hazards approach to enhance the ability of the United States to manage domestic incidents.
- Cooperative Programs Update—Highlighting Voluntary Protection Programs for Construction (VPP-C).
- Public Comment. (During this period, members of the public may address ACCSH about construction-related safety and health issues. See information below to request time before the committee.)

All ACCSH meetings, as well as those of its work groups, are open to the public. For access to the official record of ACCSH meetings, go to OSHA's Web page at <http://www.osha.gov>. The record is also available for inspection and copying at the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 899-5627). Electronic copies of this **Federal Register** notice, as well as information about ACCSH work groups and other relevant documents, are available on OSHA's Web page.

Interested parties may request to make an oral presentation to ACCSH by notifying Ms. Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (e.g., the name of the business or organization), if any, and a brief

Interested parties may request to make an oral presentation to ACCSH by notifying Ms. Chatmon before the meeting at the address above. The request must state the amount of time desired, the interest represented by the presenter (e.g., the name of the business or organization), if any, and a brief

outline of the presentation. Alternately, at the meeting, attendees may request to address ACCSH by signing the public comment request sheet and listing the interests they represent (e.g., the name of the businesses or organizations) and topics to be addressed. Requests to present to or address the committee may be granted at the ACCSH Chair's discretion and as time permits.

Attendees and interested parties may also submit written data, views, or comments, preferably with 20 copies, to Ms. Chatmon at the address above or at the ACCSH meeting. OSHA will provide submissions to ACCSH members and will include the submissions in the record of the meeting.

Individuals needing special accommodations for the ACCSH meeting should contact Ms. Chatmon by October 2, 2006.

ACCSH Work Groups

ACCSH Work Groups will not meet in conjunction with this ACCSH meeting. For further information on ACCSH work group meetings or participating in them, please contact Michael Buchet at the address above or look at the ACCSH page on OSHA's Web page.

Authority and Signature: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC, this 6th day of September 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

[FR Doc. E6-15023 Filed 9-11-06; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and of the Board's Finance Committee

TIMES AND DATES: The Legal Services Corporation Board of Directors and of the Board's Finance Committee will meet on September 18, 2006, in the order set forth below. The Board meeting will immediately follow the Finance Committee meeting.

MEETING SCHEDULE

Monday, September 18, 2006	Time
1. Finance Committee 2. Board of Directors	1 p.m. Upon conclusion of the Finance Committee meeting.

LOCATION: The Legal Services Corporation, 3rd Floor Conference Center, 3333 K Street, NW., Washington, DC.

STATUS OF MEETINGS: Open, except as noted below.

• *Status: Board of Directors Meeting*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors. At the closed session, the Board will receive briefings¹ from the Inspector General on the status of the investigation of California Rural Legal Assistance (CRLA) and the investigation requested by Congressmen Enzi, Grassley and Cannon, and from LSC management on CRLA referral issues.

MATTERS TO BE CONSIDERED:

Monday, September 18, 2006

Finance Committee; Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of July 29, 2006.
3. Presentation of the Financial Report through July 31, 2006.
4. Consider and act on the LSC FY 2008 Budget Request.
 - a. Presentation by ABA.
 - b. Presentation by NLADA.
 - c. Presentation by LSC Management.
 - d. Presentation by OIG.
 - e. Other Public Comment.
5. Consider and act on other business.
6. Consider and act on adjournment.

Board of Directors; Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of July 29, 2006.
3. Approval of minutes of the Executive Session of the Board's meeting of July 29, 2006.
4. Staff report on document requests dated April 12, 2006, June 19, 2006 and August 8, 2006 that were received from Congress and LSC's responses thereto.

¹ Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

5. Staff report on the CBS News story of August 13, 2006 and the Associated Press story of August 14, 2006 and LSC's response(s) thereto.

6. Chairman's report.
7. Consider and act on report of the Board's Finance Committee.
8. Consider and act on other business.
9. Public comment.
10. Consider and act on whether to authorize non-public briefings of the Board as per the items listed below under Closed Session.

Closed Session

11. Briefing by the OIG on status of CRLA investigation.
12. Briefing by management on CRLA referral issues.
13. Briefing by the OIG on status of investigation requested by Chairmen Enzi, Grassley and Cannon.
14. Consider and act on motion to adjourn meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295-1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295-1500.

Dated: September 8, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06-7619 Filed 9-8-06; 1:57 pm]

BILLING CODE 7050-01-P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Board is requesting approval from the Office of Management and Budget (OMB) to conduct employee surveys for a period of three years from the approval date. Before submitting the Information Collection Request (ICR) to OMB for review and approval, MSPB is soliciting comments on specific aspects of the information collection in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the

collection of information on this form is estimated to average 30 minutes per respondent, including time for reviewing instructions and completing the survey. In addition, the MSPB invites comments on (1) whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: According to the procedures prescribed in 5 CFR 1320.10, MSPB plans to submit an ICR to OMB for review and approval following the 60 day comment period. Comments must be received on or before November 9, 2006.

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

E-mail: mspb.study@mspb.gov.

Include "Employee Surveys" in the subject line of the message.

Fax: (202) 653-7211.

Mail: Cynthia Ferentinos, U.S. Merit Systems Protection Board, Room 511, 1615 M St., NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: For information on the survey questions, contact Cynthia Ferentinos by phone on 202-653-6772, ext. 1334, by FAX on 202-653-7211, or by e-mail at cynthia.ferentinos@mspb.gov. You may contact Ms. Ferentinos V/TDD at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Career Advancement Survey of Federal Employees"

As part of its purpose, MSPB is responsible for conducting studies of the Federal civil service to ensure that all Federal government agencies follow merit systems practices and avoid prohibited personnel practices. To support this research agenda, MSPB periodically conducts surveys of samples of Federal employees. To obtain insight into the current perspectives, MSPB requests approval to conduct additional surveys over the next three years.

The content of these surveys will focus on the career progression strategies utilized by Federal employees. In particular, we will examine if advancement techniques vary between groups of employees and evaluate the outcomes associated with each approach. We also plan to identify perceptions held by employees regarding discrimination and strategies that may have been used to overcome this potential barrier. In addition to the primary survey which is designed to cover all employees, we may also design a limited number of more narrowly focused surveys, which address issues unique to subpopulations of Federal employees (e.g., people with disabilities).

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 0.5 hours per respondent.

Respondents/Affected Entities: Participants are selected via stratified random sampling to facilitate a representative sample of Federal employees.

Estimated Number of Respondents: 46,000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 23,000.

Dated: September 11, 2006.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. E6-15025 Filed 9-11-06; 8:45 am]

BILLING CODE 7401-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collections; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until November 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union

Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. Fax No. 703-837-2861. E-mail: mcnamara@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0108.

Form Number: N/A

Type of Review: Extension of a currently approved collection.

Title: Monitoring Bank Secrecy Act Compliance.

Description: The collection is needed to allow NCUA to determine whether credit unions have established a program reasonably designed to assure and monitor their compliance with currency recordkeeping and reporting requirements established by Federal statute and Department of Treasury Regulations.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 8,695.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping and annually.

Estimated Total Annual Burden Hours: 26,218.

Estimated Total Annual Cost: 0.

By the National Credit Union Administration Board on September 5, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6-15028 Filed 9-11-06; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35).

This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until November 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428; Fax No. (703) 837-2861; E-mail: OCIOmail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0135.

Form Number: N/A.

Type of Review: Revision to a currently approved collection.

Title: National Credit Union Administration Agreement for Electronic Funds Transfer Payments.

Description: NCUA needs this information to comply with the Debt Collection Improvement Act which has a provision concerning the use of EFT payments.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/Recordkeepers: 9050.

Estimated Burden Hours Per

Response: 15 minutes, (15/60 hr).

Frequency of Response: Other (one-time).

Estimated Total Annual Burden Hours: 62.5 hours.

Estimated Total Annual Cost: \$48,870 (one-time cost first year of new ACH processor).

By the National Credit Union Administration Board on September 5, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6-15029 Filed 9-11-06; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until November 13, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428; Fax No. 703-837-2861; E-mail: mcnamara@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428, or at (703) 518-6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133-0129.

Form Number: None.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations direct corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Recordkeepers: 31.

Estimated Burden Hours Per

Response: 2,434 hours.

Frequency of Response: Reporting, recordkeeping, on occasion, monthly, quarterly and annually.

Estimated Total Annual Burden Hours: 75,454 hours.

Estimated Total Annual Cost: \$1,937,996.

By the National Credit Union Administration Board on September 5, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6-15030 Filed 9-11-06; 8:45 am]

BILLING CODE 7535-01-P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 20, 2006.

Time: 2:30 p.m. to 5:30 p.m.

Room: 315.

Program: This meeting, which will be by teleconference, will review applications for Humanities Initiatives for Faculty at Historically Black Colleges and Universities, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the August 28, 2006 deadline.

2. *Date:* September 21, 2006.

Time: 2:30 p.m. to 5:30 p.m.

Room: 415.

Program: This meeting, which will be by teleconference, will review applications for Humanities Initiatives for Faculty at Historically Black Colleges and Universities, and Tribal Colleges and Universities, submitted to the Division of Education Programs at the August 28, 2006 deadline.

3. *Date:* September 26, 2006.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for U.S. History, submitted to the Division of Preservation and Access at the July 25, 2006 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. E6-15021 Filed 9-11-06; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

DATE: Weeks of September 11, 18, 25, October 2, 9, 16, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of September 11, 2006

Monday, September 11, 2006

9:30 a.m.

Discussion of Security Issues
(Closed—Ex. 1).

1:30 p.m.

Discussion of Security Issues
(Closed—Ex. 1 & 3).

Tuesday, September 12, 2006

9:30 a.m.

Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Shawn Smith, 301-415-2620).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.
1 p.m.

Discussion of Security Issues
(Closed—Ex. 1).

Week of September 18, 2006—Tentative

There are no meetings scheduled for the Week of September 18, 2006.

Week of September 25, 2006—Tentative

There are no meetings scheduled for the Week of September 25, 2006.

Week of October 2, 2006—Tentative

There are no meetings scheduled for the Week of October 2, 2006.

Week of October 9, 2006—Tentative

There are no meetings scheduled for the Week of October 9, 2006.

Week of October 16, 2006—Tentative

Monday, October 16, 2006

9:30 a.m.

Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (morning session).

1:30 p.m.

Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (afternoon session).

(Public Meetings) (Contact: Dave Matthews, 301-415-1199).

These meetings will be webcast live at the Web address—<http://www.nrc.gov>.

Friday, October 20, 2006

2:30 p.m.

Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301-415-7360).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

The schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Michelle Schroll, (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to 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 the NRC's Disability Program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at DLC@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: September 7, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06-7603 Filed 9-8-06; 9:57 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

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 staff) 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 August 18, 2006 to August 31, 2006. The last biweekly notice was published on August 29, 2006 (71 FR 51222).

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 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. 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. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this

proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

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 and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should

consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 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 within 60 days, 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 set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor 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 petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, 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.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HearingDocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-

mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the 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@nrc.gov.

Dominion Nuclear Connecticut, Inc., Docket No. 50-423, Millstone Power Station, Unit No. 3 New London County, Connecticut

Date of amendment request: June 14, 2006.

Description of amendment request: The proposed amendment will permit Millstone Power Station, Unit 3 a one-time, 5-year extension, to Type A testing, of a surveillance requirement referenced in Technical Specification (TS) 4.6.1, relevant to the containment structure. TS 4.6.1 specifies performance of an integrated leak rate test at a frequency of up to 10 years with allowance for a 15-month extension.

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:

Criterion 1:

Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since extension of the containment Type A testing is not a physical plant modification that could alter the probability of accident occurrence nor, is it an activity or modification that by itself

could lead to equipment failure or accident initiation.

The proposed one-time, five-year extension to Type A testing does not result in a significant increase in the consequences of an accident as documented in NUREG-1493. The NUREG notes that very few potential containment leakage paths are not identified by Type B and C tests. It concludes that even reducing the Type A (ILRT) testing frequency to once per twenty years leads to an imperceptible increase in risk.

DNC provides a high degree of assurance through indirect testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last two Type A tests identified containment leakage within acceptance criteria, indicating a very leak-tight containment. Inspections required by the ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] are also performed in order to identify indications of containment degradation that could affect leak-tightness. Separately, Type B and C testing required by Technical Specifications, identifies any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that a one-time, five-year extension to the Millstone Power Station Unit 3 Type A test interval will not represent a significant increase in the consequences of an accident.

Criterion 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 revision to Technical Specifications adds a one-time extension to the current interval for Type A testing for Millstone Power Station Unit 3. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing does not create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure.

Criterion 3:

Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Millstone Power Station Unit 3 Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test for Millstone Power Station Unit 3. RG [Regulatory Guide] 1.174 provides guidance for determining the risk impact of plant-specific changes to the licensing basis. RG 1.174 defines very small changes in risk as resulting in increases of CDF [core damage frequency] below 10^{-6} /yr and increases in LERF [large early release frequency] below 10^{-7} /yr. Since the ILRT [integrated leak rate testing] does not impact CDF, the relevant

criterion is LERF. The increase in LERF resulting from a change in the Type A ILRT test interval from a once-per-ten-years to a once-per-fifteen-years is 3.1×10^{-7} /yr, based on internal events. RG 1.174 states that when the calculated increase in LERF is in the range of 10^{-7} /yr to 10^{-6} /yr, applications will be considered if it can be shown that the total [LERF] is less than 10^{-5} /yr. Since the total LERF for the 15-year metric is 6.3×10^{-7} /yr, then the change is considered acceptable. Increasing the ILRT interval from ten to fifteen years is, therefore, considered non-risk significant and will not significantly reduce the margin of safety. The NUREG-1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG-1493 generically concludes that the design containment leakage rate contributes about 0.1 percent of the overall risk. Decreasing the Type A testing frequency would have a minimal effect on this risk since 95% of the Type A detectable leakage paths would already be detected by Type B and C testing.

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: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.
NRC Acting Branch Chief: Brooke D. Poole.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 21, 2006.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.3, Action a, to extend the allowed outage time (AOT) for one inoperable intake cooling water (ICW) pump from 7 days to 14 days. The proposed amendments were prepared in accordance with the guidance provided by the NRC in Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk Informed Decisions on Plant-Specific Changes to the Licensing Basis" and Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking; Technical Specifications."

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 affects the AOT for TS 3.7.3, Action a. The proposed change allows an extension of the current AOT for an inoperable ICW pump from 7 days to 14 days. The proposed change does not affect the design of the ICW System, the operational characteristics or function of the ICW System, the interfaces between the ICW System and other plant systems, or significantly affect the reliability of the ICW System. Limiting conditions for operation and their associated allowed outage times are not considered initiating conditions for any accident previously evaluated, nor is the ICW System considered an initiator for any accident previously evaluated. The ICW System provides the cooling water to the safety related CCW [component cooling water] heat exchangers. The ICW System also provides cooling water to the TPCW [turbine plant cooling water] heat exchangers and supplies water to the Lube Water System. During accident conditions, the ICW System performs the accident mitigation function of removing the heat load from the CCW System to support both reactor heat removal and containment heat removal requirements. The consequences of accidents previously evaluated are not affected by the proposed change in AOT. To fully evaluate the effect of the proposed ICW AOT extension, PRA [probabilistic risk assessment] methods and a deterministic analysis were utilized. The results of the analysis show no significant increase in Core Damage Frequency or Large Early Release Frequency based upon the guidance provided in Regulatory Guides 1.174 and 1.177.

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 probability of a new or different accident from any accident previously evaluated?

Response: No. The proposed change does not involve a change in the design, configuration, or method of operation of the plant. The proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The proposed change allows operation of a Turkey Point unit to continue while an ICW pump is repaired and tested. The proposed extension does not affect the interaction of an ICW pump with any system whose failure or malfunction can initiate an accident. As such, no new failure modes are being introduced.

Therefore, the proposed action does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change does not alter the plant design, nor does it affect the assumptions contained in the safety analyses. Specifically, there are no changes

being made to the ICW design, including instrument setpoints. The proposed change has been evaluated both deterministically, and using risk-informed methods. Based upon these evaluations, margins of safety ascribed to ICW availability and to plant risk have been determined to not be significantly reduced. The evaluation has concluded the following with respect to the proposed change:

Applicable regulatory requirements will continue to be met, adequate defense-in-depth will be maintained, sufficient safety margins will be maintained, and any increases in CDF [core damage frequency] and LERF [large early release frequency] are small and consistent with the NRC Safety Goal Policy Statement (**Federal Register**, Vol. 5.1, P. 30028 (51 FR 30028), August 4, 1986) as interpreted by NRC Regulatory Guides 1.174 and 1.177. Furthermore, increases in risk posed by potential combinations of equipment out of service during the proposed extended ICW pump AOT will be managed under a configuration risk management program consistent with 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," paragraph (a)(4).

The availability of the other ICW pumps and the use of on-line risk assessment tools provide adequate compensation for the potential small incremental increase in plant risk associated with the extended ICW pump AOT.

Therefore, the proposed change does not involve a significant reduction in 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 no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408-0420.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: July 6, 2006.

Description of amendment request: The proposed amendments would incorporate new large-break loss-of-coolant accident (LBLOCA) analyses using the realistic LBLOCA methodology in the NRC-approved WCAP-16009-P-A, "Realistic Large Break LOCA [loss-of-coolant-accident] Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM)," and would revise Technical Specification (TS) 5.6.5.b to include reference to WCAP-16009-P-A.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to incorporate large break loss of coolant accident analyses using the ASTRUM methodology, documented in WCAP-16009-P-A, "Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)", in the Prairie Island Nuclear Generating Plant licensing basis and add reference to WCAP-16009-P-A in the Technical Specification's list of approved methodologies for establishing core operating limits.

Accident analyses are not accident initiators, therefore, this proposed licensing basis change does not involve a significant increase in the probability of an accident. The analyses using ASTRUM demonstrated that the acceptance criteria in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors", were met. The NRC has approved WCAP-16009-P-A for application to two-loop Westinghouse plants with upper plenum injection. Since the Prairie Island Nuclear Generating Plant is a two-loop Westinghouse plants with upper head injection and the analysis results meet the 10 CFR 50.46 acceptance criteria, this change does not involve a significant increase in the consequences of an accident.

Addition of the reference to WCAP-16009-P-A in the Technical Specifications is an administrative change that does not affect the probability or consequences of an accident previously evaluated.

The changes proposed in this license amendment do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes to incorporate large break loss of coolant accident analyses using the ASTRUM methodology, documented in WCAP-16009-P-A, "Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)", in the Prairie Island Nuclear Generating Plant licensing basis and add reference to WCAP-16009-P-A in the Technical Specification's list of approved methodologies for establishing core operating limits.

There are no physical changes being made to the plant as a result of using the Westinghouse ASTRUM analysis methodology in WCAP-16009-P-A for performance of the large break loss of coolant

accident analyses. No new modes of plant operation are being introduced. The configuration, operation and accident response of the structures or components are unchanged by utilization of the new analysis methodology. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident scenario. The parameters assumed in the analysis are within the design limits of existing plant equipment.

In addition, employing the Westinghouse ASTRUM large break loss of coolant accident analysis methodology does not create any new failure modes that could lead to a different kind of accident. The design of all systems remains unchanged and no new equipment or systems have been installed which could potentially introduce new failure modes or accident sequences. No changes have been made to any reactor protection system or emergency safeguards features instrumentation actuation setpoints.

Based on this review, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed methodology changes.

Addition of the reference to WCAP-16009-P-A in the Technical Specifications is an administrative change that does not create the possibility of a new or different kind of accident.

The licensing basis and Technical Specification changes proposed in this license amendment do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?
Response: No.

This license amendment request proposes to incorporate large break loss of coolant accident analyses using the ASTRUM methodology, documented in WCAP-16009-P-A, "Realistic Large Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM)", in the Prairie Island Nuclear Generating Plant licensing basis and add reference to WCAP-16009-P-A in the Technical Specification's list of approved methodologies for establishing core operating limits.

The analyses using ASTRUM demonstrated that the applicable acceptance criteria in 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors" are met. Margins of safety for large break loss of coolant accidents include quantitative limits for fuel performance established in 10 CFR 50.46. These acceptance criteria and the associated margins of safety are not being changed by this proposed new methodology. The NRC has approved WCAP-16009-P-A for application to two-loop Westinghouse plants with upper head injection. Since the Prairie Island Nuclear Generating Plant is a two-loop Westinghouse plants with upper plenum injection and the analysis results meet the 10 CFR 50.46 acceptance criteria, this change does not involve a significant reduction in a margin of safety.

Addition of the reference to WCAP-16009-P-A in the Technical Specifications is an

administrative change that does not involve a significant reduction in a margin of safety.

Addition of the reference to WCAP-16009-P-A in the Technical Specifications is an administrative change that does not involve a significant reduction in a margin of safety.

The licensing basis and Technical Specification changes proposed in this license amendment 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 requests involve no significant hazards consideration.
Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Acting Branch Chief: Martin Murphy.

PSEG Nuclear LLC, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 11, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to relocate response time limit tables for the reactor trip system and engineered safety features actuation system to the Updated Final Safety Analysis Report.

The August 11, 2006, application supersedes the previous application related to relocation of response time limits, dated August 19, 2005, which was noticed in the **Federal Register** on December 20, 2005 (70 FR 75496). Instead of changing the response time definitions in TSs 1.12 and 1.26, as proposed in the August 19, 2005, application, the licensee proposes to revise certain TS Bases to clarify that Nuclear Regulatory Commission approval would be required to use a means other than testing to verify that response times are within limits.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?
Response: No.

The proposed amendment relocates the instrument response time limits for the reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) from the technical specifications to the Updated

Final Safety Analysis Report (UFSAR). The proposed amendment conforms to the guidance given in Enclosures 1 and 2 of Generic Letter 93-08. Neither the response time limits nor the surveillance requirements for performing response time testing will be altered by this submittal. The overall RTS and ESFAS functional capabilities will not be changed and assurance that action requirements of the reactor trip and engineered safety features systems are completed within the time limits assumed in the accident analyses is unaffected by the proposed amendment.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the operating license. The change does not involve the addition or modification of equipment nor does it alter the design or operation of plant systems.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The measurement of instrumentation response times at the frequencies specified in the technical specification provides assurance that actions associated with the reactor trip and engineered safety features are accomplished within the time limits assumed in the accident analyses. The response time limits and the measurement frequencies remain unchanged by the proposed amendment.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

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: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Acting Branch Chief: Brooke D. Poole.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 14, 2006.

Description of amendment requests: This amendment application proposes to delete duplicative notifications, reporting, and restart requirements if a safety limit is violated; replace plant-specific position titles with generic position titles; and make several additional administrative changes.

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 to remove the duplicative safety limit reporting requirements from the TSs [Technical Specifications] does not affect the plant or operation of the plant. The change simply removes duplicative information from the TSs that is covered in the NRC regulations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to make plant-specific position/organizational titles more generic do not affect any plant structures, systems, and components, and have no effect on plant operations. The proposed changes are administrative and do not affect any existing limits. Accident initial conditions, probability, and assumptions remain as previously analyzed. The proposed changes will have no effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The remaining changes are administrative and do not modify the qualifications, responsibilities, or requirements for the positions. 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 previously evaluated?

Response: No.

The proposed change to remove the duplicative safety limit reporting requirements from the TSs does not introduce any new accident scenarios, failure mechanisms, or limiting single failures. All systems, structures, and components previously required for the mitigation of a

transient remain capable of fulfilling their intended design functions. The proposed change has no adverse effect on any safety-related system or component and does not challenge the performance or integrity of any safety related system. This change is considered an administrative action to remove duplicative reporting requirements. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to make plant-specific position/organizational titles more generic are administrative and do not introduce any new or different accident initiators. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The remaining proposed changes are administrative and do not modify the qualifications, responsibilities, or requirements for the positions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and do not involve any reduction in a margin of safety. Removal of duplicative information, replacing plant-specific position titles with generic position titles, and the other proposed administrative changes do not affect compliance with the regulations. 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 requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.
NRC Branch Chief: David Terao.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 14, 2006.

Description of amendment requests: The proposed change incorporates a description of the parent tube inspection limitation adjacent to the nickel band portion of the lower sleeve joint and provides the basis for the structural and leakage integrity of the joint being ensured with the existing inspection of the parent tube adjacent to the nickel band region.

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.

This proposed change revises the San Onofre Units 2 and 3 Technical Specifications (TS) Section 5.5.2.11.f.1.j to provide a description of the parent tube inspection limitation adjacent to the nickel band and to provide the basis for the structural and leakage integrity. This is supported by Westinghouse Topical Report SG-SGDA-05-48-P Revision 1, "WOG [Westinghouse Owners Group] PA-MS-0190, Revision 1: Test Results Related to TIG [tungsten inert gas] and Alloy 800 Sleeve Installation in 3/4 Inch and 7/8 Inch OD SG [steam generator] Tubing In-Service Inspection Requirements."

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.

Steam generator tube leakage and structural integrity will be maintained during all plant conditions upon implementation of the proposed inspection scope and repair limit changes to the San Onofre Units 2 and 3 Technical Specifications. This change does not introduce any new mechanisms that might result in a different kind of accident from those previously evaluated.

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 change involve a significant reduction in a margin of safety?

Response: No.

Structural and leakage integrity of the steam generator sleeve joint is ensured with the existing inspection of the parent tube adjacent to the nickel band region.

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 requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: David Terao.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 28, 2006.

Brief description of amendments: This request proposes changes to Technical Specification (TS) 3/4.8.2.1, "DC Sources—Operating," and 3/4.8.2.2, "DC Sources—Shutdown," and the addition of a new TS 3/4.8.2.3, "Battery Parameters."

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.] The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change rearranges the Technical Specifications for the direct current electrical power system, and adds new Conditions and required actions with revised completion times to allow for battery charger inoperability. Neither the direct current electrical power subsystem nor associated battery chargers are initiators of an accident sequence previously evaluated. Performance of plant operational activities in accordance with the proposed Technical Specification changes ensures that the direct current electrical power subsystem is capable of performing its function as previously described. Therefore, the mitigating functions supported by the subject subsystem will continue to provide the protection assumed by the safety analysis.

Relocation of preventive maintenance surveillances and certain operating limits and actions to a "Battery Monitoring and Maintenance Program" will not challenge the ability of the subject subsystem to perform its design function. Maintenance and monitoring currently required will continue to be performed. In addition, the direct current electrical power subsystem is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure continued control of maintenance activities associated with the subject subsystem.

Revision of battery performance test interval to 12 months from 18 months in 4.8.2.1.f (now 4.8.2.3.f.1) is a conservative change that is intended to ensure continued battery operability. In addition, a surveillance requirement will be added as 4.8.2.3.f.2 to require performance discharge tests at least once per 24 months for any battery reaching 85% of the service life expected for the application and capacity is equal to or greater than 100% of the manufacturer's rating. Surveillance requirement 4.8.2.3.f.2 is an additional criterion that supplements 4.8.2.3.f.1. Modified performance tests of batteries that have reached 85% of their service life are to be performed at 12-month intervals with capacity less [than] 100% of the

manufacturer's rating, and at 24-month intervals if the capacity is 100% or greater. These surveillance requirements are consistent with the requirements of IEEE-450.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[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 any physical alteration of the units. No new equipment is introduced, and installed equipment is not operated in a new or different manner. The proposed changes do not affect setpoints for initiation of protective or mitigating actions.

Revision of battery performance test interval to 12 months from 18 months in 4.8.2.1.f (now 4.8.2.3.f.1) is a conservative change that is intended to ensure continued battery operability. In addition, a surveillance requirement will be added as 4.8.2.3.f.2 to require performance discharge tests at least once per 24 months for any battery reaching 85% of the service life expected for the application and capacity is equal to or greater than 100% of the manufacturer's rating. Surveillance requirement 4.8.2.3.f.2 is an additional criterion that supplements 4.8.2.3.f.1. Modified performance tests of batteries that have reached 85% of their service life are to be performed at 12-month intervals with capacity less [than] 100% of the manufacturer's rating, and at 24-month intervals if the capacity is 100% or greater. These surveillance requirements are consistent with the requirements of IEEE-450.

Operability of the DC [direct current] electrical power subsystems in accordance with the proposed technical specifications is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis 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. No alteration in the operating procedures is proposed, and no change is being made to procedures relied upon in response to an off-normal event. No new failure modes are being introduced, and the proposed change does not alter assumptions made in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

[3.] The proposed change does not involve a significant reduction in the margin of safety.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The provisions of the Battery Monitoring and Maintenance Program will ensure that the station batteries are maintained in a highly reliable manner.

Revision of battery performance test interval to 12 months from 18 months in

4.8.2.1.f (now 4.8.2.3.f.1) is a conservative change that is intended to ensure continued battery operability. In addition, a surveillance requirement will be added as 4.8.2.3.f.2 to require performance discharge tests at least once per 24 months for any battery reaching 85% of the service life expected for the application and capacity is equal to or greater than 100% of the manufacturer's rating. Surveillance requirement 4.8.2.3.f.2 is an additional criterion that supplements 4.8.2.3.f.1. Modified performance tests of batteries that have reached 85% of their service life are to be performed at 12-month intervals with capacity less [than] 100% of the manufacturer's rating, and at 24-month intervals if the capacity is 100% or greater. These surveillance requirements are consistent with the requirements of IEEE-450.

The equipment fed by the DC electrical system will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

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: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: David Terao.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: June 7, 2006.

Brief description of amendments: The proposed change would revise the Spent Fuel Pool (SFP) and In-Containment Storage Area Criticality Analysis as described in Section 5.6 of the Technical Specifications (TSs).

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.

There is no increase in the probability of an accident. The proposed change does allow a greater number of fuel storage configurations in SFP. While this could increase the probability of a fuel misloading, the presence of sufficient soluble boron in

the SFP precludes criticality as a result of the misloading. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the TS and the spent fuel rack storage configuration limitations of UFSAR [updated final safety analysis report] Chapter 9.1.2.

Reactivity changes due to SFP temperature changes have been evaluated. The base case criticality analysis evaluated a "normal" SFP temperature range of 50 °F to 160 °F. Spent fuel pool temperature accidents are considered outside the normal temperature range extending from 50 °F to 240 °F. In all SFP temperature accident cases, sufficient reactivity margin is available to the 0.95 k_{eff} limit without requiring additional soluble boron above the base case level. Because adequate soluble boron will be maintained in the SFP water to maintain $k_{\text{eff}} < 0.95$, the consequences of a loss of normal cooling to the SFP will not be increased.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the SFP racks. The criticality analysis demonstrates that the pool k_{eff} will remain ≤ 0.95 following an accidental misloading due to the boron concentration of the pool. The current TS limitation will ensure that an adequate SFP boron concentration is maintained.

The criticality analysis shows the consequences of a fuel assembly drop accident in the SFP are not affected when considering the presence of soluble boron. The rack k_{eff} remains ≤ 0.95 .

The editorial changes proposed in this license amendment request do not impact the probability or consequences of an accident.

Therefore, based on the conclusions of the above evaluation, 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.

Spent fuel handling accidents are not new or different types of accidents; they have been analyzed in Section 15.7.4 of the UFSAR.

Criticality accidents in the SFP are not new or different types of accidents. They have been analyzed in the UFSAR and in Criticality Analysis Reports associated with specific licensing amendments for fuel enrichments that are assumed for the proposed change. Because the proposed SFP storage configuration limitations will be similar to the current ones, the new limitations will not have any significant effect on normal SFP operations and maintenance, and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the SFP loading configuration meets specified requirements.

The misloading of a fuel assembly in the required storage configuration has been evaluated. In all cases, the rack k_{eff} remains ≤ 0.95 . Removal of an RCCA [rod cluster control assembly] from a checkerboard storage configuration has been analyzed and

found to be bounded by the misloading of a fuel assembly.

As discussed above, the proposed changes will not create the possibility of a new or different kind of accident. There is no significant change in plant configuration, equipment design, or equipment.

The editorial changes proposed in this license amendment request do not impact the design basis accidents of STP [South Texas Project].

Under the proposed amendment, no changes are being made to the racks themselves, to any other systems, or to the physical structures of the Fuel Handling Building.

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 change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes and the resulting spent fuel storage operation limits will provide [an] adequate safety margin to ensure that the stored fuel assembly array always remains subcritical. Those limits are based on a plant-specific criticality analysis performed in accordance with Westinghouse spent fuel rack criticality analysis methodology.

While the criticality analysis utilized credit for soluble boron, storage configurations have been defined using 95/95 k_{eff} calculations to ensure that the spent fuel rack k_{eff} is < 1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions, and to provide subcritical margin such that the SFP k_{eff} is maintained ≤ 0.95 .

The loss of substantial amounts of soluble boron from the SFP that could lead to k_{eff} exceeding 0.95 has been previously evaluated and approved (Ref. 4 and 5) and shown to be not credible. A safety evaluation has been performed which shows that dilution of the SFP boron concentration from 2500 ppm [part per million] to 700 ppm is not credible. Also, the spent fuel rack k_{eff} will remain < 1.0 (with a 95/95 confidence level) with the SFP flooded with unborated water. These safety analyses demonstrate a level of safety comparable to the conservative criticality analysis methodology required by Westinghouse WCAP-14416-P-A.

The editorial changes proposed in this license amendment request do not affect the margin of safety.

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: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Branch Chief: David Terao.

TXU Generation Company LP, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: March 31, 2006.

Brief description of amendments: The amendments requested would revise Technical Specifications (TS) requirement 5.0, "ADMINISTRATIVE CONTROLS."

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves organizational changes at the executive level and does not impact nor effect accident analysis assumptions. The method and tools used to maintain, and produce proposed changes to, the Technical Specifications has no bearing on any accident analysis assumptions. Therefore, these assumptions are preserved and there is no change in the probability or consequences of any previously evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change involves an organizational change due to a change in title. There are no changes in existing reporting relationships or assigned responsibilities for safe operation of CPSES. The proposed re-issuance of the entire Technical Specifications stems from a change in the software utilized by TXU Power to produce and maintain the Technical Specifications. This software is not used to operate the plant nor is it used to establish any operational limits.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed change will not effect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed change will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed as a result of this

change. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed change does not involve a 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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.
NRC Branch Chief: David Terao.

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.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 20, 2006.

Brief description of amendment request: The proposed amendment would revise the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Technical Specifications (TS) 5.5.9, "Steam Generator (SG) Tube

Surveillance Program," to incorporate changes in the SG inspection scope for VEGP, Unit 1 during Refueling Outage 13 and the subsequent operating cycle, and VEGP Unit 2 during Refueling Outage 12 and the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the tubesheet region of the SGs.

Date of publication of individual notice in Federal Register: July 31, 2006 (71 FR 43225).

Expiration date of individual notice: 30-day, August 30, 2006; 60-day, September 29, 2006.

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 51.12(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, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide

Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. 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@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 2, 2005, as supplemented by letters dated April 19, April 21, and June 13, 2006.

Brief description of amendment: The amendment revised the Oyster Creek Nuclear Generating Station Technical Specifications (TSs) to incorporate the isolation trip setting and the instrumentation surveillance requirements of the reactor water clean-up system high energy line break detection and isolation equipment.

Date of Issuance: August 25, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 259.

Facility Operating License No. DPR-16: The amendment revised the TSs.

Date of initial notice in Federal Register: March 15, 2005 (70 FR 12744). The April 19, April 21, and June 13, 2006, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 25, 2006.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 14, 2004.

Brief description of amendment: The amendment deleted redundant administrative responsibilities, changed certain administrative titles and included editorial corrections and clarifications.

Date of issuance: August 9, 2006.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 223.

Facility Operating License No. DPR-35: The amendment revised the Facility

Operating License and Technical Specifications.

Date of initial notice in Federal

Register: March 1, 2005 (70 FR 9990)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2006.

No significant hazards consideration comments received: No

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: March 15, 2005, as supplemented by letters dated March 22, June 2, and July 12, 2006.

Brief description of amendment: The amendment modified Technical Specification (TS) 6.5.9, "Steam Generator (SG) Program," and TS 6.9.1.5, "Steam Generator Tube Inspection Report," to eliminate the need to inspect a portion of the tube within the SG tubesheet region, thereby potentially allowing flaws to remain in the uninspected region.

Date of issuance: August 29, 2006.

Effective date: As of the date of issuance and shall be implemented 90 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. NPF-38: The amendment revised the Technical Specifications and the Facility Operating License.

Date of initial notice in Federal

Register: June 21, 2005 (70 FR 35737). The March 22, June 2, and July 12, 2006, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2006.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 25, 2005.

Brief description of amendment: The amendment modified the Surveillance Requirements related to Waterford 3 Technical Specification 3.1.1.3, "Moderator Temperature Coefficient," to permit use of the Startup Test Activity Reduction Program (WCAP-16011-P-A).

Date of issuance: August 29, 2006.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 206.

Facility Operating License No. NPF-38: The amendment revised the Technical Specifications and the Facility Operating License.

Date of initial notice in Federal

Register: December 6, 2005 (70 FR 72673). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: February 27, 2004, as supplemented by letters dated October 25, 2004, October 10, 2005, April 27, May 30, June 16, and August 4, 2006.

Brief description of amendments: This amendment incorporated a revision to the Technical Specifications (TSs) and licensing and design bases that supports a full-scope application of an Alternative Source Term methodology.

Date of issuance: August 23, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 185, 146.

Facility Operating License Nos. NPF-39 and NPF-85: This amendment revised the TSs.

Date of initial notice in Federal

Register: June 22, 2004 (69 FR 34700). The supplements provided clarifying information that did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as originally published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 2006.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Beaver County, Pennsylvania

Date of application for amendment: October 14, 2005, as supplemented March 31, 2006.

Brief description of amendment: The amendment revised Technical Specifications 3/4 8.2.3 and 3/4 8.2.4 to permit implementation of design changes associated with a battery charger upgrade during the fall 2006 refueling outage.

Date of issuance: August 28, 2006.

Effective date: As of the date of its issuance and shall be implemented within 90 days.

Amendment No.: 157.

Facility Operating License No. NPF-73: Amendment revised the License and the Technical Specifications.

Date of initial notice in Federal

Register: November 22, 2005 (70 FR 70642). The supplement dated March 31, 2006, 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 amendment is contained in a Safety Evaluation dated August 28, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: February 16, 2006, as supplemented by letters dated May 11 and July 13, 2006.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements related to steam generator tube integrity consistent with NRC-approved Revision 4 to TS Task Force (TSTF) Standard Technical Specification Change Traveler TSTF-449, "Steam Generator Tube Integrity."

Date of issuance: August 22, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 223 and 229.

Renewed Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: April 11, 2006 (71 FR 18374). The supplements dated May 11 and July 13, 2006, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 2006.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: August 11, 2005, as revised by letter dated November 8, 2005, as supplemented by letter dated April 12, 2006.

Brief description of amendment: The amendment revised TS 4.2.1, "Fuel Assemblies," to permit the use of AREVA (Framatome ANP) M5 advanced alloy for fuel rod cladding and structural components such as guide tubes, intermediate spacer grids, end plugs, and guide thimble tubes at the Fort Calhoun Station, Unit 1 (FCS). M5 will be used beginning with Refueling Cycle 24. The M5 cladding is a proprietary zirconium-based alloy that is chemically different from that of zircaloy and ZIRLO, the fuel cladding materials currently approved for use in the FCS TS. In addition, TS 5.9, "Reporting Requirements," was revised to include the Framatome ANP topical report evaluating the impact of M5 material properties on NRC-approved methodologies used at the FCS.

Date of issuance: August 30, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 241.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 6, 2005 (70 FR 72675). The April 12, 2006, supplemental letter 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.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated August 30, 2006.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: February 23, 2006.

Brief description of amendment: The amendment revised Paragraph 2.C.(6) of the facility operating license to clarify that the license condition that limits the number of fuel assemblies that can be outside of approved shipping containers, fuel storage racks, or the reactor does not apply to fuel assemblies stored in approved dry spent fuel storage systems.

Date of issuance: August 28, 2006.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 169.

Facility Operating License No. NPF-57: This amendment revised Paragraph 2.C.(6).

Date of initial notice in Federal Register: May 9, 2006 (71 FR 27003).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2006.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Dates of application for amendments: March 29, 2006, as supplemented on June 5, 2006.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements related to steam generator tube integrity. The changes are consistent with Nuclear Regulatory Commission (NRC)-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF-449, "Steam Generator Tube Integrity." The availability of this TS improvement was announced in the Federal Register on May 6, 2005 (70 FR 24126) as part of the consolidated line item improvement process.

Date of issuance: August 28, 2006.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 144 and 124.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the licenses and the technical specifications.

Date of initial notice in Federal Register: April 25, 2006 (71 FR 23961). The supplement dated June 5, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on April 25, 2006 (71 FR 23961).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 30, 2005 (TS-05-02).

Brief description of amendments: The amendment revises Technical Specification (TS) Section 5.0 "Design

Features," to conform with NUREG-1431, Revision 3, "Standard Technical Specifications for Westinghouse Plants." The changes include elimination of the exclusion area, low population zone, and effluent subsections and associated figures referred to in Section 5.1 "Site;" elimination of Section 5.2 "Containment;" elimination of Section 5.4 "Reactor Coolant System," as well as Section 5.5 "Meteorological Tower Location," and its figure. Lastly, a change has been made to TS Section 6.0, Administrative Control," to acquire the component cyclic or transient limits currently located in the "Design Features" section.

Date of issuance: August 2, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 309 and 298.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the technical specifications.

Date of initial notice in Federal Register: November 8, 2005 (70 FR 67752).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 2, 2006.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 14, 2005 (TS-05-07), as supplemented by letter dated March 31, 2006.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 5.7.2.19, "Containment Leakage Rate Testing Program," to allow a one time, 5-year extension to the current 10 year test interval for the performance-based leakage rate test program for 10 CFR 50, Appendix J, Type A tests.

Date of issuance: August 22, 2006.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 63.

Facility Operating License No. NPF-90: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 28, 2006 (71 FR 10078). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated August 22, 2006.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: April 14, 2005, as supplemented by letter dated December 21, 2005.

Brief description of amendment: The amendment added a new Technical Specification (TS) 3.1.9, "RCS [Reactor Coolant System] Boron Limitations < 500 °F," and revised TS 3.3.1, "Reactor Trip System (RTS) Instrumentation," for the power range neutron flux—low reactor trip function.

Date of issuance: August 21, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 174.

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 2006 (71 FR 29682). The supplemental letter dated December 21, 2005, provided clarifying information that 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 published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 2006.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 7, 2006, as supplemented by letter dated July 25, 2006.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.1-1, "Reactor Trip System Instrumentation," by adding the existing Surveillance Requirement 3.3.1.16 to Function 3.a of the table.

Date of issuance: August 29, 2006.

Effective date: As of its date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 165.

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 2006 (71 FR 10080). The supplemental letter dated

July 25, 2006, provided additional clarifying information, 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 published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of September 2006.

For the Nuclear Regulatory Commission.

Timothy McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6-14938 Filed 9-11-06; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 21, 2006 Board of Directors Meeting

TIME AND DATE: Thursday, September 21, 2006, 10 a.m. (Open Portion), 10:15 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of July 13, 2006 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED:

(Closed to the Public 10:15 a.m.)

1. Report from Audit Committee.
2. Proposed FY2008 Budget.
3. Finance Project—Latin and Central America.
4. Finance Project—Global.
5. Approval of July 13, 2006 Minutes (Closed Portion).
6. Pending Major Projects.
7. Reports.

FOR FURTHER INFORMATION CONTACT:

Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: September 8, 2006.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 06-7611 Filed 9-8-06; 11:53 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of September 11, 2006:

A Closed Meeting will be held on Tuesday, September 12, 2006 at 10 a.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Tuesday, September 12, 2006 will be: Formal orders of investigation; institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; adjudicatory matters; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: September 8, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-7607 Filed 9-8-06; 11:09 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54398; File No. SR-ISE-2006-42]

Self-Regulatory Organizations; the International Securities Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Short Sales

August 31, 2006.

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 July 25, 2006, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to adopt a rule with respect to short selling on the ISE Stock Exchange, the Exchange's entry into the trading of non-option equity securities. The text of the proposed rule change is available on the Exchange's Web site (<http://www.iseoptions.com>), at the principal 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 III 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

Purpose—Currently the ISE only trades options on equity securities and

indices. The purpose of this proposed rule change is to adopt a rule that will be necessary for ISE ultimately to trade non-option equity securities. Specifically, Commission Regulation SHO³ and Rule 10a-1⁴ under the Securities Exchange Act of 1934 ("Exchange Act") govern the marking of orders in equity securities as long and short, the short sale of securities, and securities borrowing and delivery requirements. In order for the ISE to trade equity securities it will need to adopt a rule implementing these provisions. Proposed Rule 2105 does so by: (a) Requiring members to mark orders in compliance with Regulation SHO; (b) implementing the short-sale restrictions of the "tick rule" contained in the Short Sale Rule; and (c) prohibiting members from entering orders in equity securities unless the member can comply with the borrowing and delivery requirements of Regulation SHO. Proposed Rule 2105 exempts from its requirements transactions, securities and persons similarly exempted under Regulation SHO.⁵

Basis—The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule filing is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposal will permit the Exchange to trade equity securities in a manner that complies with Regulation SHO and the Short Sale Rule.

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 written comments from members or other interested parties. The Exchange will notify the Commission of any written comments received by the Exchange.

³ Rules 242.200 through 242.203 under the Exchange Act; 17 CFR 242.200-242.203 ("Regulation SHO").

⁴ 17 CFR 240.10a-1 ("Short Sale Rule").

⁵ Rule 2105 is substantially similar to Rule 30.20 of the Chicago Board Options Exchange, Incorporated ("CBOE").

III. 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 No. SR-ISE-2006-42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE and on ISE's Web site at <http://www.iseoptions.com>. 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-2006-42 and should be submitted on or before October 3, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5), which requires that an exchange have rules designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest.⁶ By incorporating the requirements of Regulation SHO and the Short Sale Rule, the proposed rule will contribute to a coordinated regulatory effort to prevent short sale fraud and manipulation and, in so doing, will protect investors.

Acceleration

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal incorporates the provisions of Regulation SHO and the Short Sale Rule and will be necessary for the ISE to trade non-option equity securities on the ISE Stock Exchange. The Exchange's adoption of a rule incorporating the provisions of Regulation SHO and the Short Sale Rule in order to trade non-option equity securities benefits the investing public. The Commission does not believe that ISE's proposal raises any novel regulatory issues. Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Exchange Act, 15 U.S.C. 78f(b)(5) and 78s(b), to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-ISE-2006-42) be and hereby is approved on an accelerated basis.

⁶ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris,
Secretary.

[FR Doc. E6-15051 Filed 9-11-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54399; File No. SR-ISE-2006-45]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating To Establishing ISE Stock Exchange, LLC as a Facility of the International Securities Exchange, Inc

September 1, 2006.

I. Introduction

On July 31, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change establishing a facility, ISE Stock Exchange, LLC ("ISE Stock"), that would administer a fully automated trading system for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. The proposed rule change was published for comment in the **Federal Register** on August 10, 2006.³ The Commission received no comments regarding the proposal. On August 31, 2006, ISE filed Amendment No. 1 to the proposed rule change.⁴ This order grants accelerated approval to the proposed rule change and Amendment

⁸ 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. 54273 (August 3, 2006), 71 FR 45868.

⁴ In Amendment No. 1, ISE made changes to the proposed rule change to reflect changes made in the Second Amendment and Restated Limited Liability Company Agreement ("LLC Agreement") of ISE Stock, and made clarifying changes to the LLC Agreement, in part, to specifically reference ISE in various provisions, to clarify the voting rights of Members who have transferred Units, to clarify the details of the exception from the voting restrictions as they relate to International Securities Exchange Holdings, Inc. ("Holdings"), to clarify that ISE's Board must determine whether any change to the LLC Agreement must be filed with the Commission pursuant to Section 19(b) of the Act, and to apply the call right described in Section 9.8 of the LLC Agreement to all Units.

No. 1 thereto, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposal

A. Overview

The Exchange proposes to establish ISE Stock as a facility, as that term is defined in Section 3(a)(2) of the Act,⁵ of ISE. ISE Stock would administer a fully automated trading system for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. The Exchange submitted to the Commission the Certificate of Formation of ISE Stock and the LLC Agreement. The Certificate of Formation and the LLC Agreement are the source of ISE Stock's governance and operating authority and, therefore, function in a similar manner as articles of incorporation and by-laws function for a corporation.

ISE is a founding and controlling member of ISE Stock. ISE owns all of the Class A Units of ISE Stock, representing 51% of the voting securities of ISE Stock. In addition to its ownership stake in ISE Stock, ISE has entered into a management agreement (the "Management Agreement") with ISE Stock. Pursuant to the Management Agreement, ISE Stock has appointed ISE as ISE Stock's manager ("Manager") to perform certain management, operational, and related services. As described in Section 8.1 of the LLC Agreement, with limited exceptions, ISE, as the Manager, would have the complete and exclusive authority to manage the operations and affairs of ISE Stock. In addition, ISE would have responsibility for all regulatory functions related to the facility (including conducting market surveillance for trading on ISE Stock). ISE Stock would have responsibility for the business operations of the facility to the extent those activities are not inconsistent and do not interfere with the regulatory and oversight functions of ISE.⁶

The Exchange submitted to the Commission the Certificate of Formation and the LLC Agreement of ISE Stock specifically relating to the control and governance of ISE Stock that would ensure that ISE has the authority within ISE Stock to maintain its responsibility for all regulatory functions related to the ISE Stock facility.⁷ The LLC Agreement

⁵ 15 U.S.C. 78c(a)(2).

⁶ See Amendment No. 1 *supra* note 4 and LLC Agreement, Section 6.1(d).

⁷ The Board of Directors of ISE would be required to determine if any changes to the LLC Agreement are required to be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-

would ensure that the Commission and ISE would have regulatory authority over investors and members of the advisory board of ISE Stock (the "Advisory Board").⁸

B. Description of LLC Membership Interests in ISE Stock

As a limited liability company, ownership of ISE Stock is represented by limited liability company membership interests in ISE Stock. The holders of such membership interests are referred to as the members (the "Members") of ISE Stock. The membership interests are divided into two classes—Class A and Class B limited liability company membership units (collectively, the "Units"). The Units represent equity interests in ISE Stock and entitle the holders thereof to participate in certain of ISE Stock's allocations and distributions. Each "Class A Unit" represents a limited liability company membership interest in ISE Stock, and as a class, the holders of the Class A Units hold fifty-one percent (51%) of the aggregate voting rights of all Members. Each holder of a Class A Unit has a vote, in respect of each Class A Unit held by such holder of record on each matter on which holders of Units are entitled to vote, equal to the product of (A) 51 and (B) a fraction, whose numerator is the number of Class A Units then held by such holder and whose denominator is the number of Class A Units then held by all holders of Class A Units.⁹ Currently, ISE holds all of the Class A Units, making it a fifty-one percent (51%) owner of ISE Stock.

Each "Class B Unit" represents a limited liability company membership interest in ISE Stock. Each holder of a Class B Unit has a vote, in respect of each Class B Unit held by such holder of record on each matter on which holders of Class B Units shall be entitled to vote as specifically required by the LLC Agreement¹⁰ or by the Delaware Limited Liability Company Act ("DLLCA"), equal to the product of (A) 49 and (B) a fraction, whose numerator is the number of Class B Units then held by such holder and whose denominator

is the number of Class B Units then held by all holders of Class B Units.¹¹ There are 49 Class B Units issued and outstanding, held by 11 Class B Unit holders. ISE represents that currently no Class B Unit holder owns more than 5 units.

C. Management of ISE Stock

As the Manager of ISE Stock, ISE would have the authority to make all decisions regarding the business of ISE Stock and matters concerning the Units, including whether or not to authorize distributions.¹² In certain limited circumstances, the Manager would need the approval of two-thirds of the disinterested members of the Advisory Board prior to taking certain actions.¹³ The Manager would be responsible for the control and management of the business of ISE Stock, and must exercise good faith and integrity in handling its affairs.

Under Section 7.1 of the LLC Agreement, other than as set forth in the LLC Agreement or required by the DLLCA or by the Commission, the Members do not participate in the management or control of ISE Stock's business, they do not transact any business for ISE Stock, and they do not have the power to act for or bind ISE Stock. All of those powers are vested solely and exclusively in the Manager. Specifically, under Section 8.1 of the LLC Agreement, subject to the limitations provided in the LLC Agreement¹⁴ and except as specifically provided therein, the Manager has exclusive and complete authority and discretion to manage the operations and affairs of ISE Stock and to make all decisions regarding the business of ISE Stock and has the power to act for or bind ISE Stock. Any action taken by the Manager constitutes the act of and serves to bind ISE Stock. Further, except as otherwise specifically provided in the LLC Agreement, the Manager has all rights and powers of a "manager" under the DLLCA, and has all authority, rights and powers in the management of ISE Stock business to do any and all other

acts and things necessary, proper, convenient or advisable to effectuate the purposes of the LLC Agreement. Lastly, under Section 8.13 of the LLC Agreement, any replacement and appointment of the Manager, and any assignment of the rights and obligations of the Manager under the Management Agreement, is subject to the rule filing process pursuant to Section 19 of the Act.

D. Governance of ISE Stock

Section 8.2(d)(i) of the LLC Agreement establishes the Advisory Board of ISE Stock as a general advisory board and provides that the Advisory Board will have no power or authority to act for ISE Stock or to otherwise participate in the ISE Stock's management, except for certain limited matters.¹⁵ Other than the matters for which approval of the Advisory Board is specifically required by the LLC Agreement, any actions taken by the Advisory Board are advisory only, and neither the Manager nor any of its Related Persons are required or otherwise bound to act in accordance with any decision, action or comments of the Advisory Board. The Advisory Board has no power or authority to act for ISE Stock or to otherwise participate in ISE Stock management. All decisions, including responsibility for the management of ISE Stock, rest with the Manager, and in no event will a member of the Advisory Board be considered a "manager" of ISE Stock.

Section 8.2(d)(ii) of the LLC Agreement provides that the purpose of the Advisory Board is to: (1) Review and assess any potential conflicts of interest that may arise between ISE Stock, on the one hand, and the Manager, any Member and/or any of their respective Related Persons,¹⁶ on the other hand

¹⁵ See LLC Agreement, Section 8.2(d) and 8.7.

¹⁶ "Related Person" means (i) With respect to any Person, any executive officer (as defined under Rule 3b-7 under the Act), director, general partner, manager or managing member, as applicable, and all "affiliates" and "associates" of such Person (as such terms are defined in Rule 12b-2 under the Act); (ii) with respect to any Person constituting an "Exchange Member" (as such term is defined in the Constitution of ISE), any broker or dealer with which such "Exchange Member" is associated; (iii) with respect to any Person that is an executive officer (as defined under Rule 3b-7 under the Act), director, general partner, manager or managing member of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (iv) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units of ISE Stock. LLC Agreement, Section 2.1 "Definitions."

"Person" means any individual, partnership, limited liability company, association, corporation,

4 thereunder. See Amendment No. 1 *supra* note 4 and LLC Agreement, Section 12.1.

⁸ The Advisory Board consists of seven members, three of which must be officers, directors, or partners of holders of the Class A Units, and four of which must be officers, directors, or partners of holders of the Class B Units. See LLC Agreement, Section 8.2(d)(iii).

⁹ LLC Agreement, Section 3.2(a).

¹⁰ The LLC Agreement provides holders of Class B Units the right to vote for Class B Advisory Board Members and to vote on certain amendments to the LLC Agreement. See LLC Agreement, Sections 3.2(b), 8.2(d)(iii), and 12.1.

¹¹ LLC Agreement, Section 3.2(b).

¹² LLC Agreement, Section 8.1 and 8.12.

¹³ LLC Agreement, Section 8.7.

¹⁴ The following actions by the Manager require the consent of two thirds of the disinterested members of the Advisory Board: Taking an act that would make it impossible to carry on the ordinary business of ISE Stock; possessing ISE Stock property for purposes other than ISE Stock business purposes; making loans to any Member or its Related Persons; taking an act that would subject a Member to personal liability; or engaging in transactions with the Manager or any Member or any Related Person of the Manager or any other Member on terms that are not reflective of an "arms-length" transaction. See LLC Agreement, Section 8.7; see also Schedule A of the LLC Agreement.

(including without limitation conflicts with respect to the receipt by the Manager, or its Related Persons, of fees for services rendered to ISE Stock); and (2) generally to consult with the Manager on ISE Stock's progress in achieving its business objectives.

Section 8.2(d)(iii) of the LLC Agreement provides that the Advisory Board consists of seven members. Each Member of ISE Stock may nominate a candidate for election to serve on the Advisory Board. Three members of the Advisory Board would be officers, directors, or partners of holders of the Class A Units, and are to be elected annually by a plurality of the holders of the Class A Units voting together as a class (each a "Class A Advisory Board Member"). Each Class A Advisory Board member would serve for a term of one year. Four members of the Advisory Board would be officers, directors, or partners of holders of the Class B Units, and, except as provided below, would be elected annually by a plurality of the holders of the Class B Units voting together as a class (each a "Class B Advisory Board Member"). In any situation where an Advisory Board Member's job status changes, either upon a significant change in the employment status at the same employer or upon a change of employer, or if the Member employing the Advisory Board member ceases to be a holder of Class B Units, the Advisory Board member must tender his or her resignation to the Manager, which the Manager, in consultation with the Advisory Board, may, but need not, accept. Notwithstanding any of the foregoing, no Member, other than ISE, would have more than one representative elected to the Advisory Board during any term. The initial Class B Advisory Board Members would serve staggered terms with (x) two of such Class B Advisory Board Members serving two consecutive one-year terms, and (y) the other two of such Class B Advisory Board Members serving three consecutive one-year terms. Thereafter, each Class B Advisory Board Member would serve for a term of one year. In no event would any Class B Advisory Board Member serve more than three consecutive one-year terms. Each Class B Advisory Board Member would serve until the conclusion of its one-year term, and until such Class B Advisory Board Member's successor has been elected, or re-elected as permitted under the LLC Agreement, by a plurality of the holders of the Class B Units voting together as a class, except in the event

of such Class B Advisory Board Member's earlier death, resignation, or termination.

Under Section 8.2(e) of the LLC Agreement, ISE Stock also has advisory committees (the "Advisory Committees"), each consisting of up to ten individuals who consult with ISE Stock and assist with the development of: (i) Agency broker trading; (ii) institutional trading; (iii) technology; and (iv) bulk quoting. As with the Advisory Board, the Advisory Committees have no power or authority to act for ISE Stock or to otherwise participate in management.

These limitations on the powers of the Advisory Board and Advisory Committees of ISE Stock will enable ISE to have complete authority over the actions of ISE Stock, especially as they relate to regulatory responsibilities.

Under Section 8.2(d)(vii) of the LLC Agreement, in discharging his or her responsibilities as a member of the Advisory Board, such member must take into consideration the effect that ISE Stock's actions would have on the ability of ISE Stock and ISE¹⁷ to carry out their respective responsibilities under the Act and whether or not his or her actions as a member of the Advisory Board would cause ISE Stock and ISE to engage in conduct that fosters and does not interfere with ISE Stock's and ISE's ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.¹⁸ Furthermore, in discharging his or her responsibilities as a member of the Advisory Board, each member must comply with the federal securities laws and the rules and regulations thereunder and cooperate with ISE and the Commission pursuant to their respective regulatory authority and the provisions of the LLC Agreement.

Under Section 8.2(d)(viii) of the LLC Agreement, the Manager, in its sole discretion, may, after appropriate notice and opportunity for hearing, terminate an Advisory Board member: (i) In the event such Advisory Board member has violated any provision of the LLC Agreement or any federal or state securities law; or (ii) if the Manager

determines that such action is necessary or appropriate in the public interest or for the protection of investors.

These provisions would require all members of ISE Stock's Advisory Board, regardless of their association with ISE, to adhere to regulatory responsibilities, in that they must comply with federal securities laws and the rules and regulations promulgated thereunder, and cooperate with the Commission and ISE pursuant to their regulatory authority. In addition, all members of the Advisory Board would be required to take into consideration ISE's responsibility to comply with the requirements under Section 6(b)(5) of the Act.¹⁹ Members of the Advisory Board that do not adhere to these requirements face termination from the ISE Stock Advisory Board and possible sanctions by regulatory authorities.

E. Voting Limitations of Members

Under Section 7.11 of the LLC Agreement, no Person (other than ISE), either alone or together with its Related Persons, as of any record date for the determination of members entitled to vote on any matter, would be entitled to: (i) Vote or cause the voting of Units beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement, plan, or arrangement, to the extent that such Units represent in the aggregate more than twenty percent (20%) of voting power of the then-issued and outstanding Units (such threshold being hereinafter referred to as the "Voting Limitation"); or (ii) enter into any voting agreement, plan, or arrangement that would result in Units beneficially owned by such Person or its Related Persons, subject to such voting agreement, plan, or arrangement not being voted on a matter, or any proxy relating thereto being withheld, where the effect of that voting agreement, plan, or arrangement would be to enable any Person, alone or together with its Related Persons, to exceed the Voting Limitation. ISE Stock must disregard any such votes purported to be cast in excess of the Voting Limitation.

The limitations imposed by Section 7.11 of the LLC Agreement may be waived by the Manager, if in its sole discretion, it consented to expressly permit such waiver of the Voting Limitation; and such waiver was filed with, and approved by, the Commission under Section 19(b) of the Act and shall have become effective thereunder. In granting a waiver, the Manager must have determined that: (i) The exercise of such voting rights or the entering of

trust or other entity. LLC Agreement, Section 2.1 "Definitions."

¹⁷ See Amendment No. 1 *supra*, note 4.

¹⁸ *Id.*

¹⁹ See Amendment No. 1 *supra*, note 4.

such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the ability of ISE Stock and ISE, as the manager, to carry out its functions and responsibilities, including, but not limited to, under the Act, is otherwise in the best interests of ISE Stock and its Members; (ii) the exercise of such voting rights or the entering of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the ability of the Commission to enforce the Act;²⁰ (iii) neither such Person nor its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (iv) neither such Person nor its Related Persons is an "Exchange Member" (as such term is defined in the Constitution of ISE).

F. Ownership Limitations of Members and Changes in Ownership

Under Section 9.2(a) of the LLC Agreement, no Person (other than ISE), either alone or together with its Related Persons, at any time, may own, directly or indirectly, of record or beneficially, an aggregate amount of Units which would result in more than a twenty (20) Percentage Interest level²¹ in ISE Stock (the "Concentration Limitation"). Any transfer of Units that would result in the acquisition and holding by any Person, alone or together with its Related Persons, of an aggregate Percentage Interest level which crosses the threshold level of twenty percent (20%) is not valid unless a waiver has been granted by the Manager, and such waiver may not be granted unless such waiver is filed and approved pursuant to the rule filing process of Section 19 of the Act.²²

²⁰ See Amendment No. 1 *supra*, note 4.

²¹ "Percentage Interest" shall mean (i) As of any time when the number of outstanding Class B Units does not exceed 49, (x) with respect to the Class B Units one percent (1%) (or fraction thereof) as to each Unit (or fraction thereof) held by such holder of Class B Units and (y) as to the holders of Class A Units, in the aggregate, 100% less the aggregate Percentage Interest of holders of Class B Units as of such time; and as to each holder of a Class A Unit, the product of (x) the aggregate Percentage Interest of all holders of Class A Units and (y) a fraction, whose numerator is the number of Class A Units then held by such holder and whose denominator is the number of Class A Units then held by all holders of Class A Units; and (ii) as of any time when the number of outstanding Class B Units exceeds 49, as to each holder of a Class A Unit or Class B Unit, the percentage equivalent of a fraction whose numerator is the number of Units held by such holder and whose denominator is the aggregate number of Units outstanding. LLC Agreement, Section 2.1 "Definitions."

²² See LLC Agreement, Section 9.2(b).

The limitations imposed by Sections 9.2(a) of the LLC Agreement may be waived by the Manager, if in its sole discretion, it consented to expressly permit such waiver of the Concentration Limitation; and such waiver shall have been filed with, and approved by, the Commission under Section 19(b) of the Act and shall have become effective thereunder. In granting a waiver, the Manager must have determined that: (i) Such beneficial ownership of Units by such Person, either alone or together with its Related Persons, will not impair the ability of ISE Stock and the Manager to carry out its functions and responsibilities, including but not limited to, under the Act, is otherwise in the best interests of ISE Stock and its Members; (ii) such beneficial ownership of Units by such Person, either alone or together with its Related Persons, will not impair the ability of the Commission to enforce the Act; (iii) neither such Person nor its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (iv) neither such Person nor its Related Persons is an "Exchange Member" (as such term is defined in the Constitution of ISE).

Under Section 9.1 of the LLC Agreement, no Member may sell, assign, pledge or in any manner dispose of or create or suffer the creation of a security interest in or any encumbrance on all or a portion of its Units (the commission of any such act being referred to as a "Transfer", any person who effects a Transfer being referred to as a "Transferor" and any person to whom a Transfer is effected being referred to as a "Transferee") except in accordance with the terms and conditions set forth in Article 9 of the LLC Agreement. Any Transfer or purported Transfer of a Unit in ISE Stock not made in accordance with the LLC Agreement shall be null and void and of no force or effect whatsoever. Furthermore, any transfer of Units that results in a reduction of ISE's Percentage Interest level of Class A Units or Percentage Interest level in ISE Stock below the twenty percent (20%) threshold is subject to the rule filing process pursuant to Section 19 of the Act.²³

Section 9.3 of the LLC Agreement provides that a Member may not Transfer all or any portion of its Units in ISE Stock to any Person without the consent of the Manager, which consent may be given or withheld in the manager's sole discretion; provided, that, subject to Section 9.10 of the LLC Agreement, a Member may transfer all

²³ See LLC Agreement, Section 9.2(d).

or a portion of its Units in ISE Stock to one or more of its Permitted Transferees²⁴ without the consent of the Manager or any other Member as long as such transfer does not otherwise violate the LLC Agreement.²⁵

Under Section 9.11 of the LLC Agreement, unless a Transferee of a Member's Units becomes a Substituted Member,²⁶ such Transferee shall have no right to obtain or require any information or account of ISE Stock transactions, or to inspect ISE Stock's books or to vote on ISE Stock matters.²⁷ Furthermore, any successor or Transferee under the LLC Agreement shall be subject to and bound by the LLC Agreement as if originally a party to the LLC Agreement.

G. Regulatory Jurisdiction Over Members

Under Section 6.1(b) of the LLC Agreement, each Member acknowledges that to the extent that they relate to the business of ISE Stock, the books, records, premises, officers, directors, agents and employees of Members shall be deemed to be the books, records, premises, officers, directors, agents and employees of ISE Stock for purposes of and subject to oversight pursuant to the Act. Furthermore, the books, records, premises, officers, directors, agents and employees of ISE Stock shall be deemed

²⁴ "Permitted Transferee" means, with respect to another Person, (i) Any Person directly or indirectly owning, controlling or holding with power to vote 80% or more of the outstanding voting securities of and equity or beneficial interests in such other Person, (ii) any Person 80% or more of whose outstanding voting securities and equity or beneficial interests are directly or indirectly owned, controlled or held with power to vote by such other Person, (iii) any Person 80% or more of whose outstanding voting securities and equity or other beneficial interests are directly or indirectly owned, controlled or held with power to vote by a Person directly or indirectly owning, controlling or holding with power to vote 80% or more of the outstanding voting securities and equity or other beneficial interests of such other Person with whom affiliate status is being tested, (iv) any Family Members or Family Trusts of such Person and (v) any Member. LLC Agreement, Section 2.1 "Definitions."

"Family Members" means, with respect to any natural Person, such Person's spouse, children, parents and lineal descendants of such Person's parents. LLC Agreement, Section 2.1 "Definitions."

"Family Trusts" means, with respect to any natural Person, a trust benefiting solely such Person or the Family Members of such Person. LLC Agreement, Section 2.1 "Definitions."

²⁵ If a Member transfers all of its Units, whether or not the transfer is to a Permitted Transferee, such transfer must first be approved by the Manager. See Amendment No. 1 *supra*, note 4 and LLC Agreement, Section 9.3(c).

²⁶ "Substituted Member" means any Person admitted to the Company as a substituted Member pursuant to the provisions of Article 9. LLC Agreement, Section 2.1 "Definitions."

²⁷ The Member retains the right to vote the Units. See Amendment No. 1 *supra*, note 4 and LLC Agreement, Section 9.3(b).

to be the books, records, premises, officers, directors, agents and employees of ISE for purposes of and subject to oversight pursuant to the Act. In addition, the books and records of ISE Stock will be kept within the U.S.²⁸

Section 13.1(a) of the LLC Agreement generally provides that a Member may not disclose any confidential information of ISE Stock or of any other Members to any persons, except as expressly provided by the LLC Agreement. However, Section 13.1(a) provides exceptions for, among other things, disclosure required by the federal securities laws and any other applicable self-regulatory organization, or in response to a request by the Commission pursuant to the Act or by ISE. In addition, confidential information pertaining to the self-regulatory function of ISE (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE Stock shall: (i) Not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees, and agents of ISE Stock that have a reasonable need to know the contents thereof; (ii) be retained in confidence by ISE Stock and the officers, directors, employees and agents of ISE Stock; and (iii) not be used for any commercial purposes.²⁹ Nothing in the LLC Agreement may be interpreted as to limit or impede the rights of the Commission or ISE to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any Member or any officers, directors, employees or agents of ISE Stock or any Member to disclose such confidential information to the Commission or ISE.³⁰

Under Section 6.1(c) of the LLC Agreement, ISE Stock, its Members, and officers, directors, agents, and employees of ISE Stock and its Members irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and ISE, for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, the rules or regulations thereunder, directly arising out of, or relating to, ISE Stock activities or Section 6.1 of the LLC Agreement (except that such jurisdiction also includes Delaware for any such matter relating to the organizational or internal affairs of ISE Stock), and waive, and agree not to assert by way of motion, as

a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of the LLC Agreement may not be enforced in or by such courts or agency.

Under Section 6.1(d) of the LLC Agreement, ISE Stock, its Members, the officers, directors, agents, and employees of ISE Stock and its Members agree to comply with the federal securities laws and the rules and regulations thereunder and cooperate with ISE and the Commission pursuant to their respective regulatory authority and the provisions of the LLC Agreement; and to engage in conduct that fosters and does not interfere with ISE Stock's and ISE's³¹ ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

Section 6.1(e) of the LLC Agreement provides that ISE Stock and each Member shall take such action as is necessary to ensure that its respective officers, directors, agents, and employees consent in writing to the application to them of the applicable provisions of Section 6.1 with respect to their ISE Stock-related activities.

Under Section 7.1(b) of the LLC Agreement, the Manager may, after appropriate notice and opportunity for hearing, suspend or terminate a Member's voting privilege or membership: (i) In the event such Member has violated a provision of this Agreement or any federal or state securities law; (ii) such Member or its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) if the Manager determines that such action is necessary or appropriate in the public interest or for the protection of investors.

ISE believes that this provision would require Members, regardless of the nature of their association with ISE, to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations thereunder, and cooperate

with the Commission and ISE pursuant to their regulatory authority or face severe consequences such as termination of voting rights or ownership. In addition, Members would be required to take into consideration and facilitate ISE's and ISE Stock's ability to comply with the requirements under Section 6(b)(5) of the Act.³²

H. Fair Representation of Trading Participants

Members of (or holders of Units in) ISE Stock are not automatically entitled to trading privileges on the ISE Stock trading system, nor is the purchase of Units a pre-requisite for exercising trading privileges on the ISE Stock trading system. Rather, in order to exercise trading privileges on the ISE Stock trading system, a broker-dealer must be an approved EAM of ISE. There is only one type of EAM membership for both options trading on ISE and equities trading on the ISE Stock trading system. When an applicant is approved under ISE rules as an EAM, the member is issued one share of Class B Common Stock, Series B-3 (a "B-3 Share"). Under the ISE Constitution, holders of B-3 Shares, or EAMs, have the right to elect two members (the "B-3 Directors") of the Board of Directors of ISE (the "ISE Board"). Nominees for election to the ISE Board to serve as Industry Directors, including B-3 Directors, are currently made by the Exchange's Nominating Committee, which is not a committee of the ISE Board, and is comprised of representatives of the holders of each series of Class B Common Stock. Stockholders also may nominate Industry Director candidates for election to the ISE Board by petition. Accordingly, since trading participants on the ISE Stock trading system must be EAMs, and since EAMs have the right to elect B-3 Directors of the ISE Board, the Exchange believes that ISE Stock trading system trading participants are fairly represented on the ISE Board. Additionally, as a result of ISE's stated strategy of selling Units to entities that will support trading on the ISE Stock trading system, trading participants will have representation via the ISE Stock Advisory Board.

The Exchange proposes to modify the language in ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) to clarify that this provision covers not only the Exchange, but ISE Stock as a facility of ISE, as well.

²⁸ LLC Agreement, Section 6.1(a).

²⁹ LLC Agreement, Section 13.1(b).

³⁰ LLC Agreement, Section 13.1(c).

³¹ See Amendment No. 1 *supra*, note 4.

³² See Amendment No. 1 *supra*, note 4 and LLC Agreement, Section 6.1(d).

I. Reorganization Into a Holding Company Structure

According to the Exchange, it intends to reorganize into a holding company structure on September 1, 2006, in the manner described in Securities Exchange Act Release No. 53705 (April 21, 2006) (the "Reorganization").³³ Upon the Reorganization, International Securities Exchange, LLC will become the registered "national securities exchange" under Section 6 of the Act, the self-regulatory organization ("SRO") and continue to act as Manager of ISE Stock. ISE Holdings shall become the holder of the Class A Units of ISE Stock. Prior to the Reorganization, the provisions relating to, among other things, ownership and voting limitations (and exceptions therefrom) are applicable to ISE, as the holder of the Class A Units. Upon the Reorganization, those same provisions are applicable to ISE Holdings, as the holder of the Class A Units.

III. Discussion, Commission Findings, and Accelerated Approval of the Proposed Rule Change and Amendment No. 1 Thereto

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁴ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,³⁵ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change, as amended, is consistent with Section 6(b)(3) of the Act,³⁶ which, among other things, requires that the rules of an exchange ensure fair representation of its members in the selection of its directors and administration of its affairs.

In addition, the Commission finds that the proposed rule change, as amended, is consistent with Section

6(b)(5) of the Act,³⁷ which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect 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.

A. ISE Stock as a Facility of the Exchange

The Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Act³⁸ in that upon establishing ISE Stock as an Exchange facility and serving as manager of ISE Stock as described above, ISE will remain so organized, and have the capacity to be able, to carry out the purposes of the Act. The Commission further believes that ISE's proposal for ISE to operate ISE Stock as a facility of ISE is properly filed under Section 19(b) of the Act and Rule 19b-4 thereunder, and that ISE Stock is not required, separate from ISE, to apply for registration as a national securities exchange pursuant to Section 6(a) of the Act.³⁹ In addition, the Commission previously approved a similar structure with respect to the operation of the Boston Stock Exchange, Inc.⁴⁰

Although ISE has contracted to undertake the fulfillment of SRO responsibilities under the Act and other regulatory compliance services for ISE Stock,⁴¹ ISE Stock is, however, still responsible for assuring that its activities are consistent with the Act. Under Section 6.1(d) of the LLC Agreement, each ISE Stock Member, its officers, directors, agents, and employees, agree to comply with federal securities law; to cooperate with the Commission and ISE pursuant to their regulatory authority and the provisions of the LLC Agreement; and to engage in conduct that fosters and does not interfere with ISE Stock or ISE's ability to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with

persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. Section 8.2(d)(vii) of the LLC Agreement also requires each ISE Stock Advisory Board Member to cooperate with the Commission and ISE pursuant to the respective authority of the Commission and ISE. These provisions reinforce the notion that ISE Stock, as a facility of an Exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and, as such, is subject to obligations imposed by the Act.

These obligations endure as long as ISE Stock is a facility of the Exchange, regardless of the size of ISE's ownership interest in ISE Stock. ISE currently, and in the future Holdings, owns a controlling interest in ISE Stock and, in the future, if ISE Holdings wishes to reduce its Percentage Interest in ISE Stock to below 20 percent,⁴² pursuant to Section 9.2(d) of the LLC Agreement the Exchange would be required to file a proposed rule change with the Commission under Section 19(b) of the Act. Additionally, under Section 8.13(c) of the LLC Agreement, any replacement and appointment of the Manager, and any assignment of the rights and obligations of the Manager under the Management Agreement, must, prior to becoming effective, have been filed with, and approved by, the Commission. The Commission believes that these measures would alert the Commission to a significant reduction of ISE's interest in ISE Stock or control over the operations of ISE Stock. Such a reduction in ownership or control could warrant additional review of the LLC Agreement to ensure that ISE's responsibilities as the SRO of the ISE Stock facility are not compromised.

The LLC Agreement includes additional provisions that make special accommodations for ISE as the SRO of the ISE Stock facility. For example, except for several limited exceptions,⁴³ Section 8.1 of the LLC Agreement provides that ISE as the manager will have "exclusive and complete authority and discretion to manage the operations and affairs" of ISE Stock. ISE has complete access to information through provisions such as Sections 13.1(c) of the LLC Agreement, which allows ISE Stock, Members, their officers, directors,

³³ See Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR-ISE-2006-04).

³⁴ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁵ 15 U.S.C. 78f(b)(1).

³⁶ 15 U.S.C. 78f(b)(3).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ 15 U.S.C. 78f(b)(1).

³⁹ 15 U.S.C. 78f(a).

⁴⁰ See Securities Exchange Act Release No. 54364 (August 25, 2006), 71 FR 52185 (September 1, 2006) (SR-BSE-2006-20).

⁴¹ See Item 10 of Exhibit 5(c) describing certain services to be performed under the Management Agreement.

⁴² In this instance, interest refers to interest in ISE Stock Class A Units or overall interest in ISE Stock.

⁴³ See LLC Agreement, Section 8.7 for limitations.

agents, and employees, to disclose to the Commission or ISE confidential information. Furthermore, Section 7.2 of the LLC Agreement, subject to certain exceptions, gives all of the voting rights to Class A Units, of which ISE, and subsequently Holdings, owns 100 percent. In addition, Section 8.2(d)(iii) of the LLC Agreement provides that the holder of Class A Units is entitled to three of the seven seats on the ISE Stock Advisory Board.

Because ISE has proposed to operate ISE Stock as its facility, ISE's obligations under the Act extend to its members' activities on ISE Stock, as well as to the operation and administration of ISE Stock. The Commission believes that Section 19 of the Act affords the Commission the ability to determine whether ISE's proposal is consistent with the Act, as would a separate application by ISE Stock to register as a national securities exchange. More specifically, the Commission believes that these provisions, described above, are consistent with the Act and enhance the ability of ISE to carry out its self-regulatory responsibilities with respect to its ISE Stock facility.

B. Changes in Control of ISE

The Commission believes that the restrictions in the LLC Agreement on changes in control of ISE Stock and the restrictions on the change in Manager (the entity that controls the operations of ISE Stock) are sufficient to enable ISE to carry out its self-regulatory responsibilities and should permit the Commission to fulfill its responsibilities under the Act.

Schedule A of the LLC Agreement lists all ISE Stock Members, the number of units each holds, and the percentage of ownership in ISE Stock that such units represent. A change to this schedule, which is part of the LLC Agreement (as is the case with any other change to the LLC Agreement), would need to be filed with the Commission if the Board of ISE determines that it is required under Section 19(b) of the Act and Rule 19b-4 thereunder.⁴⁴ In addition, Section 9.2(a) and (b) of the LLC Agreement provides that no person (other than ISE or Holdings)⁴⁵ may cross the 20 percent ownership threshold without a waiver from ISE, as manager, and such approval could not be granted without the filing and approval of a proposed rule change with

the Commission pursuant to Section 19(b) of the Act.⁴⁶

As noted, ISE, and in the future Holdings, currently owns all of the Class A Units, and Section 7.2 of the LLC Agreement, subject to certain exceptions, gives all of the voting rights to Class A Units. In addition, Section 8.2(d)(iii) of the LLC Agreement provides that the holder of Class A Units is entitled to three of the seven seats on the ISE Stock Advisory Board. If ISE, or in the future Holdings, wishes to reduce its interest in ISE Stock to below 20 percent,⁴⁷ pursuant to Section 9.2(d) of the LLC Agreement, it would be required to file a proposed rule change under Section 19(b) of the Act.

As noted in the Voting Limitations section *supra*, under Section 7.11 of the LLC Agreement, no Person (other than ISE), either alone or together with its Related Persons, may exceed the Voting Limitation or enter into any voting agreement that would result in Units beneficially owned by such Person or its Related Persons not being voted where the effect would be to enable any Person, alone or together with its Related Persons, to exceed the Voting Limitation. The limitations imposed by Section 7.11 of the LLC Agreement may be waived by the Manager after such waiver is filed with, and approved by, the Commission under Section 19(b) of the Act. However, such a waiver may not be granted to Persons or Related Persons subject to "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) or Exchange Members (as such term is defined in the Constitution of ISE).⁴⁸

Additionally, as noted, Section 8.1 of the LLC Agreement, with limited exceptions, grants exclusive and complete authority over the operations and affairs of ISE Stock to ISE as the Manager. Under Section 8.13(c) of the LLC Agreement, any replacement and appointment of the Manager, and any assignment of the rights and obligations of the Manager under the Management Agreement, must, prior to becoming effective, have been filed with, and approved by, the Commission.

In conclusion, the Commission believes that Sections 7.2, 8.1, 8.4(a) and (b), 8.13(c), 9.2(a), (b), and (d), and 12.1 of the LLC Agreement, together with the requirements of Section 19(b) of the Act

and Rule 19b-4 thereunder, provide the Commission with sufficient authority over changes in control of ISE to enable the Commission to carry out its regulatory oversight responsibilities with respect to ISE and the ISE Stock facility.

C. Regulatory Jurisdiction Over ISE Stock and Its Members

The Commission believes that the terms of the LLC Agreement provide the Commission and ISE with sufficient regulatory jurisdiction over the controlling parties and Members to carry out their respective responsibilities under the Act. In Section 6.1(b) of the LLC Agreement, each Member acknowledges that, to the extent that they are related to the business of ISE Stock, the books, records, premises, officers, directors, agents, and employees of the Member are deemed to be the books, records, premises, officers, directors, agents, and employees of ISE for the purpose of and subject to oversight pursuant to the Act. Furthermore, the books, records, premises, officers, directors, agents, and employees of ISE Stock are deemed to be the books, records, premises, officers, directors, agents, and employees of ISE. This provision would enable the Commission to exercise its authority under Section 19(h)(4)⁴⁹ of the Act with respect to the officers, directors, agents, and employees of all Members, since all such officers, directors, agents, and employees, and officers, directors, agents, and employees of ISE Stock, to the extent that they are acting in matters related to ISE Stock activities, would be deemed to be the officers, directors, agents, and employees of ISE itself. Furthermore, the books and records of any ISE Member, to the extent that they are related to ISE Stock activities, are subject to the Commission's examination authority under Section 17(b)(1) of the Act,⁵⁰ as these records would be deemed to be the records of ISE itself.

In addition, in Section 6.1(c) of the LLC Agreement, ISE Stock, its Members, its officers, directors, agents, and employees, and the officers, directors,

⁴⁹ 15 U.S.C. 78s(h)(4). Section 19(h)(4) authorizes the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director has: (i) Willfully violated any provision of the Act or the rules and regulations thereunder, or the rules of a national securities exchange; (ii) willfully abused his or her authority; or (iii) without reasonable justification or excuse, failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange.

⁵⁰ 15 U.S.C. 78q(b)(1).

⁴⁴ See LLC Agreement, Section 12.1.

⁴⁵ This exception for Holdings only applies as long as the concentration limitation provision found in Article Fourth, Subdivision III(a) of the ISE, Inc. Certificate of Incorporation is in place and as long as ISE is a wholly-owned subsidiary of Holdings.

⁴⁶ Such a waiver may not be granted to Persons or Related Persons subject to "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) or Exchange Members (as such term is defined in the Constitution of ISE). See LLC Agreement, Section 9.2(c).

⁴⁷ In this instance, interest refers to interest in ISE Class A Units or overall interest in ISE Stock.

⁴⁸ See LLC Agreement, Section 7.11(c).

agents, and employees of its Members irrevocably submit to the jurisdiction of the Commission, for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of or relating to ISE Stock activities. In addition, ISE Stock, its Members, and each officer, director, agent, and employee of ISE and its Members, must waive as a defense or otherwise in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the Commission; that the suit, action or proceeding is an inconvenient forum; that the venue is improper; or that the subject matter of the suit, action, or proceeding may not be enforced by such courts or agency.⁵¹ Moreover, pursuant to Section 6.1(e) of the LLC Agreement, ISE Stock and each Member are required to take such action as is necessary to ensure that ISE Stock and its Member's officers, directors, agents, and employees consent to the application of these requirements with respect to their ISE Stock-related activities. Finally, under Section 6.1(d) of the LLC Agreement, ISE Stock, and its Members, officers, directors, agents, and employees, and the officer, directors, agents, and employees of its Members agrees to cooperate with the Commission and ISE pursuant to their respective regulatory authority.

The Commission also notes that, even in the absence of these provisions of the LLC Agreement, Section 20(a) of the Act⁵² provides that any person with a controlling interest in ISE Stock would be jointly and severally liable with and to the same extent that ISE Stock is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.⁵⁴

The Commission believes that, together, these provisions grant the Commission sufficient jurisdictional authority over ISE Stock and its Members. Moreover, ISE is required to enforce compliance with these provisions because they are "rules of the exchange" within the meaning of Section 3(a)(27) of the Act.⁵³ A failure on the part of ISE to enforce its rules could result in suspension or revocation of registration under Section 19(h)(1) of the Act.⁵⁴

D. Restrictions on ISE Stock Members

The Commission believes that the restriction on voting trust agreements in Section 7.11(a) of the LLC Agreement is reasonable and consistent with the Act. In the absence of such a provision, unaffiliated parties could act in concert and evade the LLC Agreement's provisions regarding changes in control of ISE Stock. In addition, the LLC Agreement treats as belonging to a single person any ISE Stock Units held by affiliated parties of the person.⁵⁵ A voting trust agreement would not necessarily be inconsistent with the Act, but any Members (other than ISE or, in the future, Holdings) wishing to establish a voting trust agreement first would need the consent of the Manager,⁵⁶ a consent that may not be given unless the Manager files a proposed rule change, thus affording the Commission an opportunity to review the matter.

In addition, the Commission believes that the ownership concentration limit described above, which prohibits a person (other than ISE or in the future Holdings) along with a related person from owning directly or indirectly more than 20 percent of the outstanding units of ISE Stock⁵⁷ absent a waiver, and would apply to those persons trading on the ISE Stock trading system, together with the provision that restricts the ability of Members to vote interests in excess of 20 percent, absent a waiver,⁵⁸ are reasonable and consistent with the Act.⁵⁹ Moreover, Exchange members (as defined in the ISE Constitution) would be prohibited from owning more than 20 percent. It is common for members who trade on an exchange to have ownership interests in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that

member. A member that is also a controlling shareholder of an exchange or its facility might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveilling the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that controls and has a large economic interest in the Exchange.

E. Accelerated Approval of Proposed Rule Change and Amendment No. 1

The Commission finds good cause for approving this proposed rule change, and Amendment No. 1 thereto, before the thirtieth day after the publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.⁶⁰ The proposed rule change was published for a full comment period and no comments were received. In addition, the Commission notes that the proposed rule change, as amended, is substantially similar to the structure previously approved by the Commission.⁶¹ That proposal was also published for a full comment period and the Commission received no comments on the proposal. Furthermore, accelerating approval of this proposed rule change, as amended, should benefit investors by permitting ISE to establish, without undue delay, an additional venue for the trading of equity securities for market participants, thereby increasing competition and efficiency. Lastly, the Commission believes that Amendment No. 1 serves to clarify and enhance the proposal. For these reasons, the Commission therefore finds good cause exists to accelerate approval of the proposed rule change, and Amendment No. 1 thereto.⁶²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

⁶⁰ 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

⁶¹ See Securities Exchange Act Release No. 54364 (August 25, 2006), 71 FR 52185 (September 1, 2006) (SR-BSE-2006-20).

⁶² 15 U.S.C. 78s(b)(2).

⁵⁵ See LLC Agreement, Sections 9.2(a).

⁵⁶ Such a waiver may not be granted to any Person or Related Person subject to "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) or any Person or Related Person who are Exchange Members (as such term is defined in the Constitution of ISE). See LLC Agreement, Sections 7.11(c).

⁵⁷ See LLC Agreement, Section 9.2(a).

⁵⁸ Neither the voting nor ownership limitation waiver may be granted to any Person or Related Person subject to "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) or any Person or Related Person who are Exchange Members (as such term is defined in the Constitution of ISE). See LLC Agreement, Sections 9.2(c) and 7.11(c).

⁵⁹ The Commission believes that this provision would require ISE Stock to aggregate the interest of Members in ISE Stock and any indirect interest in ISE Stock through Members' interest in Holdings. See LLC Agreement, Section 9.2(a).

⁵¹ See LLC Agreement, Section 6.1(c).

⁵² 15 U.S.C. 78t(a).

⁵³ 15 U.S.C. 78c(a)(27).

⁵⁴ 15 U.S.C. 78s(h)(1).

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-2006-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2006-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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 Amendment No. 1 of File Number SR-ISE-2006-45 and should be submitted on or before October 3, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶³ that the proposed rule change (SR-ISE-2006-45) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶⁴

Nancy M. Morris,
Secretary.

[FR Doc. E6-15054 Filed 9-11-06; 8:45 am]

BILLING CODE 8010-01-P

UNITED STATES SENTENCING COMMISSION**Sentencing Guidelines for United States Courts**

AGENCY: United States Sentencing Commission.

ACTION: Notice of a temporary, emergency amendment to sentencing guidelines, policy statements, and commentary.

SUMMARY: Pursuant to section 1(c) of the Stop Counterfeiting in Manufactured Goods Act, Public Law 109-181, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the temporary, emergency amendment and the reason for amendment.

DATE: The Commission has specified an effective date of September 12, 2006, for the emergency amendment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The Commission must promulgate a temporary, emergency amendment to implement the directive in section 1(c) of the Stop Counterfeiting in Manufactured Goods Act, Public Law 109-181, by September 12, 2006. The statutory deadline for the promulgation of the temporary, emergency amendment, in conjunction with the Commission's public meeting schedule (the promulgation of such amendments must occur in a public meeting), made it impracticable to publish a proposed temporary, emergency amendment in the **Federal Register** in order to provide an opportunity for public comment, and to publish the promulgated amendment not less than 30 days before the effective date. The Commission therefore had good cause not to publish a proposed amendment before the specified effective date and not to publish the promulgated amendment 30 days or more before such date. See 5 U.S.C. 553(b), (d)(3).

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 1(c) of Public Law 109-181.

Ricardo H. Hinojosa,
Chair.

Amendment: The Commentary to § 2B5.3 captioned "Application Notes" is amended in Note 2(A) by adding at the end the following:

(vii) A case under 18 U.S.C. § 2318 or § 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the 'infringed item' is the identifiable, genuine good or service.

Reason for Amendment: This amendment implements the emergency directive in section 1(c) of the Stop Counterfeiting in Manufactured Goods Act, Public Law 109-181. The directive, which requires the Commission to promulgate an amendment under emergency amendment authority by September 12, 2006, instructs the Commission to "review, and if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 2318 or 2320 of title 18, United States Code * * *." The directive further provides that the Commission shall:

determine whether the definition of "infringement amount" set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses [under section 2318 or 2320 of title 18, United States Code,] and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as an anti-circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as *U.S. v. Sung*, 87 F.3d 194 (7th Cir. 1996).

The emergency amendment adds subdivision (vii) to Application Note 2(A) of § 2B5.3 (Criminal Infringement of Copyright or Trademark) to provide that the infringement amount is based on the retail value of the infringed item in a case under 18 U.S.C. 2318 or 2320 that involves a counterfeit label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature (I) that has not been affixed to, or does not enclose or accompany a good or service; and (II) which, had it been so used, would appear to a reasonably informed purchaser to be affixed to, enclosing or accompanying an identifiable, genuine good or service. In such a case, the

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ 17 CFR 200.30-3(a)(12).

“infringed item” is the identifiable, genuine good or service.

[FR Doc. E6-15076 Filed 9-11-06; 8:45 am]

BILLING CODE 2211-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10567 and # 10568]

Texas Disaster Number TX-00195

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA-1658-DR), dated 8/15/2006.

Incident: Flooding.

Incident Period: 7/31/2006 and continuing through 8/25/2006.

DATES: Effective Date: 8/25/2006.

Physical Loan Application Deadline Date: 10/16/2006.

EIDL Loan Application Deadline Date: 5/15/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 8/15/2006, is hereby amended to establish the incident period for this disaster as beginning 7/31/2006 and continuing through 8/25/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6-15100 Filed 9-11-06; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Plastics Pallets (Twin Sheet Thermoformed).

SUMMARY: The U.S. Small Business Administration (SBA) is granting a

waiver of the Nonmanufacturer Rule for Plastics Pallets (Twin Sheet Thermoformed).

The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: This waiver is effective September 27, 2006.

FOR FURTHER INFORMATION CONTACT:

Edith Butler, Program Analyst, by telephone at (202) 619-0422; by fax at (202) 481-1788; or by e-mail at edith.butler@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines “class of products” based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on July 12, 2006, to waive the Nonmanufacturer Rule for Plastics Pallets (Twin Sheet Thermoformed).

In response, on August 9, 2006, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Plastics

Pallets (Twin Sheet Thermoformed). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, no comments were received from any interested party. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for Plastics Pallets (Twin Sheet Thermoformed). NAICS code 326199 and product number 4141.

Authority: 15 U.S.C. 637(a)(17).

Dated: August 31, 2006.

Karen C. Hontz,

Associate Administrator for Government Contracting.

[FR Doc. E6-15096 Filed 9-11-06; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Additional Options for Requesting Administrative Review—Title II and Title XVI; Withdrawal

AGENCY: Social Security Administration (SSA).

ACTION: Withdrawal of notice.

SUMMARY: We are withdrawing the notice we published in the **Federal Register** Notice on August 14, 2006. That notice explained that the Agency intended to expand the methods available for requesting administrative review by accepting oral requests from claimants in person or by telephone. In developing the business process, we discovered this change would not provide the same protections to the claimant that exist in the current process. As a result, we have determined that we will not change the appeal process in this manner at this time.

DATES: Effective Date: This withdrawal will be effective on September 12, 2006.

FOR FURTHER INFORMATION CONTACT:

Rosemary Carey, Leader, Due Process Team, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-7936 or TTY (410) 966-5609.

SUPPLEMENTARY INFORMATION: On August 14, 2006 (71 FR 46535), we published in the **Federal Register** a notice entitled Additional Options for Requesting Administrative Review—Title II and Title XVI. That notice explained that we intended to expand the methods available for requesting administrative review of our determinations or decisions in the Social Security and

Supplemental Security Income programs by accepting oral requests from claimants in person or by telephone. Due to unanticipated business process considerations regarding such oral requests, we are rescinding this change. However, we will honor any oral requests that we have received from August 14, 2006, until the effective date of this withdrawal notice.

Dated: September 6, 2006.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. E6-15055 Filed 9-11-06; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 5543]

Determination on U.S. Position on Proposed European Bank for Reconstruction and Development (EBRD) Project in Bosnia and Herzegovina

Pursuant to section 561 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Pub. L. 109-102) (FOAA), and Department of State Delegation of Authority Number 289, I hereby determine that the proposed 20 million Euro EBRD investment package, to provide financing to Raiffeisen Bank Bosnia and Herzegovina (RBBH) for expanded financing of small and medium-size enterprises (SMEs) and retail lending, will contribute to a stronger and more integrated economy in Bosnia and Herzegovina and directly support implementation of the Dayton Accords. I therefore waive the application of Section 561 of the FOAA to the extent that provision would otherwise prevent the U.S. Executive Directors of the EBRD from voting in favor of this project.

This Determination shall be reported to the Congress and published in the **Federal Register**.

Dated: August 31, 2006.

Daniel Fried,

Assistant Secretary of State for European and Eurasian Affairs, Department of State.

[FR Doc. E6-15072 Filed 9-11-06; 8:45 am]

BILLING CODE 4710-23-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA-2006-25778]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: The Federal Transit Administration invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collections:

- (1) Bus Testing Program.
- (2) Transit Research, Development, Demonstration and Deployment Projects. The collections involve our Bus Testing and Transit Research Programs. The information to be collected for the Bus Testing Program is necessary to ensure that buses have been tested at the Bus Testing Center for maintainability, reliability, safety, performance, structural integrity, fuel economy, emissions, and noise. The information to be collected for Transit Research, Development, Demonstration and Deployment Projects is necessary to determine eligibility of applicants and ensure mass transportation service at a minimum cost. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 20, 2006.

DATES: Comments must be submitted before October 12, 2006. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366-6680.

SUPPLEMENTARY INFORMATION:

Title: Bus Testing Program (OMB Number: 2132-0550).

Abstract: 49 U.S.C. 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), has entered into a cooperative agreement with FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Estimated Total Annual Burden: 404 hours.

Title: 49 U.S.C. Section 5312(a) Transit Research, Development, Demonstration and Deployment Projects.

Abstract: 49 U.S.C. 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, demonstration and deployment projects, and evaluation of technology of national significance to public transportation, that the Secretary determines will improve mass transportation service or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

Estimated Total Annual Burden: 11,240 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department,

including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: September 5, 2006.

Ann Linnertz,

Acting Associate Administrator for Administration.

[FR Doc. E6-15026 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the North Metro Corridor

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Denver Regional Transportation District (RTD), in cooperation with the U.S. Army Corps of Engineers (USACE) and the Colorado Department of Transportation (CDOT), will prepare an Environmental Impact Statement (EIS) to evaluate the impacts of transit improvements, including a potential commuter rail line or a light rail line, in the North Metro Corridor between Downtown Denver and the City of Thornton in Adams County, Colorado. The EIS will be prepared in accordance with FTA/FHWA regulations (23 CFR 771 et seq.) implementing the National Environmental Policy Act (NEPA), as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The purpose of this Notice of Intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed transit project, to invite participation in the NEPA process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted.

DATES: Written comments on the scope of the EIS should be sent to Dave Shelley, RTD Project Manager, by October 31, 2006. Public scoping meetings will be held on September 27

and 28, 2006 from 5:30 p.m. to 8:15 p.m. at the locations indicated below.

An interagency scoping meeting will be scheduled after agencies with an interest in the proposed project have been identified.

ADDRESSES: Written comments on the scope of the EIS should be sent to Dave Shelley, RTD Project Manager, North Metro Corridor, Regional Transportation District (RTD), 1560 Broadway, Suite 700, Denver, CO 80202. Comments may also be offered at the public scoping meetings. The addresses for the public scoping meetings are as follows:

Wednesday, September 27, 2006, City of Thornton Civic Center Complex, 9500 Civic Center Drive, Thornton, CO 80229.

Thursday, September 28, 2006, Bruce Randolph Middle School, 3955 Steele Street, Denver, CO 80205.

For more information for assistance needs for the scoping meetings, please contact Dave Shelley at (303) 299-2408 at least 48 hours before the meeting. All meetings will be conducted in wheelchair accessible locations.

FOR FURTHER INFORMATION CONTACT: Mr. David Beckhouse, Community Planner, Federal Transit Administration, Region VIII, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228-2583, (720) 963-3306.

SUPPLEMENTARY INFORMATION:

The Proposed Project: The project extends 18 miles between Denver Union Station (DUS) and 162nd Avenue (SH7) north of Thornton. The project proposes stations at Globeville/Swansea, Commerce City, 88th Avenue, 100th Avenue, 112th Avenue, 124th Avenue, 144th Avenue, and 162nd Avenue.

Purposes of and Need for the Proposed Project: The North Metro area is forecast to be one of the fastest growing areas of the region and the country over the next 20 years. Growth rates for both population and employment are forecast to be double the regional average. The I-25 and I-76 corridors are forecast to intensify as employment corridors, with the areas between the two facilities filling in with residential development. Congestion along north I-25 is already severe, with forecasts indicating increasing severity and duration of congestion. In addition to increasing congestion, access through and from the area to other areas in the metro region is difficult. Many roadways are not continuous, requiring circuitous travel. Existing transit service in the area is minimal and utilizes the congested roadway network. The project will provide a new fixed-guideway, high-capacity transportation facility to

improve local and regional mobility and accessibility for the North Metro area.

This transit project is included as part of RTD's FasTracks Program, a 12-year comprehensive plan for transit service and facilities in the Denver region. The FasTracks Plan is a \$4.7 billion program that was endorsed by the voters of the Denver metropolitan area in 2004. The voters of the region approved an increase in the regional sales and use tax from 0.6% to 1.0% in order to provide for the expedited build out of the transit system. FasTracks includes a funding plan for 119 new miles of rail transit, 18 miles of bus rapid transit, 21,000 new spaces in park n Rides and significant improvements to the bus system. The FasTracks projects have been adopted in the current Denver area Regional Transportation Plan (RTP).

Alternatives: The EIS scoping process will include an evaluation of the results of the MIS conducted by RTD between 1998 and 2001 as well as the Three Corridors Scoping Study that was completed in October 2005. The Locally Preferred Alternative (LPA) of the MIS was either Light Rail Transit (LRT) or Diesel Multiple Units (DMU) between DUS and 124th Avenue along the Union Pacific Railroad (UPRR) Boulder Branch. This recommendation was approved by the Denver Regional Council of Governments and included in the fiscally constrained RTP and the MetroVision 2030 Master Plan.

FTA and RTD propose that the EIS evaluate the following three alternatives: 1. The no-action alternative is the option of implementing nothing more than the existing and committed road and transit improvements; 2. The TSM alternative includes various transportation improvements beyond the existing and committed projects plus enhanced bus transit service in the North Metro Corridor; 3. The MIS LPA will be evaluated as the proposed project as a commuter rail line between DUS and 162nd Avenue (SH 7) along the existing UPRR Boulder Branch line. The EIS will also consider any additional reasonable fixed-guideway, high capacity transit alternatives identified during scoping that provide similar transportation benefits while reducing or avoiding adverse impacts.

The NEPA Process and the Role of Participating Agencies and the Public: The purpose of the NEPA process is to explore, in a public setting, potentially significant effects of implementing the proposed action and alternatives on the physical, human, and natural environment. Areas of investigation include, but are not limited to, land use, development potential, land acquisition and displacements, historic resources,

visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified. Regulations implementing NEPA, as well as provisions of the recently enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), call for public involvement in the EIS process. Section 6002 of SAFETEA-LU requires that FTA and RTD do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become "participating agencies;" (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process. An invitation to become a participating agency, with the scoping information packet appended, will be extended to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project. It is possible that we may not be able to identify all Federal and non-Federal agencies and Indian tribes that may have such an interest. Any Federal or non-Federal agency or Indian tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under

ADDRESSES.

A comprehensive public involvement program will be developed and a public and agency involvement Coordination Plan will be created. The program will include outreach to local and county officials and community and civic groups; a public scoping process to define the issues of concern among all parties interested in the project; organizing periodic meetings with various local agencies, organizations and committees; a public hearing on release of the Draft Environmental Impact Statement (DEIS); and development and distribution of project newsletters.

The purposes of and need for the proposed project have been preliminarily identified in this notice. We invite the public and participating agencies to consider the preliminary statement of purposes of and need for the proposed project, as well as the alternatives proposed for consideration.

Suggestions for modifications to the statement of purposes of and need for the proposed project and any other alternatives that meet the purposes of and need for the proposed project are welcomed and will be given serious consideration. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are also welcomed. There will be additional opportunities to participate in the scoping process in addition to the public meetings announced in this notice.

In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500-1508, and 23 CFR part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) regulation implementing the DOT Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

In accordance with 36 CFR 800.8 FTA and RTD will coordinate compliance with Section 106 requirements and the requirements of the NEPA Process. RTD will utilize the Memorandum of Agreement between the FTA, Region VIII and the U.S. Army Corps of Engineers (USACE), dated January, 2006 for documentation to comply with Section 404 mandates.

In addition, RTD may seek Section 5309 New Starts funding for the project. As provided in the FTA New Starts regulation (49 CFR part 611), New Starts funding requires the submission of certain specific information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Issued on: September 7, 2006.

Lee O. Waddleton,

Regional Administrator, Region VIII, Federal Transit Administration.

[FR Doc. E6-15093 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Alternative Transportation in Parks and Public Lands Program announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2006 appropriations for the Alternative Transportation in Parks and Public Lands (ATPPL) program, authorized by Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA-LU) and codified in 49 U.S.C. 5320. The ATPPL program funds capital and planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible recipients. This is the first year of the ATPPL program. Funding is authorized for this program through FY 2009.

FOR FURTHER INFORMATION CONTACT: Project sponsors who are State, local, or tribal entities may contact the appropriate FTA Regional Administrator (See Appendix A) for grant-specific issues. Project sponsors who are a Federal land management agency or a specific unit of a Federal land management agency should work with the contact listed below at their headquarters office to coordinate the availability of funds to that unit.

- *Bureau of Land Management:* Linda Force, Linda_Force@blm.gov, 202-557-3567.

- *Fish and Wildlife Service:* Nathan Caldwell, nathan_caldwell@fws.gov, 703-358-2376.

- *Forest Service:* Ellen LaFayette, elafayette@fs.fed.us, 703-605-4509.

- *National Park Service:* Kevin Percival, Kevin_Percival@nps.gov, 303-969-2429.

For general information about the Alternative Transportation in the Parks and Public Lands program, please contact Tina Hodges, Office of Budget and Policy, Federal Transit Administration, tina.hodges@dot.gov, 202-366-4287.

SUPPLEMENTARY INFORMATION: A total of \$21,780,000 was appropriated for FTA's Alternative Transportation in the Parks and Public Lands program in Fiscal

Year (FY) 2006. Of this amount, a minimum of \$19,503,990 was available for project awards; \$108,900 was reserved for oversight activities; and up to \$2,167,110 was available for planning, technical assistance, research. A total of 78 applicants requested \$40.5 million, approximately twice the amount available for projects, indicating high competition for funds. An interagency technical review committee evaluated the project proposals based on

the criteria defined in 49 U.S.C. 5320(g)(2). Then, as specified in Section 5320(g), the Secretary of the Interior's designee determined the final selection of projects after consultation with and in cooperation with the Secretary of Transportation's designee. For FY 2006, the program will fund 42 projects totaling \$19,631,170.

The goals of the program are to conserve natural, historical, and cultural

resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities through alternative transportation projects. The projects selected for funding in FY 2006 represent a diverse set of capital and planning projects across the country, ranging from bus purchases to a ferry dock.

AWARDS

State	Public land unit	Agency	Funding recipient	Type of project	Project description	FY 2006 funding
AK	Chugach National Forest.	Forest Service ...	Alaska Railroad	Railroad	Purchase Diesel Multiple Unit Rail vehicles to provide rail service to recreation areas in Chugach National Forest.	\$4,700,000
AK	Glacier Bay National Park and Preserve.	National Park Service.	State of Alaska ..	Boat Dock	Replace the existing passenger and freight dock.	1,200,000
AZ	Grand Canyon National Park.	National Park Service.	National Park Service.	Bus	Rebuild the Hermits Road Shuttle Bus transfer area.	733,050
CA	Inyo National Forest, Devils Postpile National Monument.	Forest Service ...	Forest Service ...	Planning Study ..	Feasibility study for implementation of a sustainable transportation system for Reds Meadow/Devils Postpile.	167,000
CA	Muir Woods National Monument/Golden Gate National Recreation Area.	National Park Service.	National Park Service.	Intelligent Transportation System.	Design and build electronic warning signs, traffic counters, highway advisory radio, web cameras, a centralized management software package, and other equipment as necessary.	490,000
CA	Muir Woods National Monument/Golden Gate National Recreation Area.	National Park Service.	National Park Service.	Planning Study ..	Secure consultant services for planning effort to address visitor access issues at Muir Woods National Monument (managed by Golden Gate National Recreation Area).	500,000
CA	Point Reyes National Seashore.	National Park Service.	National Park Service.	Planning Study ..	Fund an implementation feasibility study and financial plan for the upgrade of an existing park shuttle system to an alternate-fuel system for the heavily visited Point Reyes Headlands.	175,000
CA	San Francisco Maritime National Historical Park and Golden Gate National Recreation Area.	National Park Service.	National Park Service.	Planning Study ..	Planning to extend San Francisco Municipal Railway's Historic streetcars from Fisherman's Wharf 0.85 mile to San Francisco Maritime National Historic Park and the Fort Mason Center at Golden Gate Nat'l Recreation Area.	300,000
CA	Sequoia and Kings Canyon National Park.	National Park Service.	National Park Service.	Bus	Lease busses for the Giant Forest Shuttle and Gateway Shuttle Link to connect key sites within Sequoia National Park lodging, camping, food service facilities, popular day use trails, and features of the world-famous Giant Forest Sequoia grove.	165,000
CA	Sequoia and Kings Canyon National Park.	National Park Service.	City of Visalia	Bus	Purchase five shuttle busses for the City of Visalia to run a new service from the San Joaquin Valley to popular Sequoia National Park.	400,000
CA	Yosemite National Park.	National Park Service.	Yosemite Area Regional Transit System (YARTS).	Park and Ride Lot.	Construct two park and ride lots to allow visitors to park and use the YARTS service to access the national park, mitigating congestion within the park.	582,579

AWARDS—Continued

State	Public land unit	Agency	Funding recipient	Type of project	Project description	FY 2006 funding
CA	Yosemite National park.	National Park Service.	National Park Service.	Planning Study ..	Update traffic, transit, parking, and intersection counts; (2) update existing trip tables; (3) update and complete computer models; (4) evaluate the relationships between transportation and park experience; (5) correlate visitor experience with traffic data.	486,000
CO	Mesa Verde National Park.	National Park Service.	National Park Service.	Planning Study ..	Fund the remaining planning tasks and allow the Transportation Plan to be completed in early 2007.	57,868
CO	Rocky Mountain Arsenal National Wildlife Refuge.	Fish and Wildlife Service.	City of Commerce City.	Planning Study ..	Conduct a shuttle feasibility study that would determine if a shuttle is needed.	40,000
CO	The Maroon Bells—Snowmass Wilderness Area, White River National Forest, Colorado.	Forest Service ...	Roaring Forks Transit Authority.	Bus	Purchase four buses to expand transit service to visitors.	1,680,000
FL	Ding Darling National Wildlife Refuge.	Fish and Wildlife Service.	Lee County Transit.	Planning Study ..	Planning, technical analyses, and coordination of transportation system.	700,000
HI	Hawaii Volcanoes National Park.	National Park Service.	National Park Service.	Planning Study ..	Data collection/studies and resource surveys for potential alternative transportation system along two primary roads where congestion and over-crowding are causing resource damage and compromising visitor safety and experience.	120,000
ID, WY ...	Grand Teton National Park.	National Park Service.	National Park Service.	Planning Study ..	Create a Public Transportation Business Plan for public transportation service in Grand Teton National Park.	99,934
IL	Midewin National Tallgrass Prairie.	Forest Service ...	Forest Service ...	Planning Study ..	Develop an alternative transportation system plan for the prairie.	256,600
KS	Tall Grass Prairie National Preserve.	National Park Service.	National Park Service.	Bus	Replace two existing buses used for park tours.	280,000
MA	Cape Cod National Seashore.	National Park Service.	Cape Cod Regional Transit Authority.	Bus/Intelligent Transportation System.	Purchase ITS communication equipment to allow timed transfers and coordination of local transit service.	175,000
MA	Cape Cod National Seashore.	National Park Service.	National Park Service.	Planning Study ..	Define the needs and evaluate alternative satellite maintenance/storage sites for a transit service to be implemented.	200,000
MA	Cape Cod National Seashore.	National Park Service.	National Park Service.	Tram	Replace three trailers for trams to transport visitors to destinations within and near the National Seashore.	400,000
MA	Lowell National Historical Park.	National Park Service.	National Park Service.	Railroad	Address safety issues: (1) signalization of grade crossings, (2) rehabilitate trolley bridge, (3) replace deteriorated railroad ties and substandard rails.	338,000
MA	Parker River National Wildlife Refuge, Essex County National Heritage Area, MA DCR Sandy Point.	Fish and Wildlife Service.	Essex National Heritage Commission.	Planning Study ..	Develop a plan to complete safe, off-road connections between the Newburyport MBTA Transit Center, the Refuge Headquarters and the Refuge.	95,000
MD	Patuxent Research Refuge.	Fish and Wildlife Service.	Fish and Wildlife Service.	Tram	Rehabilitate existing prototype electric tram and tram tour route.	108,639

AWARDS—Continued

State	Public land unit	Agency	Funding recipient	Type of project	Project description	FY 2006 funding
ME	Acadia National Park.	National Park Service.	Maine Department of Transportation.	Bus	Purchase two vans with trailers for bicycles for Acadia's Island Explorer transit system, allowing visitors to better access recreation opportunities in the park without private cars.	120,000
ME	Acadia National Park.	National Park Service.	Maine Department of Transportation.	Bus	Replace eight propane powered buses for Acadia's Island Explorer transit system, which connects visitor destinations in the park with campgrounds, motels, and community business districts.	1,400,000
NJ	Gateway National Recreation Area—Sandy Hook.	National Park Service.	National Park Service.	Planning Study ..	Fund a planning study to assess needs and establish a set of integrated intelligent transportation system (ITS) parking/traveling information systems requirements.	150,000
NY	Roosevelt-Vanderbilt National Historic Sites.	National Park Service.	National Park Service.	Planning Study ..	Design a three-year phased field-test of an alternative transportation system that links the four park sites with the Town Center and the Poughkeepsie Train Station; structure a regional ATS partnership.	68,000
OH	Cuyahoga Valley National Park.	National Park Service.	National Park Service.	Design	Prepare design documents to allow for upgrade of railroad signals at grade crossings of Cuyahoga Valley Scenic Railroad.	170,000
OH	Cuyahoga Valley National Park.	National Park Service.	National Park Service.	Design	Develop plans to rehabilitate existing rail in Cuyahoga National Park.	185,000
OH	Cuyahoga Valley National Park.	National Park Service.	National Park Service.	Maintenance Vehicle.	Purchase a railroad maintenance vehicle to maintain 51 miles of railroad track.	170,000
OH	Cuyahoga Valley National Park.	National Park Service.	Cuyahoga Valley Scenic Railroad.	Railroad	Purchase an additional ADA accessible railcar.	373,000
OR	Lewis and Clark National Historical Park.	National Park Service.	Sunset Empire Transportation District.	Bus	Fund shuttle bus leasing from the park's partner, Sunset Empire Transit District.	50,000
OR	Mt. Hood National Forest.	Forest Service ...	Oregon Department of Transportation.	Planning Study ..	Planning for a new alternative transportation system to provide transportation to and within Mt. Hood National Forest in order to reduce congestion on U.S. Highway 26.	100,000
PR	San Juan National Historic Site.	National Park Service.	Codevisa Transit with municipality of San Juan.	Bus	Purchase two small trams that would be operated by the municipality of San Juan to provide transportation between the two forts.	640,000
TX	Santa Ana National Wildlife Refuge.	Fish and Wildlife Service.	Fish and Wildlife Service.	Bus	Replace current tram at Santa Ana National Wildlife Refuge.	510,000
VA	Back Bay National Wildlife Refuge.	Fish and Wildlife Service.	Fish and Wildlife Service.	Bus	Purchase two alternative-fueled specialty trams that will replace the antiquated tram system presently used to transport visitors through Back Bay National Wildlife Refuge to adjoining False Cape State Park.	160,000
VA	Shenandoah National Park.	National Park Service.	National Park Service.	Bus	Purchase an ADA accessible bus to replace existing leased vehicle.	60,000
VT	Marsh-Billing-Rockefeller National Historical Park and Town of Woodstock.	National Park Service.	National Park Service.	Planning Study ..	Perform a fiscal analysis study that will investigate a system to shuttle visitors, including elderly and mobility impaired, from points within the Woodstock community to the park visitor center.	78,500

AWARDS—Continued

State	Public land unit	Agency	Funding recipient	Type of project	Project description	FY 2006 funding
WA	North Cascades National Park.	National Park Service.	National Park Service.	Bus	Purchase 4 buses to replace old buses that transport visitors within the Lake Chelan National Recreation Area.	947,000
Total	.....	.....	.....	.....	.....	\$19,631,170

Applying for Funds

Recipients who are State or local government entities will be required to apply for ATPPL funds electronically through FTA’s electronic grant award and management system, TEAM. The content of these grant applications must reflect the approved proposal. (**Note:** Applications for the ATPPL program do not require Department of Labor Certification.) Upon grant award, payments to grantees will be made by electronic transfer to the grantee’s financial institution through the Electronic Clearing House Operation (ECHO) system. Staff in FTA’s Regional offices are available to assist applicants.

Recipients who are Federal land management agencies will be required to enter into an interagency agreement with FTA. FTA will administer one interagency agreement with each Federal land management agency receiving funding through the program for all of that agency’s projects. Individual units of Federal land management agencies should work with the contact at their headquarters office listed above to coordinate the availability of funds to that unit.

Program Requirements

Section 5320 requires funding recipients to meet certain requirements. For FY 2006, FTA has developed interim requirements that reflect existing statutory and regulatory provisions. These can be found in the document “Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients of FY 2006 Funding” available at <http://www.fta.dot.gov/atppl>. These requirements are incorporated into the grant agreements and inter-agency agreements used to fund the selected projects.

Pre-Award Authority

Pre-award authority allows an agency that will receive a grant or interagency agreement to incur certain project costs prior to receipt of the grant or interagency agreement and retain eligibility of the costs for subsequent reimbursement after the grant or agreement is approved. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility, including compliance with Federal requirements such as the National Environmental Policy Act (NEPA), SAFETEA—LU planning requirements, and provisions established in the grant contract or Interagency Agreement. This automatic pre-award spending authority, when triggered, permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Under the authority provided in 49 U.S.C. 5320(h), FTA is extending pre-award authority for FY 2006 ATPPL projects effective as of August 28, 2006, when the projects were publicly announced.

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended pursuant to this pre-award authority will be eligible

for reimbursement if FTA later makes a grant or interagency agreement for the project(s). Local funds expended by the grantee prior to August 28, 2006 will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction, prior to the completion of the NEPA process, would compromise FTA’s ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority, and the pre-award item in the project information section of TEAM should be marked “yes.”

Reporting Requirements

All recipients must submit quarterly milestone/progress reports to FTA containing the following information:

- (1) Narrative description of project(s); and,
- (2) discussion of all budget and schedule changes.

State and local government entities should submit this information through FTA’s TEAM grants management system.

The headquarters office for each Federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports (preferably by e-mail) to Henrika Buchanan-Smith, FTA Office of Transit Programs, Henrika.Buchanan-Smith@dot.gov; 202-366-2053; 400 7th St., SW., Room 9315; Washington, DC 20590. Examples can be found on the program Web site at <http://www.fta.dot.gov/atppl>. The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due date
1st Quarter Report	October 1–December 31	January 31.
2nd Quarter Report	January 1–March 31	April 30.
3rd Quarter Report	April 1–June 30	July 31.
4th Quarter Report	July 1–September 31	October 31.

In order to allow FTA to compute aggregate program performance measures as required by the President's Management Agenda, FTA requests that all recipients of funding for capital projects under the ATPPL program submit the following information annually:

- Annual visitation to the land unit;
- Annual number of persons who use the alternative transportation system (ridership/usage);
- An estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;
- Cost per passenger; and,
- A note of any special services offered for those systems with higher costs per passenger but more amenities.

State and local government entities should submit this information as part of their fourth quarter report through FTA's TEAM grants management system.

Federal land management agencies should also send this information as part of their fourth quarter report (preferably by e-mail), to Henrika Buchanan-Smith, FTA, Henrika.Buchanan-Smith@dot.gov; 202-366-5080; 400 7th St., SW.; Room 9315; Washington, DC 20590. Examples can be found on the program Web site at <http://www.fta.dot.gov/atppl>.

Oversight

Recipients of FY 2006 ATPPL funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package, and Federal Land Management Agency recipients will complete the certification by signing the interagency agreement. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. 5307(h)(2) to ATPPL recipients that are other Federal agencies. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the ATPPL program. These reviews will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees of ATPPL funds (State, local

and tribal government entities) will be subject to all applicable triennial, State management, civil rights, and other reviews.

Issued in Washington, DC, this 5th day of September, 2006.

James S. Simpson,
Administrator.

Appendix A—FTA Regional Offices

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Richard Doyle, FTA Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142-1093, (617) 494-2055.

Region II

New Jersey, New York, and Virgin Islands. Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004-1415, (212) 668-2170.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Susan Borinsky, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, (215) 656-7100.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee. Yvette Taylor, FTA Regional Administrator, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303, (404) 562-3500.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Marisol Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606-5232, (312) 353-2789.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978-0550.

Region VII

Iowa, Kansas, Missouri, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329-3920.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Lee Waddleton, FTA Regional Administrator, 12300 West Dakota, Suite 310, Lakewood, CO 80228-2583, (720) 963-3300.

Region IX

American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105-1839, (415) 744-3133.

Region X

Alaska, Idaho, Oregon, and Washington. Richard F. Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174-1002, (206) 220-7954.

[FR Doc. E6-15095 Filed 9-11-06; 8:45 am]
BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA-2006-23511]

Notice of Proposed Agency Guidance and Request for Comments on the Eligibility of Joint Development Improvements Under Federal Transit Law

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed guidance with request for comment.

SUMMARY: The Federal Transit Administration (FTA) seeks public comment on the following proposed guidance on joint development capital projects funded by the Federal Transit Administration. The Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users (SAFETEA-LU) enacted certain amendments to the definition of the term "capital project" as used in 49 U.S.C. 5302(a)(1)(G) relating to "joint development" activities by recipients of Federal funds under 49 U.S.C. 5301 *et seq.* (Federal Transit Law). The Federal Transit Administration (FTA) proposes to adopt the following guidance in accordance with the procedures for notice and an opportunity for the public to comment set forth at 49 U.S.C. 5334(l) and FTA's Notice of Final Policy Statement for Implementation of Notice and Comment Procedures for Documents Imposing "Binding Obligations," as published in the **Federal Register** on June 5, 2006. The following proposed guidance seeks to ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (the project sponsor), and to their joint development partners by (i) Affording FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally deferring to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal Transit funds and program income for joint development purposes, and (iii) promoting transit-oriented

development, subject to the broad parameters set forth herein.

DATES: Comments must be received by October 12, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure your comments are not entered more than once into the DOT Docket, please identify your submissions by the following docket number: FTA-2006-23511. Please make your submissions by only one of the following means:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Web Site:* <http://dms.dot.gov>.

Follow the online instructions for making submissions to the DOT electronic docket site.

- *Fax:* 1-202-493-2478.

• *U.S. Post or Express Mail:* Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

• *Hand Delivery:* To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include the docket number for this notice set forth above. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://dms.dot.gov>.

Docket: For access to the DOT docket to read materials relating to this notice, please go to <http://dms.dot.gov> at any time or to the Docket Management System.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Robert Tuccillo at (202) 366-4050. For legal questions, please contact Jayme Blakesley at (202) 366-0304. The principal office of FTA is located at 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 6 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Statement of Policy

Through this guidance, FTA interprets the definition and operation of the term "capital project" as defined at 49 U.S.C. 5302(a)(1)(G), and as amended by Section 3003(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU"). This amendment permits FTA to issue public transportation grants "for the construction, renovation, and improvement of intercity bus and intercity rail stations and terminals," including the construction, renovation, and improvement of commercial revenue-producing intercity bus stations or terminals. In doing so, it modifies the underlying policy of joint development improvements, and therefore enhances the ability of FTA grantees to work with the private sector and others for purposes of joint development. To ensure maximum benefit to the people who ride public transportation, to FTA grantees that choose to sponsor joint development improvements (the "project sponsor"), and to their joint development partners, the following guidance (i) seeks to afford FTA grantees maximum flexibility within the law to work with the private sector and others for purposes of joint development, (ii) generally will defer to the decisions of the project sponsor, negotiating and contracting at arm's length with third parties, to utilize Federal transit funds and program income for joint development purposes, and (iii) aims to promote transit-oriented development, subject to the broad parameters set forth herein.

Proposed Guidance Text

I. Eligibility Criteria

a. Definition of "Capital Project"

Federal Transit Law defines a "capital project" for joint development as follows:

A public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation.

49 U.S.C. 5302(a)(1)(G).

This definition establishes the following criteria for determining whether a joint development improvement is eligible for funding pursuant to a program established under 49 U.S.C. 5301 *et seq.* (the "Federal Transit Law"): The public transportation improvement must (i) Enhance economic development or incorporate private investment; (ii)(a) Enhance the effectiveness of a public transportation project and relates physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (iii) provide a fair share of revenue for public transportation that will be used for public transportation. In addition, a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means. 49 U.S.C. 5302(a)(1)(G)(i).

Joint development improvements will be eligible for FTA funding only if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation.

b. "Enhances Economic Development or Incorporates Private Investment"

As noted above, it is a threshold requirement for Federal funding of a public transportation improvement as joint development that such improvement either (i) Enhance economic development or (ii) incorporate private investment.¹

i. "Enhances Economic Development"

This criterion requires that a joint development improvement enhance economic development. A grantee may satisfy this criterion by demonstrating that the joint development improvement will add value to privately-or publicly-funded economic development activity occurring in close proximity to a public transportation facility.

¹ In accordance with the statute's use of the disjunctive "or," rather than the conjunctive "and," FTA shall determine that a transportation improvement satisfies the threshold requirement for funding as joint development if the transportation improvement either (i) Enhances economic development or (ii) incorporates private investment (the disjunctive), and shall not require that the transportation improvement satisfy each of (i) and (ii) (the conjunctive).

ii. "Incorporates Private Investment"

Any joint development improvement that incorporates private investment will satisfy this criterion. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements. FTA will not set a monetary threshold. The amount and form of private investment shall be negotiated by the parties to the joint development improvement.

c. "Enhances the Effectiveness of a Public Transportation Project"

Any reasonable forecast of joint development impacts that enhance the effectiveness of a public transportation project will satisfy this criterion. These impacts may include, but are not limited to, any of the following: increased ridership, shortened travel times, and lessened or deferred transit operating or capital costs.

d. "Related Physically or Functionally"

The disjunctive requirement of physical "or" functional relationship provides that a joint development improvement may be built separately from, but in functional relationship to, a public transportation project. Therefore, a joint development improvement satisfies this element if it is related physically or functionally to a public transportation project.

i. "Physically Related"

A joint development improvement is "physically related" to a public transportation project if it provides a direct physical connection to public transportation services or facilities. Illustrative, but not exhaustive, examples of physical relationships include (i) projects built within or adjacent to public transportation facilities and (ii) projects using air rights over public transportation facilities.

ii. "Functionally Related"

A joint development improvement is "functionally related" to a public transportation project if by activity and use, with or without a direct physical connection, it (i) enhances the use of, connectivity with or access to public transportation; or (ii) provides a transportation-related service (such as, but not limited to, remote baggage handling or shared ticketing) or community services (such as daycare or health care) to the public. Considerations include a reduction in travel time between the joint development project and the public transportation facility, reasonable access between the joint development project

and the public transportation facility, and increased trip generation rates resulting from the relationship between the joint development project and the public transportation facility.

While the functional relationship test of activity and use permits the use of FTA funds for joint development improvements located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, functional relationships should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service (in certain cases, for example, within a radius of 1,500 feet around the center of the public transportation project).

e. "Establishes New or Enhanced Coordination Between Public Transportation and Other Transportation"²

Any reasonable forecast of joint development impacts that establish new or enhanced coordination between public transportation and other transportation will satisfy this criterion. FTA will accept any reasonably supported judgment of new or enhanced coordination from the project sponsor.

i. "New or Enhanced Coordination"

To establish new or enhanced coordination, a joint development improvement must create or enhance the physical or functional connections between public transportation and other transportation.³

Examples of physical connections that establish new or enhanced coordination include, but are not limited to, proximate or shared ticket counters, termini, park-and-ride lots, taxicab bays, passenger drop-off points, waiting areas, bicycle paths and sidewalks connecting public transportation to non-transportation facilities. Projects that shorten the distance between public

² Subsection (e), "New or Enhanced Coordination," explains the second method for complying with a disjunctive requirement. As explained in section (I)(d) of this document, a joint development improvement may satisfy this requirement by (i) Relating physically or functionally to a public transportation project or (ii) establishing new or enhanced coordination between public transportation and other transportation.

³ This requirement is similar to, but not the same as, the requirement of physical or functional relationship described at subsection (d)(i) and (ii). The two are distinct, disjunctive requirements, but they share common criteria. A project could satisfy both requirements, but need only satisfy one to qualify for funding as a joint development improvement. Visualized as such, the disjunctive requirement would appear as a Venn diagram—separate requirements with overlapping criteria.

transportation termini and other transportation shall be presumed to enhance coordination.

Examples of functional connections that establish new or enhanced coordination include, but are not limited to, shared or coordinated signage, schedules, and ticketing.

ii. "Public Transportation"

Section 5307(a)(7) of Title 49 defines "public transportation" as

"transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243⁴ (or a successor to such entity)."

iii. "Other Transportation"

FTA interprets the term "other transportation," as used in 49 U.S.C. 5307(a)(1)(G), to mean all forms of transportation that are not public transportation, including, but not limited to, airplane, school bus, charter bus, sightseeing vehicle, intercity bus and rail, automobile, taxicab, bicycle and pedestrian transportation.

f. "Provides a Fair Share of Revenue for Public Transportation That Will Be Used for Public Transportation"

The third criterion for determining whether a joint development improvement is eligible for funding pursuant to a program established under the Federal Transit Law is that the improvement "provides a fair share of revenue for public transportation that will be used for public transportation."⁵ 49 U.S.C. 5302(a)(1)(G). FTA will not define the term "fair share of revenue," nor will it set a monetary threshold. What is a fair share of revenue, and what form it should take,⁶ shall be negotiated between the parties involved in the joint development improvement. The only requirements are (i) That the

⁴ National Railroad Passenger Corporation ("Amtrak")

⁵ This criterion should not be confused with the requirement of 49 U.S.C. 5302(a)(1)(G)(ii) that "a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means."

⁶ For example, "fair share of revenue" need not be a direct payment of revenue by an intercity bus provider to a transit agency but may take the form of an increase in revenues received by a transit agency, whether in its capacity as landlord or otherwise, as a result of enhanced passenger traffic created by the service of a jointly developed facility by an intercity bus provider, provided that the transit agency and intercity bus provider together designate and report to FTA the source of such "fair share of revenue." FTA grantees shall expend the "fair share of revenue" in accordance with the common grant rule of 49 CFR 18.1-18.52.

public transportation provider receives a fair share of revenue, (ii) that such revenue be used for public transportation, and (iii) that the project sponsor obtain a written opinion of counsel or other advisor (or FTA's agreement) that the share of revenue to public transportation is fair. This allows a public transportation provider to negotiate for financial benefits in exchange for the benefits it will convey through the joint development improvement.

g. "Reasonable Share of the Costs of the Facility"

While not a criterion to determine eligibility, as noted above, it is nonetheless required that any "person making an agreement to occupy space in a facility under [49 U.S.C. 5302(a)(1)(G)] shall pay a reasonable share of the costs of the facility through rental payments and other means." FTA shall not require a specific valuation methodology and shall accept any reasonable valuation methodology used by the grantee to determine a reasonable share of the costs of the facility.

II. Eligible Activities

Subject to the eligibility criteria detailed at section (II) above, joint development improvements expressly include the following:

- Commercial and residential development;
- Pedestrian and bicycle access to a public transportation facility;
- Construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; and
- Renovation and improvement of historic transportation facilities.

49 U.S.C. 5302(a)(1)(G). These and other joint development improvements will be eligible for FTA funding if they satisfy the criteria set forth above, and do not fall within the exclusion detailed at 49 U.S.C. 5302(a)(1)(G)(ii), which excludes the construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation.⁷

⁷ Many aspects of commercial and residential development will be excluded by 49 U.S.C. 5302(a)(1)(G)(ii), which makes ineligible for FTA financial assistance the "construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation." It is important to note, however, that commercial and residential development is not excluded wholesale. For example, space in an FTA-funded facility may be made available for commercial revenue-producing activities and for connections to revenue producing activities. Similarly, non-commercial, non-revenue-producing aspects of commercial and residential developments may be eligible for FTA financial assistance, subject to the criteria detailed at section (II).

Costs related to a joint development improvement are only eligible for Federal Transit funding pursuant to a budget contained in an approved grant. FTA cannot approve funding for costs associated with a joint development improvement that are not contained in an approved grant budget. FTA Regional Administrators approve joint development proposals as part of the grant approval process.

Eligible costs for joint development improvements include, but are not limited to, the following:

- a. *Real Estate Acquisition*, including the acquisition of real property and structures thereon;⁸
- b. *Demolition of Existing Structures*;
- c. *Site Preparation*;
- d. *Building Foundations*, including substructure improvements for buildings constructed over transit facilities;
- e. *Utilities*, including utility relocation and construction;
- f. *Walkways*, including bicycle lanes and pedestrian connections and access links between public transportation services and related development;
- g. *Open Space*, including site amenities and related streetscape improvements such as street furniture and landscaping;
- h. *Safety and Security Equipment and Facilities*, including lighting, surveillance and related intelligent transportation applications;
- i. *Construction, renovation, and improvement of bus and intercity rail stations and terminals*;
- j. *Facilities that Incorporate Community Services* such as daycare or health care;
- k. *Capital Project, and Equipment, for an Intermodal Transfer Facility or Transportation Mall*, including acquisition of facilities and equipment, roadbeds, tracks and bus ramps, pedestrian concourses, loading shelters, parking facilities, park-and-ride services, improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation;
- l. *Furniture, Fixtures and Equipment (FFE)*: Transportation-related FFE are eligible costs in all cases. However, due to the exclusion of commercial revenue-producing facilities (other than an intercity bus station or terminal) and public facilities not related to public transportation at 49 U.S.C.

⁸ Note that certain costs in connection with real estate acquisition (such as costs associated with eminent domain and relocation assistance) shall be eligible, as provided by the respective statutes and regulations.

5302(a)(1)(G)(ii), FFE related to commercial revenue-producing facilities (other than an intercity bus station or terminal) or public facilities not related to public transportation are considered ineligible;

m. *Parking*, including parking improvements with a public transportation justification and use or an intercity bus or intercity rail justification and use in connection with joint development; and

n. *Project Development Activities*, including design, engineering, construction cost estimating, environmental analysis, real estate packaging and financial projections (operating income and expenses, debt service and cash flow analysis), and negotiations to secure financing and tenants;

o. *Professional Services*, including reasonable and necessary costs incurred to hire professionals to prepare or perform items a through n above, or to assist the grantee in reviewing the same.

III. Ineligible Activities

a. Construction of a Commercial Revenue-Producing Facility

Eligible costs do not include construction of commercial revenue producing facilities (other than an intercity bus station or terminal) or part of a public facility not related to public transportation.

IV. Federal Requirements

FTA's Master Agreement contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by FTA through a grant agreement or cooperative agreement with the recipient, or supported by FTA through a Transportation Infrastructure (TIFIA) Loan, loan guarantee, or line of credit with the recipient. Not every provision of the Master Agreement will apply to every project for which FTA provides Federal assistance through a grant agreement or cooperative agreement. The type of project, the Federal laws and regulations authorizing Federal assistance for the project, and the legal status of the recipient as a State or local government, private non profit entity, or private for profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. The recipient shall comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law,

regulation, or directive applicable to the recipient or its project may result in penalties to the violating party.

Applicable crosscutting requirements likely to apply to joint development improvements include, but are not limited to, the following:

a. Ground Lease or Transfer of Federally Assisted Real Estate

If the joint development improvement involves a ground lease or transfer of federally-funded real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:

- i. Language found at 49 CFR 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
- ii. Language found at 49 CFR 27.7; 27.9(b) and 37 binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed; and
- iii. Language contained in FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest and debarment and suspension.

b. Federally Assisted Construction of Joint Development Improvements

If the construction of improvements is also federally assisted, then the following requirements will apply and must be incorporated into the lease or the conveyance or encumbrance instrument:

- i. Buy America—language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. 5323(j) and 49 CFR part 661;
- ii. Planning and Environmental Analysis—language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of:

A. The FHWA/FTA metropolitan and statewide planning regulations at 23 CFR part 450;

B. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*;

C. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, Feb. 16, 1994;

D. FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental

Quality regulations on compliance with the NEPA, 40 CFR part 1500 *et seq.*;

E. FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR part 771;

F. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, "Protection of Historic and Cultural Properties," 36 CFR part 800; and

G. restrictions on the use of certain publicly owned lands and historic resources unless the FTA makes the specific findings required by 49 U.S.C. 303.

iii. Cargo Preference—language making it clear that items imported from abroad and used in the joint development were shipped predominantly on U.S.-flag ships and that the project complies with 46 CFR part 381, to the extent these regulations apply to the joint development;

iv. Seismic Safety—language certifying that a structure conforms to seismic safety standards, as contained in 49 CFR part 41;

v. Energy Assessments—Language making it clear that the transferee(s) or joint developer agrees to perform a mandatory, energy assessment as prescribed by 23 CFR part 771 and 42 U.S.C. 8373(b)(1) for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment, if the project has one; otherwise the assessment shall be provided with the application for FTA assistance;

vi. Lobbying—49 CFR part 20;

vii. Labor Protection—Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon—49 U.S.C. 5333(a) and 40 U.S.C. 3141 *et seq.*, and 29 CFR part 5; Copeland "Anti-Kickback" Act as amended, 18 U.S.C. 874 and 29 CFR part 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.*, and 29 CFR part 5 and at 40 U.S.C. 3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees;

viii. Civil Rights Requirements—49 U.S.C. 5332 and DOT implementing regulations at 49 CFR part 21 (effecting Title VI of the Civil Rights Act of 1964), 49 CFR 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 CFR parts 27 and 37 (respectively, nondiscrimination on the basis of

disability in programs or activities receiving Federal financial assistance and transportation services for individuals with disabilities);

ix. Program Fraud—grantees agree to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and 49 CFR part 31. Penalties may apply for noncompliance;

x. Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project; and

xi. Uniform Relocation—If the federally-funded site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 *et seq.* and the regulations at 49 CFR part 24.

c. National Environmental Policy Act (NEPA)

In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA may issue a Categorical Exclusion. Generally, however, joint development activities that portend significant environmental impacts will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. FTA is available to provide guidance on the environmental review process. See generally the FTA Environmental Impact and Related Procedures at 23 CFR part 771.

V. Eligibility Procedures

Before becoming eligible for FTA funding, a joint development improvement must be approved by the FTA Regional Administrator, or his designee, responsible for the project sponsor's locality. Only FTA grantees may sponsor a joint development improvement. The project sponsor may submit a joint development proposal at any time. FTA approval shall be contingent upon the project sponsor certifying that the joint development improvement conforms to the criteria set forth above and that the project conforms to the requirements of the common grant rule found at 49 CFR 18.31. In the event that the project does not conform to 49 CFR 18.31, FTA may approve the project if the project sponsor submits an alternative certification explaining compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) together with supporting documentation, in each case

in form and substance satisfactory to FTA in its reasonable discretion. The FTA Regional Administrator, or his designee, shall approve all proposals that meet the criteria described herein. Like all projects funded by FTA, joint development improvements are subject to the applicable crosscutting requirements.

There are two methods for seeking approval for a joint development project. In all cases, the project sponsor must submit a completed Joint Development Checklist and proposed Joint Development Agreement. By submitting a completed Joint Development Checklist, the project sponsor shall certify that the proposed joint development improvement conforms to the criteria of 49 U.S.C. 5302(a)(1)(G) as outlined above.

For an expedited review, the joint development proposal shall include a signed Certificate of Compliance. By signing the Certificate of Compliance, the project sponsor shall certify, among other things, that the proposed joint development improvement conforms to the requirements of 49 CFR 18.31.

If a project sponsor seeks a more individualized review of the project, a joint development proposal shall include an explanation of compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) (the "alternative certification") with supporting documentation.

The Joint Development Checklist and Certificate of Compliance are attached hereto.

VI. Real Property

Real property acquired by a grantee or subgrantee pursuant to 49 U.S.C. 5302(a)(1)(G) shall be governed by 49 U.S.C. 5334(h) as amended, and subject to the obligations and conditions set forth in 49 CFR 18.31 as amended, which require the grantee or subgrantee to request disposition instructions from FTA whenever real property is no longer needed for the originally authorized purpose.⁹

⁹ FTA shall rely on the parties to joint development transactions, including, notably, transit agencies, to determine the appropriate use and disposition of real property used on joint development improvements, so long as such disposition and use complies with applicable statutes and duly promulgated regulations of FTA. For example, FTA shall no longer apply, and shall

VII. Applicability of Third Party Contracting Requirements

FTA's third party contracting requirements, which appear in FTA Circular 4220.1E, have limited applicability to joint development projects. As described on page 12 of Circular 4220.1E, the third-party contracting requirements must apply to the federally funded construction aspects of joint development. With regard to revenue contracts as defined in the Circular, FTA will work with grantees on a case-by-case basis to craft approaches that satisfy the statutory and regulatory requirements while preserving the benefits of this innovative contracting strategy to the maximum possible extent.

If a contract between a grantee and a third party involving a joint development project is not a construction contract or a revenue contract as defined by Circular 4220.1E, then such contract is not covered by FTA's third party contracting requirements. Paragraph 7.n. of Circular 4220.1E defines "revenue contracts" as "those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing an FTA funded asset."

Revenue contracts in joint development projects that do not meet this primary purpose test are not covered by the third party contracting requirements. For example, third party contracts to manage, operate, and/or maintain intercity bus or intercity rail terminals that are part of FTA-funded joint development projects or tenancy agreements with third party intercity bus or intercity rail operators are not covered revenue contracts. The primary purpose of such contracts is to carry out the congressional intent to give grantees the flexibility to integrate intercity rail and intercity bus terminals and their

not require it grantees to apply, its administratively-derived test of "highest and best transit use" (or any other tests) for determining the value of real property used in FTA-funded joint developments, including the disposition of real property connected to a joint development improvement. In the past, FTA relied on 49 CFR 18.25(g) as its authority for requiring (and determining in its discretion) the "highest and best transit use" of such property. No such requirement is expressly authorized or required by 49 CFR 18.25(g), however.

related services into FTA-funded joint development projects.

Even in situations not covered by the third party contracting requirements, FTA generally favors full and open competition. However, where the third party contracting requirements are not involved, FTA will leave it to the full discretion of the grantees to determine the appropriate extent and nature of competition, if any, for such contracts. For example, in cases involving management of intercity bus or rail terminals or tenancy agreements in those terminals, FTA recognizes that given the unique nature of the national intercity rail and bus systems, a competitive procurement process for such contracts may not be appropriate.

VII. Certificate of Compliance

To ensure compliance with 49 CFR 18.31 and other Federal requirements related to joint development improvements, and the acquisition, use and disposition of real property for such improvements, FTA shall require project sponsors to sign a Certificate of Compliance or, in lieu of such certificate, an alternative certification explaining compliance with 49 U.S.C. 5302(a)(1)(G) and 49 CFR 18.25(g)(4) and (5) with supporting documentation. By signing the Certificate of Compliance, the project sponsor shall certify, among other things, that the proposed joint development improvement conforms to the requirements of 49 CFR 18.31.

IX. Satisfactory Continuing Control

For purposes of this guidance and the Certificate of Compliance, "satisfactory continuing control" shall not mean complete operating or managerial control of a joint development facility. In determining whether "satisfactory continuing control" with respect to a joint development capital project is maintained, the project sponsor and FTA shall consider, as a primary factor, whether the project sponsor has the right and power to direct that such project shall be used for activities eligible for funding under Federal Transit Law (49 U.S.C. 53).

Appendix A—Proposed Joint Development Checklist

BILLING CODE 4910-57-P

Joint Development Checklist

I. PROJECT DESCRIPTION		
Project Sponsor:	Date Submitted:	FTA Project Number (if known):
Project Title:		
Project Location (Include City and Street Address):		
Name of Project Contact:	Phone:	E-mail Address (if available):
Type of Project: <input type="checkbox"/> Commercial development <input type="checkbox"/> Residential development <input type="checkbox"/> Pedestrian or bicycle access to public transportation facility <input type="checkbox"/> Construction, renovation, or improvement of intercity bus or intercity rail station or terminal <input type="checkbox"/> Renovation or improvement of historic transportation facility <input type="checkbox"/> Other		
Description of Project:		

II. MATERIALS SUBMITTED
<input type="checkbox"/> Joint Development Checklist
<input type="checkbox"/> Joint Development Agreement
<input type="checkbox"/> Certification of Compliance or
<input type="checkbox"/> Alternative Certification (with written explanation)

III. APPLICATION OF STATUTORY CRITERIA	
Requirement	Description
Economic Link (check (1) or (2)): <input type="checkbox"/> (1) Enhances economic development or <input type="checkbox"/> (2) Incorporates private investment	
Public Transportation Benefit (check (3) & (4), or (5)): <input type="checkbox"/> (3) Enhances the effectiveness of a public transportation project and <input type="checkbox"/> (4) Relates physically or functionally or <input type="checkbox"/> (5) Establishes New or Enhanced Coordination Between Public Transportation and other Transportation	
Revenue for Public Transportation (check (6)): <input type="checkbox"/> (6) Provides a Fair Share of Revenue for Public Transportation that will Be Used for Public Transportation	
Reasonable Share of Costs (check (7) if applicable): <input type="checkbox"/> (7) Occupants to pay a reasonable share of the costs of the facility through rental payments and other means	

Appendix B—Proposed Certificate of Compliance

Certificate of Compliance

Effective as of the date hereof, the undersigned hereby certifies and covenants to the Federal Transit Administration (“FTA”) as follows:

1. *Title.* Subject to the obligations and conditions set forth in 49 CFR 18.31, as amended, title to real property acquired under a grant or subgrant for FTA Project Number _____, [insert project title here] (the “Project”), shall vest in the undersigned or subgrantee thereof (collectively or individually, as the case may be, the “Grantee”).

2. *Use.* Except as otherwise provided by Federal statutes, real property shall only be used for the originally authorized purposes (which may include Joint Development purposes that generate program income, both during and after the award period and used to support public transportation activities) as long as needed for such purposes, and that the Grantee shall not dispose of or encumber its title or other interests.

3. *Disposition.* When real property acquired with funds provided by FTA for the Project is no longer needed for the purpose originally authorized by FTA, the Grantee shall request disposition instructions from FTA and shall agree that, unless otherwise authorized by FTA, such disposition shall be made in accordance with applicable law, including without limitation 49 U.S.C. 5334(h) and 49 CFR 18.31.

4. *Federal Interest.* The Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (“Project Property”) until, and to the extent that, the Federal Government relinquishes its Federal interest in such Project Property.

5. *Incidental Use.* Any incidental use of Project Property, as determined by FTA, shall not exceed that permitted under applicable Federal laws, regulations, and directives, including the requirements of FTA’s Master Agreement.

6. *Encumbrance of Project Property.* The Grantee covenants to FTA as follows:

a. *Written Transactions.* The Grantee agrees that it will not execute any transfer of title to the Project Property or enter into an instrument legally binding on the Grantee that would encumber Federal Interest in the Project Property.

b. *Oral Transactions.* The Grantee agrees that it will not obligate itself in any manner to any third party with respect to Project Property.

7. *Notice to Joint Development Partner.* The undersigned has delivered to the Joint Development Partner a duly executed copy of

this certificate, dated as of the date hereof, receipt of which has been acknowledged by the Joint Development Partner in writing to the undersigned on or before the date of execution of the Joint Development Agreement.

8. *Other Actions.* The Grantee (a) agrees that it will not take any action that encumbers the Federal Interest in the Project Property and (b) hereby affirms that each of its representations and warranties set forth in the Master Agreement is true and correct in all material respects as of the date hereof. The Grantee agrees that nothing herein shall supersede, amend, modify or otherwise affect the provisions, terms or conditions set forth in the Master Agreement.

9. *Definitions.*

a. “FTA” shall have the meaning provided in the preamble of this certificate.

b. “Grantee” shall have the meaning provided in section (2) of this certificate.

c. “Joint Development” shall mean a capital project as defined by 49 U.S.C. 5302(a)(1)(G) that is eligible for funding pursuant to the terms and conditions set forth in [insert new Joint Development circular number].

d. “Joint Development Partner” shall mean [insert definition].

e. “Master Agreement” shall mean that certain Master Agreement by and between FTA and the Grantee, as authorized by 49 U.S.C. 53, Title 23, United States Code (Highways), the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, or other Federal laws that FTA administers, as the same may be lawfully revised, superseded or supplemented from time to time.

f. “Project” shall have the meaning provided in section (1) of this certificate.

g. “Project Property” shall have the meaning provided in section (4) of this certificate.

10. *No Estoppel.* The undersigned agrees that acceptance of this Certificate of Compliance by FTA shall not estop the Federal government from initiating or conducting, and shall not be used as a defense for, any investigation, audit or inquiry by the Federal government following approval by FTA of the project.

Issued on the 5th day of September, 2006.

James S. Simpson,
Administrator.

[FR Doc. E6–15022 Filed 9–11–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety

Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to “Reason for Delay”

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

- N—New application.
- M—Modification request.
- X—renewal.
- PM—Party to application with modification request.

Issued in Washington, DC, on September 6, 2006.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Safety, Special Permits & Approvals.

NEW SPECIAL PERMIT APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
13563–N	Applied Companies, Valencia, CA	1	09–30–2006
14229–N	Senex Explosives, Inc., Cuddy, PA	4	09–30–2006
14232–N	Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA	4	09–30–2006
14239–N	Marlin Gas Transport, Inc., Odessa, FL	1	09–30–2006
14237–N	Advanced Technology Materials, Inc. (ATMI), Danbury, CT	1	09–30–2006

NEW SPECIAL PERMIT APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
14285-N	INO Therapeutics LLC., Port Allen, LA	4	09-30-2006
14298-N	Air Products and Chemicals, Inc., Allentown, PA	4	09-30-2006
14316-N	VOTG North America, Inc., West Chester, PA	4	09-30-2006
14310-N	Praxair, Danbury, CT	4	09-30-2006
14314-N	North American Automotive Hazmat Action Committee	4	09-30-2006
14318-N	Lockheed Martin Technical Operations, Vandenberg AFB, CA	4	09-30-2006
14289-N	City Machine & Welding, Inc., Amarillo, TX	4	09-30-2006
14257-N	Origin Energy American Samoa, Inc., Pago Pago, AS	4	09-30-2006
14266-N	NCF Industries, Inc., Santa Maria, CA	3	09-30-2006
14277-N	Ascus Technologies, Ltd., Cleveland, OH	3, 4	09-30-2006

MODIFICATION TO SPECIAL PERMITS

Application No.	Application	Reason for delay	Estimated date of completion
12677-M	Austin Powder Illinois Company, Cleveland, OH	1	09-30-2006
5749-M	E.I. DuPont de Nemours, Wilmington, DE	4	09-30-2006
10481-M	M-I Engineering Limited, Bradford, West Yorkshire	4	09-30-2006

[FR Doc. 06-7582 Filed 9-11-06; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Submission for OMB Review;
Comment Request

September 6, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 12, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1606.

Type of Review: Extension.

Title: Qualified Zone Academy Bond Credit.

Form: 8860.

Description: A qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual

income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 204 hours.

OMB Number: 1545-1593.

Type of Review: Extension.

Title: U.S. Income Tax Return for Qualified Funeral Trusts.

Form: 1041-QFT.

Description: IRC section 685 allows the trustee of a qualified funeral trust to elect to report and pay the tax for the trust. Data is used to determine that the trustee filed the proper return and paid the correct tax.

Respondents: Business and other for-profit institutions, and not-for-profit institutions.

Estimated Total Burden Hours: 270,150 hours.

OMB Number: 1545-0098.

Type of Review: Extension.

Title: Application for Tentative Refund.

Form: 1045.

Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a new operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 614,888 hours.

OMB Number: 1545-1016.

Type of Review: Revision.

Title: Empowerment Zone Employment Credit.

Form: 8613.

Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 365,904 hours.

OMB Number: 1545-1842.

Type of Review: Extension.

Title: Health Coverage Tax Credit Registration Form.

Form: 13441.

Description: Form 13441, Health Coverage Tax Credit Registration Form, will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope. We will accept faxed forms, if necessary.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 900 hours.

OMB Number: 1545-0192.

Type of Review: Extension.

Title: Tax on Accumulation Distribution of Trusts.

Form: 4970.

Description: Form 4970 is used by a beneficiary of a domestic or foreign trust

to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 32,200 hours.

OMB Number: 1545-1442.

Type of Review: Extension.

Title: PS-79-93 (Final) Grantor Trust Reporting Requirements.

Description: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit

of a trust as owned by the grantor or another person are properly reported.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 920,000 hours.

OMB Number: 1545-0219.

Type of Review: Extension.

Title: Work Opportunity Credit.

Form: 5884.

Description: IRC section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 52,547 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622-3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6-15047 Filed 9-11-06; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

**Tuesday,
September 12, 2006**

Part II

Department of the Interior

Fish and Wildlife Service

**50 CFR Part 17
Endangered and Threatened Wildlife and
Plants—Proposed Critical Habitat
Designations; Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Review of Native Species That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this Candidate Notice of Review (CNOR), we, the U.S. Fish and Wildlife Service (Service), present an updated list of plant and animal species native to the United States that we regard as candidates or have proposed for addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing landowners and resource managers to alleviate threats and thereby possibly remove the need to list species as endangered or threatened. Even if we subsequently list a candidate species, the early notice provided here could result in more options for species management and recovery by prompting candidate conservation measures to alleviate threats to the species.

The CNOR summarizes the status and threats that we evaluated in order to determine that species qualify as candidates and to assign a listing priority number to each species, or to remove species from candidate status. Additional material that we relied on is available in the Species Assessment and Listing Priority Assignment Forms (species assessment forms, previously called candidate forms) for each candidate species.

Overall, this CNOR recognizes 7 new candidates, changes the listing priority number for 24 candidates, and removes 10 species from candidate status. Combined with other decisions for individual species that were published separately from this CNOR, the new number of species that are candidates for listing is 279.

We request additional status information that may be available for the 279 candidate species identified in this CNOR. We will consider this information in preparing listing documents and future revisions to the

notice of review, as it will help us in monitoring changes in the status of candidate species and in management for conserving them. We also request information on additional species that we should consider including as candidates as we prepare future updates of this notice.

This document also includes our findings on resubmitted petitions and describes our progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period May 2, 2005, through August 23, 2006.

DATES: We will accept comments on the Candidate Notice of Review at any time.

ADDRESSES: Submit your comments regarding a particular species to the Regional Director of the Region identified in **SUPPLEMENTARY INFORMATION** as having the lead responsibility for that species. You may submit comments of a more general nature to the Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (703/358-2171). Written comments and materials received in response to this notice will be available for public inspection by appointment at the Division of Conservation and Classification (for comments of a general nature only) or at the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION**.

Species assessment forms with information and references on a particular candidate species' range, status, habitat needs, and listing priority assignment are available for review at the appropriate Regional Office listed below in **SUPPLEMENTARY INFORMATION** or at the Division of Conservation and Classification, Arlington, Virginia (see address above), or on our Internet Web site (<http://endangered.fws.gov/candidates/index.html>).

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) or Chris Nolin, Chief, Division of Conservation and Classification (703-358-2171).

SUPPLEMENTARY INFORMATION:**Candidate Notice of Review***Background*

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As defined in section 3 of the Act, an endangered species is any species which is in danger of extinction

throughout all or a significant portion of its range, and a threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Through the Federal rulemaking process, we add species that meet these definitions to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered and Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate species is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions.

We maintain this list of candidates for a variety of reasons: To notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to solicit input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to solicit necessary information for setting priorities for preparing listing proposals. We strongly encourage collaborative conservation efforts for candidate species and offer technical and financial assistance to facilitate such efforts. For additional information regarding such assistance, please contact the appropriate Regional Office listed in **SUPPLEMENTARY INFORMATION** or visit our Internet Web site, <http://endangered.fws.gov/candidates/index.html>.

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species, which was published as House Document No. 94-51. We published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which we announced we would review more than 3,000 native plant species named in the Smithsonian's report and other species added by the 1975 notice for possible addition to the List of Endangered and Threatened Plants, referring to them as species considered to be candidate endangered

or threatened species. We published a new comprehensive notice of review for native plants on December 15, 1980 (45 FR 82479), which took into account the earlier Smithsonian report and other accumulated information. On November 28, 1983 (48 FR 53640), our supplemental plant notice of review announced changes in the status of various species. We published complete updates of the plant notice on September 27, 1985 (50 FR 39526); February 21, 1990 (55 FR 6184); September 30, 1993 (58 FR 51144); and, as part of combined animal and plant notices, on February 28, 1996 (61 FR 7596); September 19, 1997 (62 FR 49398); October 25, 1999 (64 FR 57534); October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); May 4, 2004 (69 FR 24876); and May 11, 2005 (70 FR 24870). Additionally, on January 8, 2001 (66 FR 1295), we published our resubmitted petition finding for one plant species having an outstanding "warranted-but-precluded finding" on a petition to list.

We published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). We published an initial comprehensive review for invertebrate animals on May 22, 1984 (49 FR 21664). We published a combined (*i.e.* vertebrate and invertebrate) animal notice of review on January 6, 1989 (54 FR 554), with minor corrections on August 10, 1989 (54 FR 32833). We again published comprehensive animal notices on November 21, 1991 (56 FR 58804) and November 15, 1994 (59 FR 58982). Beginning in 1996 we published combined animal and plant notices, including those published on February 28, 1996 (61 FR 7596); September 19, 1997 (62 FR 49398); October 25, 1999 (64 FR 57534); October 30, 2001 (66 FR 54808); June 13, 2002 (67 FR 40657); May 4, 2004 (69 FR 24876); and May 11, 2005 (70 FR 24870). Additionally, on January 8, 2001 (66 FR 1295), we published our resubmitted petition findings for 25 animal species having outstanding "warranted-but-precluded" petition findings as well as notice of one candidate removal.

On September 21, 1983, we published guidance for assigning a listing priority number (LPN) for each candidate species (48 FR 43098). We continue to use this guidance to assign each candidate a LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status. Such a priority ranking guidance system is required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)).

This revised notice supersedes all previous animal, plant, and combined notices of review.

Summary of This CNOR

Since publication of the 2004 CNOR on May 11, 2005 (70 FR 24870), we reviewed the available information on candidate species to ensure that a proposed listing is justified for each species and reevaluated the relative listing priority number assigned to each species. We also evaluated the need to emergency-list any of these species, particularly species with high priorities (*i.e.* species with listing priority numbers of 1, 2, or 3). This review and reevaluation ensures that we focus conservation efforts on those species at greatest risk. In addition to reviewing candidate species, the Service has worked on numerous findings in response to petitions to list species and has prepared proposed and final determinations for rules to list species under the Act; some of these findings and determinations have been completed and published in the **Federal Register** while work on others is still underway (see Preclusion and Expeditious Progress, below, for details). Since publication of the CNOR last year the Service has completed and published final rules listing 2 species as endangered and 17 species as threatened; reviewed the status of and published findings that listing proposals are not warranted for 4 species; and published proposed rules for listing for 3 species for which final determinations are pending.

Based on our review of the best available scientific and commercial information, this CNOR identifies 7 new candidate species (*see New Candidates*, below), changes the listing priority number for 24 candidates (*see Listing Priority Changes in Candidates*, below) and determined that listing proposals are not warranted for an additional 10 species and thus have removed them from candidate status (*see Candidate Removals*, below). Combined with the other decisions published separately from this CNOR for individual species that previously were candidates, a total of 279 species, including 140 plant and 139 animal species, are now candidates awaiting preparation of rules proposing their listing. These 279 species, along with the 3 species currently proposed for listing, are included in Table 1.

Table 2 includes 33 species identified in the previous CNOR as either proposed for listing or classified as candidates that are no longer in those categories. This includes the 19 species we listed as threatened or endangered since the previous CNOR and the 4

species for which we published separate findings that listing is not warranted, plus the 10 species that we have determined do not warrant preparation of a rule to propose listing and therefore have removed from candidate status in this CNOR.

New Candidates

Below we present brief summaries of seven new candidates that we are recognizing in this CNOR, including one species of mammal, one bird, two snails, two insects, and one plant. Complete information, including references, can be found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from our Internet Web site (<http://endangered.fws.gov/candidates/index.html>). For each of these seven species, we find that we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but that preparation and publication of a proposal is precluded by higher-priority listing actions (*i.e.* these meet our definition of a candidate species). Two of these seven species were petitioned for listing, and for those two species this constitutes our finding, as required pursuant to section 4(b)(3)(B)(iii) of the Act, that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions, and that expeditious progress is being made to add qualified species to the lists of threatened and endangered species and to remove from such lists species for which the protections of the Act are no longer necessary. (Additional information is provided in the sections entitled *Petition Findings* and *Preclusion and Expeditious Progress*, below). We also note below that one other species, a fish, was identified as a candidate earlier this year in a separate finding published in the **Federal Register**.

Mammals

New England cottontail (*Sylvilagus transitionalis*)—The following summary is based on information from our files and information collected during the public comment period on our 90-day petition finding. On August 30, 2000, we received a petition to list this species. We published our 90-day finding on June 30, 2004 (69 FR 39395).

The New England cottontail (NEC) is a medium- to large-sized cottontail rabbit that may reach 1,000 grams in weight, and is one of two species within

the genus *Sylvilagus* occurring in New England. New England cottontails are considered habitat specialists, in so far as they are dependent upon early-successional habitats typically described as thickets. The species is the only endemic cottontail in New England.

Historically, the NEC ranged from southeastern New York (east of the Hudson River) north through the Champlain Valley, southern Vermont, the southern half of New Hampshire, southern Maine, and south throughout Massachusetts, Connecticut, and Rhode Island. The species is now considered to be extirpated from Vermont, the current range elsewhere has declined substantially, and occurrences have become increasingly separated. The species' current distribution is fragmented into five apparently isolated metapopulations in about 14 percent of the species' historical range. The range has contracted from approximately 90,000 sq km to 12,180 sq km, and much of the suitable habitat within the current range is in small patches that are not occupied by the NEC. A multi-state, regional inventory conducted in 2001–2004 found New England cottontails were absent from 93% of approximately 2,300 habitat patches within the recent historical range (1990 to present) that were searched for the presence of the species. Many of the occupied sites were quite small (3 acres or less) and are considered by some researchers to be population “sinks.” It is estimated that less than one-third of the occupied sites occur on lands in conservation status, and fewer than 10 percent of these sites in conservation status are being managed for early successional forest species such as the NEC.

The primary threat to the New England cottontail is ongoing destruction and modification of its remaining habitat through natural succession processes and through alteration related to human development and other activities. Isolation of occupied patches of habitat by areas of unsuitable habitat, as well as predation, appears to be resulting in local extirpation of New England cottontails from small patches. Based on current land uses in the region, the loss of about 2 percent of its current range per year is expected to continue. Additional threats include competition for food and habitat with introduced eastern cottontails and large numbers of native white-tailed deer, and inadequate regulatory mechanisms in effect to protect the habitat. Based on threats of high magnitude that are imminent, we assigned this species a listing priority

number of 2. (See also the section entitled *Petition Findings*, below)

Birds

Red knot (*Calidris canutus rufa*)—The following summary is based on information from our files and information provided by petitioners. We received one petition on August 9, 2004, and two others were each received on August 5, 2005.

The *rufa* subspecies is one of six recognized subspecies of red knot and one of three subspecies occurring in North America (hereafter all mention of red knot refers strictly to the *rufa* subspecies). This subspecies makes one of the longest distance migrations known in the animal kingdom as it travels between breeding areas in the central Canadian Arctic and wintering areas that are primarily in southern South America along the coast of Chile and Argentina. They migrate along the Atlantic coast of the United States (U.S.), where they may be found from Maine to Florida. The Delaware Bay area (in Delaware and New Jersey) is the largest known spring migration stopover area, with far fewer migrants congregating elsewhere along the Atlantic coast. The concentration in the Delaware Bay area occurs from the middle of May to early June, corresponding to the spawning season of horseshoe crabs. The knots feed on horseshoe crab eggs, rebuilding energy reserves needed to complete migration to the Arctic and arrive on the breeding grounds in good condition.

Surveys at wintering areas and at Delaware Bay during spring migration indicate a substantial decline in recent years. At the Delaware Bay area, peak counts between 1982 and 1998 were as high as 95,360 knots. Although counts may vary considerably between years, some of the population fluctuations can be attributed to predator-prey cycles in the breeding grounds, and counts show that knots rebound from such reductions. In the past, horseshoe crab eggs were so numerous that a knot could eat enough in two to three weeks to double its weight. Research shows that from 1997 to 2002 an increasing proportion of red knots leaving the Delaware Bay failed to achieve threshold departure masses needed to fly to breeding grounds and survive an initial few days of snow cover, and this corresponded to reduced annual survival rates. Recently, peak counts at the Delaware Bay area have been lower than in the past and do not show a rebound. The peaks were 13,315 in 2004, 15,345 in 2005, and 13,455 in 2006. Counts in recent years at the principal wintering areas in South

America also are substantially lower than in the past and do not show a rebound.

The primary factor threatening the red knot is destruction and modification of its habitat, particularly the reduction in key food resources resulting from reductions in horseshoe crabs, which are harvested primarily for use as bait and secondarily to support a biomedical industry. Commercial harvest increased substantially in the 1990's. Since 1999, a series of timing restrictions and substantially lower harvest quotas have been adopted by the Atlantic States Marine Fisheries Commission (ASMFC), as well as New Jersey and Delaware. In May 2006, the ASMFC adopted restrictions effective from October 1, 2006 to September 30, 2008, including a prohibition on harvest and landing of horseshoe crabs in New Jersey and Delaware from January 1 through June 7, harvest of males only from June 8 through December 31, and harvest limited to no more than 100,000 horseshoe crabs per state per year. The ASMFC also adopted other restrictions applicable to Maryland and Virginia. New Jersey has established restrictions which supersede those of the ASMFC; as a result there is a moratorium on all horseshoe crab harvest in New Jersey from May 15, 2006 through June 7, 2008, after which the restrictions adopted by ASMFC apply.

The reductions in commercial harvest since 1999 are substantial: 726,660 horseshoe crab landings for bait were reported in 1999 in Delaware and New Jersey, compared to 173,777 in 2004. However, we do not know whether horseshoe crab populations will rebuild or how long a lag time there may be in increased availability of eggs, as they need 8–10 years to reach sexual maturity and other key information for estimating population response is lacking. A survey in Delaware Bay showed spawning activity was stable or slightly declining from 1999 to 2004. In 2004, availability of horseshoe crab eggs on principal shorebird foraging beaches increased over recent years. The peak number of migrant red knots observed at Delaware Bay increased slightly in 2005 compared to 2004, and in 2006 the peak count was similar to that in 2004. Also, body weights of red knots at the time of departure from Delaware Bay improved in 2005 over previous years. Counts of red knots at key wintering areas in South America, although much reduced from the past, were similar in 2006 to the counts in 2005. Thus in recent years the number of knots has been much lower than in the past and the trend in the abundance is not improving despite

a four-fold reduction in horseshoe crab landings since the late 1990's.

Other identified threat factors include habitat destruction due to beach erosion and various shoreline protection and stabilization projects that are impacting areas used by migrating knots for foraging, the inadequacy of existing regulatory mechanisms, human disturbance, and competition with other species for limited food resources. Also, the concentration of red knots in the Delaware Bay area and at a relatively small number of wintering areas make the species vulnerable to potential large-scale events in those areas such as large oil spills or severe weather.

Overall, we conclude that the threats, in particular the modification of habitat through harvesting of horseshoe crabs to such an extent that it puts the viability of the knot at substantial risk, are of a high magnitude, but are nonimminent because of reductions and restrictions on harvesting horseshoe crabs.

Accordingly, we assigned a listing priority number of 6 to this subspecies. (See also the section entitled *Petition Findings*, below)

Fish

Headwater chub (*Gila nigra*)—We previously announced candidate status for this species in a separate warranted-but-precluded 12-month petition finding, published on May 3, 2006 (71 FR 26007).

Snails

Black mudalia (*Elimia melanoides*)—The following summary is based on information in our files. The historical and current range of the black mudalia, an aquatic snail, is in Alabama. The historical range included much of the upper half of the Black Warrior River drainage, including the main stem Black Warrior above Tuscaloosa, as well as the Sipsey Fork and Locust Fork. The black mudalia is currently known from five localized shoals in an approximately 30-mile reach of the upper Locust Fork of the Black Warrior River, and from two shoals in a 1-mile reach of the Blackburn Fork of the Little Warrior River, a tributary of the Locust Fork. The black mudalia requires flowing water, and the construction of two major dams on the main stem Black Warrior River above the Fall Line (Oliver Lock and Dam, 1940; Holt Dam, 1966) and another dam on the lower Sipsey Fork (Bankhead Dam, 1975), impounded much of the species' historical habitat. Dams eliminate or reduce currents within impounded areas, allowing sediments to accumulate on inundated channel habitats. Impounded waters also experience changes in water

chemistry that can affect survival or reproduction of black mudalia.

The primary threats to the black mudalia in the areas it currently occupies involve habitat destruction and modification, particularly in relation to poor water quality and habitat deterioration. Point-source discharges and surface runoff cause eutrophication, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry which are likely to seriously affect aquatic snails. Pollution from surface runoff can originate from a wide array of land use activities, and may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases. Land uses in the vicinity of black mudalia populations include pasture, row crops, timber production, and chicken farms. Because the threats to black mudalia are of a high magnitude and are imminent, we assigned a listing priority of 2 to this species.

Rough hornsnail (*Pleurocera foremani*)—The following summary is based on information in our files. The rough hornsnail is an aquatic snail endemic to the Coosa River system in Alabama. It currently is known to occur at two locations: The lower Yellowleaf Creek in Shelby County, and the lower Coosa River below Wetumpka Shoals in Elmore County. Searches of historical habitats in the Coosa River and its tributaries have failed to locate the species at other localities. The two surviving populations are extremely small and localized. The historical habitats of the rough hornsnail have been extensively modified by six large dams constructed for hydropower production. Dams eliminate or reduce currents within impounded areas, allowing sediments to accumulate on inundated channel habitats. Impounded waters also experience changes in water chemistry that can affect survival or reproduction of pleurocerid snails. Currently, the primary threat to the rough hornsnail is habitat destruction and modification related to poor water quality and habitat deterioration that result from point source discharges and/or surface runoff. These actions cause eutrophication, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that can seriously affect aquatic snails. Both populations of the rough hornsnail are in areas currently experiencing high human population growth and development. Because the threats are ongoing and are of a high magnitude, we assigned the rough hornsnail a listing priority of 2.

Insects

Florida leafwing butterfly (*Anaea troglodyta floridalis*)—The Florida leafwing is endemic to south Florida and the Keys; it occurs only within pine rocklands that retain its sole hostplant, pineland croton (*Croton linearis*). Once locally common within the formerly widespread pine rockland habitat that occurred within Miami-Dade and Monroe Counties and less common and sporadic within Collier, Martin, Palm Beach, and Broward Counties, the leafwing now has small and isolated populations at only two locations: On Big Pine Key in the lower Florida Keys, and Long Pine Key on the Florida mainland. On Big Pine Key, the butterfly and its habitat occur on National Key Deer Refuge (NKDR) and also on other scattered private and public lands within the vicinity of NKDR. On the Florida mainland, the population on Long Pine Key is within Everglades National Park (ENP). Pine rockland fragments on the mainland near or adjacent to ENP may still retain the potential to support some small, localized, and sporadic populations of the butterfly, but no Florida leafwings have been documented as occurring in such areas outside ENP for the last several years.

Land developments of various types have greatly reduced pinelands in Florida. Within the Keys, pinelands containing the pineland croton hostplant now occur only on Big Pine Key, with an estimated 80 hectares (ha) (198 acres) within NKDR and small, scattered relict sites elsewhere. On the mainland, an estimated 1,068 ha (2,638 acres) of appropriate hostplant-bearing habitat occur within ENP on Long Pine Key; outside that area, in Miami-Dade County, scattered fragments of pine rockland containing pineland croton occur in fragments that collectively total approximately 370 (ha) (916 acres), roughly half of which are in private ownership. Collectively, the Big Pine Key, Long Pine Key, and relict pine rocklands adjacent to ENP presently support an estimated total of 100–800 adult Florida leafwing butterflies at any given time.

The Florida leafwing is vulnerable to impacts that probably did not pose significant risks to its continued existence in the past, when suitable habitat and the species were much more abundant and widespread. Habitat destruction and modification is a continuing problem on public and private lands. This includes habitat loss due to unnatural or altered fire regimes. Natural fires are important in maintaining the herbaceous layer of

pine rocklands, of which the butterfly's sole hostplant, pineland croton, is a part. Without these fires, succession from pinelands to hardwood hammocks is rapid, with loss of suitable habitat for the Florida leafwing. Due to the proximity of remaining pine rockland habitat to urban areas in southern Florida and the Keys, most natural fires have been and are suppressed, often replaced by inconsistent regimes of managed or prescribed fires that do not necessarily result in habitat conditions suitable for the Florida leafwing. Prescribed burning occurs on portions of ENP on Long Pine Key, and ENP is working on incorporating considerations for life histories of select butterfly species into their management. At NKDR, private homes and light commercial uses are embedded within or in close proximity to the fire-sustained pineland habitat. Thus management of pine rocklands is particularly difficult due to the mixed pattern of land ownership and development. Fire suppression to protect residential areas results in the invasion and replacement of native pine rockland habitat by hardwood hammocks, thereby causing continued loss of habitat for the leafwing. Survey data collected from mid-2003 through July 2006 indicate a substantial decline in leafwing numbers on NKDR, even within an area where prescribed burning occurs. Outside of NKDR and ENP, much of the remaining suitable habitat for the Florida leafwing on private land is subject to destruction or modification due to the effects of fire suppression or due to the nature of prescribed fire activities, and continued economic development that results in conversion of pine rocklands to other uses.

The continued existence of the Florida leafwing also is threatened due to other natural and human-related factors. Pesticides used in mosquito control practices are a major threat on Big Pine Key, where nearly all occupied and suitable habitat for the Florida leafwing is exposed to mosquito control chemicals. Studies have shown that the pesticides used for mosquito control at field application rates are extremely toxic to non-target butterflies, skippers, and moths. Essentially all of the pine rocklands within NKDR except one area, Watson's Hammock, are sprayed and residential areas and roadsides across Big Pine Key are treated. Also, chemical drift of pesticides has been found 750 meters (2,460 feet) within the borders of the no-spray zone on Watson's Hammock. Mosquito control poses much less of a risk to the leafwings in

ENP, as mosquito control on Long Pine Key is limited to residential areas and campgrounds. Additional natural and human-related factors include the risk of direct mortality and habitat loss due to extreme weather events (*e.g.* hurricanes, tropical storms), and risk of reduced genetic diversity; both of these risks are heightened due to the reduction of the Florida leafwing to small, isolated populations.

The established interest in specimens of the leafwing and information requests regarding its location from collectors, researchers, and others suggests that collection may be occurring and has the potential to occur at any time. However, we do not have sufficient information to conclude that overutilization for commercial, recreational, scientific, or educational purposes is a factor that threatens the Florida leafwing. The principal threats to the Florida leafwing at this time are the destruction, modification, or curtailment of its habitat or range, and other natural or manmade factors affecting its continued existence. Based threats of high magnitude that are imminent, we assigned a listing priority number of 3 to the Florida leafwing butterfly.

Bartram's hairstreak butterfly (*Strymon acis bartrami*)—The following summary is based on information in our files. The Bartram's hairstreak is a subspecies endemic to south Florida and the Keys. Like the Florida leafwing butterfly (described above) it occurs only within pine rocklands that retain its sole hostplant, pineland croton (*Croton linearis*). Once locally common within the formerly widespread pine rockland habitat that occurred within Miami-Dade and Monroe Counties, and less common and sporadic within Collier, Palm Beach, and Broward Counties, the Bartram's hairstreak is now largely restricted to two locations: Big Pine Key in the Florida Keys, and Long Pine Key on the Florida mainland. On Big Pine Key, the butterfly and its habitat occur on National Key Deer Refuge and also on other scattered private and public lands in the vicinity of NKDR. On Long Pine Key the species is within Everglades National Park. Pine rockland fragments near or adjacent to ENP also appear to retain some small, localized, and sporadic populations of the butterfly. The same factors identified as threats to the Florida leafwing butterfly (summarized above) also threaten Bartram's hairstreak. Based on threats of high magnitude that are imminent, we assigned a listing priority number of 3 to Bartram's hairstreak butterfly.

Flowering Plants

Harrisia aboriginum (Aboriginal pricklyapple)—The following summary is based on information in our files. This cylindrical-stemmed cactus currently occurs in coastal strand vegetation and tropical coastal hammocks on coastal islands of Sarasota, Charlotte, and Lee Counties, Florida, from Longboat Key south to Buck Key in the J.N. "Ding" Darling National Wildlife Refuge. Populations are likely to be on shell mounds or sites with shelly substrates; plants may be quite close to the mangrove zone, but not in it. This plant always had a restricted distribution and is now vulnerable to extinction because only 10 populations are remaining. Each population occurs just above sea level along the coast, and is threatened by the rise in sea level that has occurred during the past century and is continuing. Each population is also threatened by nonnative plant invasions and, in at least one case, predation by introduced iguanas. Some populations are on private lands, and these are all vulnerable to habitat destruction and/or improper management. Additionally, the proximity to the coast, combined with the very small number of plants in each population, makes the species vulnerable to hurricanes which have the potential to overwhelm islands and extirpate populations. For these reasons, the magnitude of threats is high. Overall, threats are nonimminent because public land managers have been and are continuing to address exotic invasive plant issues. Therefore, we assigned this species a listing priority number of 5.

Listing Priority Changes in Candidates

We reviewed the listing priority number for all candidate species and are changing the numbers for the following species. Some of the changes reflect actual changes in either the magnitude or imminence of the threats, and in one case, reflects a change in the taxonomy of the species. For some species, our changes in the listing priority number reflect efforts to ensure national consistency as well as closer adherence to the 1983 guidelines in assigning these numbers, rather than a change in the nature of the threats.

Birds

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi stairi*)—The following summary is based on information contained in our files. The genus *Gallicolumba* is distributed throughout the Pacific and Southeast Asia. The genus is represented in the

oceanic Pacific by six species. Three are endemic to Micronesian islands or archipelagos, two are endemic to island groups in French Polynesia, and *G. stairi* is endemic to Samoa, Tonga, and Fiji. All six species have some level of threatened status on the International Union for Conservation of Nature and Natural Resources (IUCN) Red List. Some authors recognize two subspecies of the friendly ground-dove, one, slightly smaller, in the Samoan archipelago (*G. s. stairi*), and one in Tonga and Fiji (*G. s. vitiensis*), but morphological differences between the two are minimal.

In American Samoa, the friendly ground-dove has been found on the islands of Ofu and Olosega (Manua Group). Threats to this subspecies have not changed over the past year. Of the primary threats to the subspecies (predation by nonnative species, poaching, and habitat loss), predation by nonnative species is thought to be occurring now, and predation likely has been occurring for several decades. This predation may be an important impediment to increasing the population. Predation by introduced species has played a significant role in reducing, limiting, and extirpating populations of island birds, especially ground-nesters, in the Pacific and other locations worldwide. Nonnative predators known or thought to occur in the range of the friendly ground-dove in American Samoa are feral cats (*Felis catus*), Polynesian rats (*Rattus exulans*), black rats (*R. rattus*), and Norway rats (*R. norvegicus*).

In February of 2005, a hurricane destroyed the habitat of *G. stairi* in an area on Olosega Island where the species had been most frequently recorded. Although this species has coexisted with severe storms for millennia, this example illustrates the potential for natural disturbance to exacerbate the effect of anthropogenic disturbance on small populations. Consistent monitoring using a variety of methods over the last 5 years yielded few observations of this taxon in American Samoa. The total population size is poorly known, but is unlikely to number more than a few hundred pairs. The distribution of the friendly ground-dove is limited to forested slopes with an open understory and a substrate of fine scree or exposed earth; this habitat is not common in American Samoa. We revised the listing priority number from a 3 to a 6 to better reflect the fact that the threats posed to the friendly ground-dove (its small population size and nonnative predators) are nonimminent but still may occur throughout its range.

Streaked horned lark (*Eremophila alpestris strigata*)—The following information is based on information contained in our files. No new information was provided in the petition received December 11, 2002. The streaked horned lark occurs in British Columbia (Canada), Washington State, and Oregon. The streaked horned lark nests on the ground in sparsely vegetated sites in short-grass dominated habitats, such as native prairies, coastal dunes, fallow agricultural fields, lightly to moderately grazed pastures, seasonal mudflats, airports, and dredged-material formed islands in the Columbia River. It is essentially extirpated from Canada. In Washington State, surveys show that there are approximately 380 remaining breeding birds (Pearson and Altman 2005). In Oregon, the breeding population is estimated to be approximately 400 birds.

The streaked horned lark's breeding habitat is threatened by loss and degradation due to conversion of native grasslands to other uses (such as agriculture, homes, recreational areas, and industry), encroachment of woody vegetation, and invasion of nonnative plant species (e.g., Scot's broom and sod-forming grasses). Native prairies have been nearly eliminated throughout the range of the species. It is estimated that less than 1 to 3 percent of the native grassland and savanna remains. Those that remain have been invaded by nonnative sod-forming grasses. Coastal nesting areas have suffered the same fate. Wintering habitats are seemingly few, and susceptible to unpredictable conversion to unsuitable overwintering habitat. Where larks inhabit nonnative habitats similar in structure to native prairies (such as airports, military reservations, agricultural fields, and dredge formed islands), they are subjected to a variety of unintentional human disturbances such as mowing, recreational and military activities, plowing, flooding, and dredge spoil dumping during the nesting season, as well as intentional disturbances such as at the McChord AFB where falcons and dogs are used to haze the birds in order to avoid aircraft collisions. In some areas, landowners have taken steps to improve streaked horned lark nesting habitat.

The magnitude of threat is high due to small populations with low genetic diversity and patchy and isolated habitats in areas desirable for development. The threat of invasive plant species is high and constant. The numbers of individuals are low and the numbers of populations are few. Overwintering birds are concentrated in larger flocks and subject to

unpredictable wintering habitat loss, potentially affecting a large portion of the population at one time. In Washington, known populations occur on airports and two military bases where management and training activities can negatively affect streaked horned lark breeding. In British Columbia, the one potentially remaining site with breeding birds occurs at an airport. The immediacy of threat is imminent, due to the continued loss of suitable lark habitat, risks to the wintering populations, plans for development on and adjacent to two of its nesting areas, use of falcons and dogs to haze breeding birds at McChord AFB, planned expansions of the McChord AFB west ramp and Olympia airport, the planned addition of 130 more helicopters at the Gray Army Airfield, and annual Air Force military training and fire bombing on top of lark nesting habitat. Because of the increased imminence of threats, we changed the listing priority number for the streaked horned lark from 6 to 3.

Reptiles

Black pine snake (*Pituophis melanoleucus lodingi*)—There are historical records for the black pine snake from one parish in Louisiana, 14 counties in Mississippi, and 3 counties in Alabama west of the Mobile River Delta. Black pine snake surveys and trapping indicate that this species has been extirpated from Louisiana and from two counties in Mississippi. Moreover, the distribution of remaining populations has become highly restricted due to the destruction and fragmentation of the remaining longleaf pine habitat within the range of the species. Most of the known Mississippi populations are concentrated on the DeSoto National Forest. Populations occurring on properties managed by city and State agencies as gopher tortoise mitigation banks or wildlife management areas represent the best opportunities for long-term survival of the species in Alabama. Other factors affecting the black pine snake include vehicular mortality and low reproductive rates, which magnify other threats and increase the likelihood of local extinctions. Due to the imminent threat of high magnitude caused by the past destruction of most of the longleaf pine habitat of the black pine snake, and the continuing persistent degradation of what remains, we assigned a listing priority number of 3 to this subspecies. Although there is no actual change in threats over the past year, habitat loss represents an ongoing or imminent threat to the black pine snake. Therefore, to help ensure consistency in

the application of our listing priority process, we changed the listing priority number from a 6 to a 3 to reflect that the threats are imminent.

Louisiana pine snake (*Pituophis ruthveni*)—The Louisiana pine snake historically occurred in fire-maintained longleaf-pine ecosystems of west-central Louisiana and extreme east-central Texas. Louisiana pine snakes are closely associated with Baird's pocket gophers (*Geomys breviceps*) and make extensive use of their burrow systems for foraging, nocturnal and diurnal retreats, escape from predators and fire, and hibernation sites. Within some of the best remaining habitat in their historic range, Louisiana pine snakes have not been documented in over a decade. Results of Louisiana pine snake trapping and radiotelemetry surveys suggest that extensive population declines and local extirpations have occurred during the last 50 to 80 years.

Most of the historical longleaf pine habitat of the Louisiana pine snake has been destroyed, and the habitat quality of that which remains has been degraded due to logging, fire suppression, roadways, short-rotation silviculture, and grazing. Louisiana pine snake habitat loss is continuing, albeit at a slower rate than in the past. The best remaining Louisiana pine snake habitat occurs on lands where periodic burning has continued. Other factors affecting Louisiana pine snakes include low fecundity (reproductive output), which magnifies other threats and increases the likelihood of local extinctions, and vehicular mortality, which may significantly affect Louisiana pine snake population and community structure.

The Candidate Conservation Agreement for the Louisiana pine snake, a comprehensive and voluntary partnership encompassing all Federal lands where pine snake occurrences are known, was recently completed in order to protect known Louisiana pine snake populations and maintain the ecosystem upon which it depends. Several private landowners with known Louisiana pine snake populations are interested in joining that partnership or developing a similar one. The pro-active partnerships to address key management concerns and research needs are growing and these conservation efforts have reduced the magnitude of the threats from high to moderate. However, the primary threat from habitat loss continues and is, therefore, imminent. Thus, based on threats of moderate to low magnitude that are imminent, we have changed the listing priority number from a 5 to an 8.

Amphibians

Relict leopard frog (*Rana onca*)—This leopard frog was considered extinct since the 1950s, until it was rediscovered in two relatively small areas in southern Nevada and a spring in extreme northwestern Arizona. We estimate that the current distribution of the species is 10 to 20 percent of its historical distribution. Habitat conversion to agriculture, water diversions, habitat fragmentation such as construction of Hoover Dam and creation of Lake Mead and Lake Mojave, and introduction and establishment of nonnative predators and competitors are believed to be the primary causes of historical population declines and reduction in the range and distribution of the frog. Currently, the primary threats are low numbers of individuals and populations, nonnative predators and competitors, and the potential for water diversion or ground water pumping. A conservation agreement and strategy completed in 2005 will serve as the management plan for the species. As prescribed in the agreement and strategy, annual work plans will be developed and implemented to monitor threats and the status of the species as well as accomplish conservation actions for the species. The magnitude of existing threats is moderate, which we lowered from the previous determination of high magnitude in 2005. This change in magnitude is largely based on successful captive-rearing and translocation efforts. These threats remain nonimminent since there are no known projects or actions that would adversely affect frog populations or threaten surface water associated with known sites occupied by the frog. Thus, we changed the listing priority number from a 5 to an 11 for this species.

Fishes

Cumberland darter (*Etheostoma susanae*)—The following information is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This fish species is an approximately 3-inch member of the family Percidae that is endemic to the upper Cumberland River system (above Cumberland Falls) in Kentucky and Tennessee. Currently, the species is restricted to 16 headwater streams in Kentucky and 2 streams in Tennessee. Within these streams, the Cumberland darter inhabits low-velocity, shallow riffles and backwater areas of moderate- to low-gradient stream reaches with stable sand or sandy-gravel substrates. The primary threat to the species is

siltation of instream habitats caused by coal mining activities, silvicultural practices, road construction, and urban development. Because the species is limited to only 18 known populations, the magnitude of threat for the species is high; these populations are isolated from one another by poor-quality habitat, impoundments, or natural barriers. The immediacy of threat is nonimminent because (1) Federal and State water quality laws have reduced water quality and habitat threats to some degree, (2) non-point pollution threats and modification of reach geomorphology and hydrology are cumulative and gradual, and (3) approximately 40 percent of watersheds supporting the species are provided habitat and water quality protection through Federal ownership (Daniel Boone National Forest). Consequently, we assigned a listing priority number of 5 to this species. This represents a change in the previous listing priority number, from 6 to 5, due to a change in taxonomic status for the species, not because of a change in threat magnitude or imminence. The Cumberland Johnny darter, *E. nigrum susanae*, was elevated to specific status (*E. susanae*, Cumberland darter) based on new molecular evidence showing that this subspecies has distinct mitochondrial DNA haplotypes not found in the Johnny darter, *E. nigrum nigrum*.

Rush darter (*Etheostoma phytophilum*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. This species is endemic to upland portions of the Black Warrior River system in Alabama where it occurs in shallow headwater streams. This species is uncommon and sporadic within its range, as it favors shallow, flowing water in spring runs and spring-associated streams with emergent vegetation. Only three disjunct populations are known: One in the Clear Creek system in Winston County, one in spring-fed tributaries of Turkey Creek in Jefferson County; and one population in Little Cove Creek (Cove Springs) in Etowah County.

The Jefferson County population (Turkey Creek), which is located in a large metropolitan area, is threatened by urbanization and commercialization of its habitat. Siltation from bridge, road, and sewer line construction has been recently documented within the Turkey Creek watershed by academic researchers and Service biologists. The major threat to the Winston County population of rush darters is erosion in Mill Creek, Doe Branch, and Wildcat Branch, and the cumulative increase of

sediments caused from gravel roads and roadside ditches. Within the past year, biologists have observed increased erosion along roads adjacent to Doe and Wildcat Branches which resulted in increased siltation within those streams. Increased urbanization, road maintenance and silviculture practices contribute to increased sedimentation in the watershed. The major threat to the Cove Springs population is contamination of the water with chlorine. Efforts are underway to improve habitat and water quality; however, at this time all populations are being negatively affected by declining water quality. The magnitude of threat is high due to the limited number of populations. We changed the listing priority from a 5 to a 2 based on the imminent threat; the threat is imminent because water quality is currently declining for all populations.

Clams

Altamaha spiny mussel (*Elliptio spinosa*)—The following summary is based on information in our files. The Altamaha spiny mussel is a freshwater mussel endemic to the Altamaha River drainage of southeastern Georgia. The historical range was restricted to the Coastal Plain portion of the Altamaha River and the lower portions of its three major tributaries, the Ohoopsee, Ocmulgee, and Oconee Rivers. The species is associated with stable, coarse to fine sandy sediments of sandbars and sloughs and appears to be restricted to swiftly flowing water. The species appears to be extirpated from the Ohoopsee and Oconee Rivers, and its numbers are greatly reduced in the Ocmulgee and Altamaha Rivers. Altamaha spiny mussels face severe habitat degradation from a number of sources. Primary among these are threats from sedimentation and contaminants within the rivers that the Altamaha spiny mussel inhabits. A new threat of deadhead logging has recently emerged. These threats to the Altamaha spiny mussel are further compounded by its limited distribution and the low population size identified in recent survey efforts. Efforts to identify the host fish and expand our understanding of the spiny mussels' life cycle have not produced results, attempts to investigate potential impacts caused by heavy metals have not received funding, a survey conducted in 2004 in the Ocmulgee found no spiny mussels, and deadhead logging presents an added threat. Consequently, we now consider the threats to be imminent and have changed the listing priority number from a 5 to a 2 for this species.

Insects

Wekiu bug (*Nysius wekiuicola*)—The wekiu bug belongs to the true bug family, Lygaeidae, and is endemic to the island of Hawaii. This species only occurs on the summit of Mauna Kea and feeds upon other insect species which are blown to the summit of this large volcano. The wekiu bug is primarily threatened by the loss of its habitat from astronomy development. In 2004 and early 2005, surveys were conducted that found multiple new locations of the wekiu bug on Mauna Kea summit. Several of these cinder cones within the Mauna Kea Science Reserve, as well as two other cinder cones located in the State Ice Age Natural Area Reserve, are not currently undergoing development nor is development planned. With the discovery of these new locations, the threats, though ongoing, do not occur across the entire range of the wekiu bug. The immediacy of the threats is imminent in some part of the wekiu bug's range because ongoing development is occurring in the Keck Observatory Outrigger telescope project area. This development will establish six new interferometry telescopes around the existing Keck facility. A mitigation plan is in place that will require a 3:1 replacement of damaged habitat. However, the effectiveness of this mitigation is untested and unknown. Although the threats are ongoing in some areas of wekiu bug habitat, the recent discoveries of new locations of the wekiu bug in areas that are not subject to the primary threat of astronomy development reduces the magnitude of the threat from high to moderate. Therefore, we are changing the listing priority number for this species from a 2 to an 8.

Crustaceans

Anchialine pool shrimp (*Vetericaris chaceorum*)—*Vetericaris chaceorum* is an anchialine pool-inhabiting species of shrimp belonging to the family, Procarididae; it is the only species in its genus. This species is endemic to the Hawaiian Islands and is only known from one population in a single pool on the island of Hawaii. There are two primary threats to this species. First, fish do not naturally occur in the pool inhabited by the species, and it would be highly vulnerable to predation by any intentionally or accidentally introduced fish. Anchialine pools have been used to discard or hold bait-fish and/or aquarium fish. Second, the species is vulnerable to habitat loss due to degradation by dumping or fill, or recreational activities. This activity has occurred in the past but this pool now

lies within lands administered by the State of Hawaii Department of Hawaiian Home Lands. There are no conservation efforts underway to eliminate the potential for any of these threats. The magnitude of threats remains high because of the devastating effect that realization of these threats could have on the species because of its restriction to a single pool. However, we changed the listing priority number for this species from a 1 to a 4 because the threats are nonimminent: Fish have not been introduced into the pool (nor is there any reason to believe that introduction is imminent) and a site visit in early 2005 showed there were no signs of dumping or fill.

Anchialine pool shrimp (*Metabetaeus lohena*)—*Metabetaeus lohena* is an anchialine pool inhabiting species of shrimp belonging to the family Alpheidae. This species is endemic to the Hawaiian Islands and is currently known from populations on the islands of Oahu, Maui, and Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss from degradation. The pools where this species occurs on Maui and Hawaii are located within State Natural Area Reserves (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of these prohibitions is difficult and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species are of a high magnitude. However, we now consider the threat of predation from fish to be nonimminent because no fish were observed during the surveys conducted in the NARs for this shrimp in 2004 and no recent habitat degradation has occurred. In addition, no nonnative fish were observed during several site visits to the Oahu location in 2005. Therefore, we changed the listing priority number of this species from a 2 to a 5.

Anchialine pool shrimp (*Palaemonella burnsi*)—*Palaemonella burnsi* is an anchialine pool inhabiting species of shrimp belonging to the family, Palaemonidae. This species is endemic to the Hawaiian Islands and is currently known from three populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation by fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation. The pools where this species occurs on Maui are located within a State Natural Area Reserve

(NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. On the island of Hawaii, the species occurs within a National Park and collection and disturbance are also prohibited. However, enforcement of these prohibitions is difficult, and the negative effects from the introduction of fish are extensive and happen quickly. Therefore, threats to this species are of high magnitude. However, we no longer consider the threats to be imminent, because during a 2004 survey no fish were observed in the pools where these shrimp occur on Maui or the island of Hawaii and there was no evidence of recent habitat degradation. Therefore, the threats of predation from fish and habitat degradation are nonimminent, and consequently we changed the listing priority number of this species from a 2 to a 5.

Anchialine pool shrimp (Procaris hawaiiensis)—*Procaris hawaiiensis* is an anchialine pool inhabiting species of shrimp belonging to the family, Procarididae. This species is endemic to the Hawaiian Islands and is currently known from two populations on the island of Maui and one population on the island of Hawaii. The primary threats to this species are predation from fish (which do not naturally occur in the pools inhabited by this species) and habitat loss due to degradation. The pools where this species occurs on Maui are located within a State Natural Area Reserve (NAR). Hawaii's State statutes prohibit the collection of the species and the disturbance of the pools in State NARs. However, enforcement of these prohibitions is difficult and the negative effects from the introduction of fish are extensive and happen quickly. There are no conservation efforts underway to alleviate the potential for any of these threats in the one pool on the island of Hawaii. Therefore, threats to this species remain at high magnitude. However, we no longer consider the threats to be imminent because, during a 2004 survey, no fish were observed in the pools where these shrimp occur on Maui or the island of Hawaii. In addition, there were no signs of dumping or fill on a site visit to the location on the island of Hawaii in early 2005. Therefore, we changed the listing priority number of this species from a 2 to a 5.

Flowering plants

Abronia alpina (Ramshaw Meadows sand-verbena)—*Abronia alpina* is a small perennial herb, 2.5 to 15.2 centimeters (1 to 6 inches) across forming compact mats with lavender-pink, trumpet-shaped, and generally

fragment flowers. *Abronia alpina* is known from one main population center in Ramshaw Meadow on the Kern Plateau of the Sierra Nevada, California and from one subpopulation found in adjacent Templeton Meadow. The total estimated area occupied is approximately 6 hectares (15 acres). Population estimates from 1985–1994 range from a low of 69,652 plants in 1986 to 132,215 plants in 1987. Surveys conducted since 1994 indicate that no significant changes have occurred in population size or location, although, the 2003 survey showed population numbers to be at the low end of the range. The population fluctuates from year to year without any clear trends.

The major threats facing *A. alpina* include habitat disturbance and trampling from incidental livestock trailing, pack animals, and hikers; campsite development; and erosion associated with such disturbances. An additional threat is encroachment of lodgepole pine into areas occupied by the species. Lodgepole pine encroachment has altered the meadow and becoming established within *A. alpina* habitat. Lodgepole pine encroachment may alter soil characteristics by increasing organic matter levels, decreasing porosity, and moderating diurnal temperature fluctuations thus reducing the competitive ability of *A. alpina* to persist in an environment more hospitable to other plant species. The Ramshaw Meadow ecosystem is subject to alteration by lowering of the water table due to downcutting of the South Fork of the Kern River (SFKR). The SFKR flows through Ramshaw Meadow, at times coming within 15 meters (50 feet) of *A. alpina* habitat, particularly in the vicinity of five subpopulations. The habitat occupied by *A. alpina* directly borders the meadow system supported by the SFKR. Drying out of the meadow system could affect *A. alpina* pollinators and/or seed dispersal agents. Established hiker, packstock, and cattle trails pass through *A. alpina* subpopulations. Two main hiker trails pass through Ramshaw Meadow, but were rerouted out of *A. alpina* subpopulations where feasible, in 1988 and 1997. Remnants of cattle trails that pass through subpopulations in several places receive occasional incidental use by horses and sometimes hikers. In 2001, the U.S. Forest Service discontinued grazing on the Templeton allotment, which includes Ramshaw Meadow, for a period of 10 years. Consequently, livestock grazing does not currently occur in the two meadow areas where the species is found.

However, the Forest Service could change their decision when the 10-year period ends and livestock grazing within *A. alpina* habitat may resume. To ensure consistency in our interpretation of the imminence of threats, we revised the listing priority for *A. alpina* from an 11 to an 8 to reflect the fact that most of these moderate threats are imminent.

Arabis georgiana (Georgia rockcress)—The Georgia rockcress grows in a variety of dry situations, including shallow soil accumulations on rocky bluffs, ecotones of gently sloping rock outcrops, and in sandy loam along eroding river banks. It is occasionally found in adjacent mesic woods, but it will not persist in heavily shaded conditions. Currently a total of 18 populations are known from the Gulf Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces of Alabama and Georgia. Populations of this species typically have a limited number of individuals over a small area.

Habitat degradation, more than outright habitat destruction, is the most serious threat to this species' continued existence. Disturbance associated with timber harvesting, road building, and grazing has created favorable conditions for the invasion of nonnative weeds, especially Japanese honeysuckle (*Lonicera japonica*), in this species' habitat. Eight populations are currently or potentially threatened by the presence of nonnative plants. The heritage programs in Alabama and Georgia have initiated plans for exotic control at several populations. The magnitude of threats to this species is moderate to low due to the number of populations (18) across multiple counties in two states and the insidious nature of the threats. However, since a number of the populations are currently being impacted by nonnative plants, we now consider the threats to be imminent. Thus, we changed the listing priority number from an 11 to an 8 for this species.

Astragalus toritpes (Sleeping Ute milkvetch)—The following information is based on information contained in our files. Sleeping Ute milkvetch is a perennial plant that grows only on the Smokey Hills layer of the Mancos Shale Formation on the Ute Mountain Ute Indian Reservation in Montezuma County, Colorado. In 2000, 3,744 plants were recorded at 24 locations covering 500 acres within an overall range of 64,000 acres. Available information from 2000 indicates that the species remains stable. Threats from borrow pit excavation, off-highway vehicles, irrigation canal construction, and a prairie dog colony have had minor impacts that reduced the range and

number of plants by small amounts in the past and are potential future threats. Off-highway vehicle use of the habitat is reportedly increasing but we do not have direct evidence of this. Oil and gas development is active in the general area, but we have received no information from the tribe to indicate whether there is development within the habitat for the plants on their land. Because the threats are nonimminent, we changed the listing priority number for Sleeping Ute milkvetch from 8 to 11.

Bidens campylotheca ssp. *waihoiensis* (Kookoolau)—The following information is based on information contained in our files. Kookoolau is an erect, perennial found in wet *Acacia-Metrosideros* (koa-ohia) forest on Maui, Hawaii. *Bidens campylotheca* ssp. *waihoiensis* is known from one population of 200 individuals. It is threatened by cattle, which eat this plant, and degrade and destroy habitat. The area in which all individuals of this subspecies are currently found is fenced and cattle have been removed. The threats remain of high magnitude, but predation, and habitat degradation and destruction by feral cattle are no longer imminent because they are not currently occurring. Therefore, we have changed the listing priority number for this species from 3 to 6.

Castilleja christii (Christ's paintbrush)—The following information is based on information contained in our files. This species of paintbrush is found in one population on the summit of Mount Harrison in Cassia County, Idaho. This endemic species is considered a hemiparasite and it grows in association with subalpine meadow and sagebrush habitats. The population found on 85 ha (220 ac) may be large in number (greater than 10,000 individual plants), but, current population estimates are not available. Monitoring indicates that reproductive stems per plant and plant density have decreased significantly since 1995. Although these trends were upward between 2004 and 2005, it is not known if that trend will continue. The habitat on Mount Harrison is bisected by several roads, has been until recently utilized by unauthorized livestock, and is subject to a high degree of recreational use. However, these threats occur seasonally during the growing season, in late-spring and summer periods, and they are currently being controlled by the U.S. Forest Service with fencing, rock barriers, and interpretative signs. The largest threat to the species is from nonnative invasive plants, the majority of which are smooth brome (*Bromus inermis*). The smooth brome infestation was treated in 2003, 2004, and 2005 by

the U.S. Forest Service. The success of treating smooth brome that was present in 13.6 percent of the range of *C. christii* in 2005 will not be known immediately, although there is a commitment in a recently signed Conservation Agreement by the U.S. Forest Service and U.S. Fish and Wildlife Service to continue these efforts until they are successful or for the next 10 years. The magnitude of the threats with these conservation measures appears low at this time. However, the smooth brome continues to threaten the habitat for *C. christii* despite control efforts. Plant monitoring transects still contained significant densities of smooth brome following the eradication efforts in 2005. This threat from smooth brome is imminent because this threat still persists in levels that affect the native plant community that provides habitat for *C. christii*. Thus, we changed the listing priority number from an 11 to an 8 for this species since the threats are imminent.

Chamaesyce deltoidea pinetorum (Pineland sandmat)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The largest population of the pineland sandmat, estimated at approximately 10,000 plants, is located on Long Pine Key within Everglades National Park. All other populations of the pineland sandmat are smaller and occur on isolated pine rockland fragments in heavily urbanized Miami-Dade County. Those populations on private lands are at risk from development and habitat degradation. Populations on most public and private lands in urban Miami-Dade County are inherently vulnerable to invasion by exotic plants, fire suppression or inadequate prescribed fire, and limited management. Overall, the magnitude of threats to this species is moderate since by applying regular prescribed fire, the National Park Service has kept Long Pine Key's pineland vegetation intact and relatively free of exotic pest plants. In addition, after a thorough review of the status and threats to the pineland sandmat, we determined that the threats are non-imminent. Therefore, we changed the listing priority number from a 9 to a 12 for this subspecies.

Erigeron lemmonii (Lemmon fleabane)—The following summary is based on information contained in our files and the petition received in July of 1975. The species is known from one site in a canyon in the Fort Huachuca Military Reservation of southeastern Arizona. As of 1991, approximately 400 plants were known from this site. No formal surveys have been done since

that time, but the population seemed stable throughout the 1990s. The threats to this species are from catastrophic wildfire in the canyon and on-going drought conditions. We do not know if this species has any adaptations to fire. Due to its location on cliffs, we suspect that fires that may have occurred at more regular intervals and burned at low intensities may have had little to no effect on this species. It is due only to lack of fire and the accumulated fuel load that the fire intensity and associated heat may be high enough to damage or kill plants on adjacent cliffs, especially near the ground. On the other hand, the plants that are much higher on the cliff face would probably not be affected. Ft. Huachuca has indicated a willingness to develop a conservation agreement for this species. We now consider the magnitude of threats to be moderate rather than high because we believe that not all of the population would be adversely affected by a wildfire or drought. The threats are still imminent because the likelihood of a fire is high. Therefore, we changed the listing priority number from a 5 to an 8 due to moderate, imminent threats.

Geranium hanaense (Nohoanu)—This species is a decumbent shrub found in bogs on Maui, Hawaii. This species is known from one population with 300 to 500 individuals. *Geranium hanaense* is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. However, feral pigs have been fenced out of and removed from both bogs in which this species currently occurs, and a control program has reduced nonnative plants in all fenced areas. This changes the immediacy of the threats from imminent to nonimminent. Therefore, we have changed the listing priority number for this species from 2 to 5.

Geranium kauaiense (Nohoanu)—Nohoanu is a decumbent subshrub found in bogs and bog margins on Kauai, Hawaii. This species is known from three populations totaling 100 to 200 individuals in the Alakai Swamp area. *Geranium kauaiense* is threatened by pigs that directly prey upon it, degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of the three bogs where *G. kauaiense* currently occurs, and nonnative plants have been greatly reduced in all three fenced bogs, and are not found in the immediate vicinity of any *G. kauaiense* individuals. Because these threats are of high magnitude but no longer are imminent, we have changed the listing priority number from 2 to 5.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus) “The Fickeisen plains cactus is a small cactus known from the Gray Mountain vicinity to the Arizona strip in Coconino and Mohave Counties, Arizona. The cactus grows on exposed layers of Kaibab limestone on canyon margins and well-drained hills in Navajoan desert or grassland. In 1999, the Arizona Game and Fish Department noted 23 occurrences for the species, including historical ones. The species is located on BLM, Forest Service, tribal, and possibly State lands. Recent reports from the BLM and Navajo Nation describe populations of the species as being in decline. The main human-induced threats to this cactus are off-road vehicles and trampling associated with livestock grazing. Monitoring data has detected mortality associated with livestock grazing. Illegal collection of this species has been noted in the past, but we do not know if it is a continuing threat. The populations that have been monitored have been affected, in part, by the continuing drought. There has been very low recruitment and rabbits and rodents have consumed adult plants since there is reduced forage available during these dry conditions. In our prior assessments, we concluded that threats were not imminent. However, using a consistent interpretation of imminence related to whether threats are on-going, we are correcting our ranking to reflect that the threats are imminent. As a result, we changed the LPN for this plant variety from a 6 to a 3.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—Soldier Meadow cinquefoil is a low growing, rhizomatous, herbaceous perennial that is associated with alkali meadows, seeps, and occasionally marsh habitats bordering perennial thermal springs, outflows, and meadow depressions. In Humboldt County, Nevada, the species is known only from Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province. In northeastern California, the species is known from Ash Valley near Ash Creek in Lassen County. In Nevada, Soldier Meadow cinquefoil has been documented from 10 discrete occurrences within an area of about 70 acres that supports about 130,000 individuals. The California population occupies less than an acre on private lands and supports fewer than 1,000 plants.

The species and its habitat are threatened by increasing recreational use in the areas where it occurs as well

as historic livestock grazing and activities associated with the use of authorized and unauthorized roads. Conservation measures implemented recently by the Bureau of Land Management include the installation of fencing to exclude livestock wild horses, burros and other large mammals; closing of access roads to spring, riparian, and wetland areas and the limiting of vehicles to designated routes; the establishment of a designated campground away from the habitats of sensitive species; the installation of educational signage and, an increased staff presence, including law enforcement and a volunteer site steward during the six-month period of peak visitor use. These conservation measures have reduced the magnitude of threat to the species from high to moderate; all remaining threats are nonimminent and involve long-term changes to the habitat for the species resulting from past impacts. In consideration of these conservation measures, we lowered the listing priority number from 5 to 11.

Other Taxonomic Changes in Candidates

Flowering Plants

Physaria tuplashensis, (White Bluffs bladder-pod)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. This species is in the Cruciferae (Mustard family). Historically and currently, White Bluffs bladder-pod has only been known from a single population that occurs along the White Bluffs of the Columbia River in Franklin County, Washington. *Physaria tuplashensis* was originally described as *Lesquerella tuplashensis* in 1996, which is the name we have used for it in prior CNORs. In 2002, there was a suggestion that the *Lesquerella* and *Physaria* genera should be united as *Physaria*, and that *L. tuplashensis* should be reduced to *P. douglasii* subspecies *tuplashensis*. A recent study (2005) recommended accepting the new genus name of *Physaria* and, supported by metamorphic work, proposed retaining full species status for the taxon, and a new nomenclature: *Physaria tuplashensis*. We recognize this new nomenclature in this notice. There are no changes in the magnitude or imminence of threats to the taxon, so we continue to assign a listing priority number of 5 to this species.

Candidate Removals

As summarized below, we have evaluated the threats to the following 10

species and considered factors that, individually and in combination, presently or potentially could pose a risk to these species and their habitat. After a review of the best available scientific and commercial data, we conclude that listing these 10 species under the Endangered Species Act is not warranted because the species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, we find that proposing a rule to list these species is not warranted, and we no longer consider them to be candidate species for listing. We will continue to monitor the status of these species, and to accept additional information and comments concerning this finding. We will reconsider this determination in the event that new information indicates that the threats to these species are of a considerably greater magnitude or imminence than identified through assessments of information in our files, as summarized here. The summary below also notes four other species for which we published separate findings removing them from candidate status since the most recent CNOR.

Birds

Many-colored fruit-dove (*Ptilinopus perousii perousii*)—The following summary is based on information contained in our files. *P. p. perousii*, is found in American Samoa on the four main islands of Tutuila, Olosega, Ofu, and Tau, and in Independent Samoa. It is primarily associated with mature rainforest habitat. The many-colored fruit-dove is highly mobile and may travel large distances, presumably in search of fruiting banyans (*Ficus prolixa* and *F. obliqua*). The American Samoa population of *P. p. perousii* is the only population of this subspecies under U.S. jurisdiction. The primary threats we recognized in the past are its small population size, stochastic natural disturbances such as hurricanes, the accidental introduction of new pathogens or parasites, and possibly predation by introduced mammalian predators. We previously assigned a listing priority number of 12 to this taxon, reflecting threats that we determined were of low magnitude and not imminent. Five years of monitoring documented an increase in the relative abundance of the subspecies prior to Hurricane Heta in January of 2004 and Hurricane Olaf in February 2005. The upward trend has been stalled by these severe storms, but continued monitoring should indicate whether (as we expect) effects of the 2004 and 2005 hurricanes have caused a temporary, but natural,

interruption in the trend of increase, or whether hurricane effects have reversed this trend. Avian malaria, once thought to possibly pose a threat to this subspecies, likely is not pathogenic in Samoa. The stable distribution of the subspecies and recent documented increase in relative abundance in American Samoa suggest that the threats summarized above currently are not having a detrimental effect on the subspecies' overall population, and it is unlikely to become endangered within the foreseeable future. Therefore, listing is not warranted.

Gunnison sage-grouse (*Centrocercus minimus*)—See separate revised 12-month petition finding published in the **Federal Register** on April 18, 2006 (71 FR 19953).

Reptiles

Cagle's map turtle (*Graptemys caglei*)—The following information is based on information contained in our files, including information from the petition received April 26, 1991. Cagle's map turtle occurs in scattered sites in seven counties in Texas on the Guadalupe, San Marcos, and Blanco Rivers. We previously identified loss and degradation of riverine habitat from large and small impoundments (dams or reservoirs) as the primary threat to the Cagle's map turtle. One effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movement and could fragment populations. In the past, construction of smaller impoundments and human activities on the rivers known to be occupied by the Cagle's map turtle have likely eliminated or reduced foraging and basking habitats. Currently, there are no firm plans for reservoirs in the Guadalupe-San Antonio River System. Cagle's map turtle is also vulnerable to overcollecting and target shooting but actions taken by Texas Parks and Wildlife Department (TPWD) have increased protection of the species against collecting and shooting. Cagle's map turtle was listed as threatened by TPWD, effective November 16, 2000, and TPWD regulations prohibit the taking, possession, transportation, or sale of any of the animal species designated by state law as endangered or threatened without the issuance of a permit. Estimates of population numbers of the species in the Guadalupe and San Marcos Rivers in 1991 and 2001 indicates an overall population increase, although estimated populations at some sites declined. Because of stable population size,

increased protection, and no foreseeable threats from reservoir construction, we find that listing Cagle's map turtle is not warranted.

Amphibians

Boreal toad (Southern Rocky Mountains DPS) (*Bufo boreas boreas*)—see separate revised 12-month petition finding published in the **Federal Register** on September 29, 2005 (70 FR 56880).

Insects

Lesser Adams Cave beetle (*Pseudanophthalmus cataryctos* Krekeler) and Greater Adams Cave beetle (*P. pholeter* Krekeler)—see **Federal Register** notice published on December 8, 2005 (70 FR 72973).

Po'olanui gall fly (*Phaeogramma* sp.)—Because there is no published name or description for this fly, this taxa is not considered valid and does not meet the Act's definition of a species and is not eligible for listing. Therefore, we find that listing is not warranted.

Crustaceans

Anchialine pool shrimp (*Antecaridina lauensis*)—This species has a disjunct, Indo-Pacific distribution. It has been reported from the Fiji Islands, Mozambique Channel (Madagascar), the Red Sea-Dahlak, Ryukyu and Daito Islands (Japan), the Solomon Islands and the Hawaiian Islands. In Hawaii, *A. lauensis* is known from two pool groups on Maui (Ahihi-Kinau State Natural Area Reserve) and two pools on the southern end of the island of Hawaii (Lua o Palahemo, and one on private land). Like other anchialine pool shrimp species, it is believed that this species inhabits an extensive network of water-filled interstitial spaces (cracks and crevices) leading to and from the actual pool, and this trait has precluded researchers from obtaining population size estimates during surveys for the species. In Lua o Palahemo on the island of Hawaii, *A. lauensis* co-occurs with two other candidate species of anchialine pool shrimp, *Procaris hawaiana* and *Vetericaris chaceorum*, and with *Calliasmata pholidota* (see below).

Although we have information on the threats to the population in Hawaii, population numbers and threats to the species where it occurs elsewhere in the world are unknown. We find that listing is not warranted because there is insufficient information on the species' status throughout its range to determine whether it warrants protection under the Act. We are unable to consider listing the Hawaii population as a

distinct population segment since this animal is not a vertebrate.

Anchialine pool shrimp (*Calliasmata pholidota*)—This species has a disjunct, Indo-Pacific distribution. It has been reported from the Red Sea-Sinai Peninsula, Funafuti Atoll (Ellice Islands), and the Hawaiian Islands of Maui and Hawaii. On the island of Hawaii, *C. pholidota* occurs in one pool at Ka Lae (South Point) at Lua o Palahemo and in one pool group in the Manuka Natural Area Reserve (NAR). On Maui, *C. pholidota* is found in four pool groups in the Ahihi-Kinau NAR. At Lua o Palahemo, *C. pholidota* co-occurs with two other candidate species of anchialine pool shrimp, *Procaris hawaiana* and *Vetericaris chaceorum*, and with *Antecaridina lauensis* (see above). Like other anchialine pool shrimp species, it is believed that this species inhabits an extensive network of water-filled interstitial spaces (cracks and crevices) leading to and from the actual pool, and this trait has precluded researchers from obtaining more accurate population size estimates during surveys for the species. Worldwide species status information, including population numbers and threats to the species outside the U.S. is unknown. We find that listing is not warranted because there is insufficient information on the species status throughout its range to determine whether this species warrants protection under the Act. We are unable to consider listing the Hawaii population as a distinct population segment since this animal is not a vertebrate.

Flowering Plants

Aliciella caespitosa (= *Gilia caespitosa*) (wonderland alice-flower or Rabbit Valley gilia)—The wonderland alice-flower (also known as Rabbit Valley gilia) is a plant within the Phlox family found in Wayne County, Utah. The species is primarily associated with sand-filled pockets and crevices of Navajo Sandstone on slopes having mechanical weathering or erosion of rock in pinyon-juniper/mountain mahogany vegetation communities between 5,200 and 9,000 feet in elevation.

This species occurs in more sites and is much more abundant than was initially thought. In 1996 we knew of 6 population areas with an estimated total of 5,000 plants. However, increased surveys from 2000 to 2003 identified 50 known sites at the 6 population areas, with an estimated 25,350 individual plants. For the past several years our assessments of this species concluded that threats were moderate to low and were nonimminent, and we assigned it

a listing priority number of 11. We identified potential collection of plants and seeds as a significant threat. However, we have no evidence that collection is occurring, or if it is occurring that it is impacting the overall status of the species. We also have no information to suggest that collection in the future is likely to put populations at risk at any of the sites currently known to be occupied. Other threats we identified included impacts associated with recreational trails, off-road vehicle use, livestock trampling, and low natural recruitment. Although some of these threats are ongoing, they are localized, and appear to have little impact. The majority of sites are not easily accessible, and the factors that currently or potentially could impact individuals have not been shown to affect the species rangewide, nor do we expect that to become the case. In addition, a Conservation Agreement and Strategy, signed in 1996 and currently being updated, promotes continued cooperation among the agencies and helps to direct a variety of conservation actions, including: Inventory remaining suitable habitats; identify research needs and conduct studies; refine monitoring protocols; continue monitoring; implement land management policies and regulations for protection of Navajo endemic plant species; and continue to pursue public awareness opportunities. Based on our updated assessment, we find that listing this species is not warranted.

Astragalus equisolensis (horseshoe milkvetch)—Horseshoe milkvetch is a plant in the pea family and is found on the Duchesne River Formation in Uintah county, Utah and Mesa county, Colorado. It is associated with mixed desert and salt desert shrub vegetation communities that are generally dominated by sagebrush, shadscale and horsebrush. Surveys in 1992 estimated the population at 10,000 in Utah and there is no recent information indicating it has declined; the Colorado population is a recent discovery. The only potential threat of substance is from future energy development, but that does not threaten the species through most of its range. Based on available information, including the recent discovery of the species in Colorado and an apparent low level of potential threat, we do not have sufficient information to justify a determination that the species should be proposed for listing. Therefore, we find that listing this species is not warranted.

Castilleja aquariensis (Aquarius paintbrush)—The Aquarius paintbrush is a plant in the figwort family found only on the Aquarius plateau of south central Utah. Habitat characteristics are

meadow openings and open spruce-fir stands. A recent survey conducted in 2004 and 2005 counted 74,100 individuals, a much higher number than earlier estimates. Factors affecting the species include off-road vehicle use; wildlife and livestock grazing; predation by pocket gophers, aphids, crickets and grasshoppers; and low precipitation. However, we do not have any evidence that these factors are a significant threat to population levels. Therefore, we find that listing the species is not warranted.

Paronychia congesta (Bushy whitlow-wort)—Bushy whitlow-wort is endemic to Jim Hogg County, Texas, known from only two populations that occur within the drainage of two tributaries of the Arroyo Grande. Historically, this species was documented only from the type locality with 2,000 individual plants counted. A second small population of 100 individuals was found two miles north-northeast of the type locality in 1987. The two known populations occur on small areas that cover approximately 5 and 15 acres. Little quantitative data have been collected for this species, therefore we do not know whether populations have expanded or contracted. The sparse information that is available suggests the current range and distribution of the species has not changed from the historical description. The types of factors believed to potentially adversely affect this species include destruction, modification, and fragmentation of the habitat, as well as eradication of individual plants. However, conversion of rangeland to residential development is not considered a significant threat since this part of southern Texas is not undergoing rapid residential or industrial development. The extent of alteration of the whitlow-wort's habitat via conversion of native brush to nonnative forage grasses is unknown since all of its habitat is privately owned and not accessible. Other potential threats include displacement or destruction of individual plants by construction activities associated with highways, pipeline installation, oil and gas exploration, well-pad construction and right-of-way maintenance. However, we do not have any information on the likely implementation of these potential activities and no ongoing imminent threats have been identified for this species. We have determined that listing is not warranted because insufficient information exists on biological vulnerability and threats to support a proposal to list this species.

Sidalcea hickmanii parishii (Parish's checkerbloom)—Parish's checkerbloom is an herbaceous perennial plant in the mallow family (Malvaceae), with

multiple stems emerging annually from a woody root crown. It most commonly appears following fires, apparently having evolved to rapidly take advantage of unvegetated openings in forest or chaparral. Most historic collections, and all currently known populations, are known from open areas along roads, trails, firebreaks, small landslides, or in recently burned areas. All known populations are on USDA Forest Service lands. Parish's checkerbloom has been collected from San Bernardino, Santa Barbara, and San Luis Obispo Counties, California. Its distribution in San Bernardino County appears to be particularly restricted, although the vagueness of historical location information and the plant's emergence primarily following fire make it difficult to accurately assess its distribution. The discovery of a new, albeit small, population found on the desert-facing slopes of the San Bernardino Mountains in 2000 suggests that habitat not previously considered suitable may in fact be so.

Threats identified for this taxon fall into two groups—those that negatively affect individual or small groups of plants (the “expressed” portions of what may be larger populations in seedbanks), and those that have the potential to substantially alter a large area of surrounding habitat or damage any unexpressed seedbanks that may occur in surrounding soils. Activities in the former group include livestock grazing on individual plants along roads and grading of existing roads. Those in the later group include altered fire regimes (e.g. aggressive fire suppression, prescribed burning in winter or spring), post-fire livestock grazing, development or expansion of roads and facilities (e.g. recreational, military communication facilities, or development of private inholdings), and invasion by nonnative species. The southern portion of this taxon's range, in San Bernardino County, is most vulnerable to these activities due to its more restricted distribution there, its closer proximity to human population centers, and the area's greater recreational use.

Review of recent information indicates the number of populations located is greater and the known range of the taxon is larger than we previously understood. Also, our conclusion regarding the magnitude and the immediacy of the threats has shifted with the additional information we have about the species. We considered the magnitude of threats to individuals, as well as habitat with unexpressed seedbank, was greater when we only knew of 3 small extant locations for the species as compared to now, when we

are aware of 5 extant locations, including 1 with a large population. We also considered the immediacy of the threats to be greater when we only knew of 3 small extant locations for the species. For some human-caused activities, such as road grading and construction of fire breaks, we have had the opportunity to observe that these activities most likely caused the expression of a portion of the seedbank, in a sense providing some of the same habitat conditions that are provided by wildfire (removal of litter, scarification of seed). This suggests that at least certain human activities can be altered (such as in timing of grading) so that they will not negatively impact the species. Although there is great uncertainty regarding how and to what extent future wildfires may release the seedbank of this species, we do not believe that the threat from lack of fires or any human-caused activities are imminent (as compared to a known threat from a planned activity with a definite timeline, such as a housing development) or substantial. Therefore, we find that listing is not warranted.

Petition Findings

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on his own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through the candidate program, discussed above. The second method for listing a species provides a mechanism for the public to petition us to add a species to the Lists. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information that listing may be warranted (a "90-day finding"). If we make a positive 90-day finding, we must promptly commence a status review of the species under section 4(b)(3)(A); we must then make and publish one of three possible findings within 12 months of the receipt of the petition (a "12-month finding"):

1. The petitioned action is not warranted;
2. The petitioned action is warranted (in which case we are required to promptly publish a proposed regulation to implement the petitioned action; once we publish a proposed rule for a species, section 4(b)(5) and 4(b)(6) govern further procedures regardless of whether we issued the proposal in response to a petition); or
3. The petitioned action is warranted but that (a) the immediate proposal of a regulation and final promulgation of

regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the lists of endangered or threatened species. (We refer to this as a "warranted-but-precluded finding.")

Section 4(b)(3)(C) of the Act requires that when we make a warranted-but-precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. Thus, we are required to publish new 12-month findings on these "resubmitted" petitions on an annual basis.

On December 5, 1996, we made a final decision to redefine "candidate species" to mean those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list, but for which issuance of the proposed rule is precluded (61 FR 64481, December 6, 1996). Therefore, the standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding on a petition to list, and we add all petitioned species for which we have made a warranted-but-precluded 12-month finding to the candidate list.

This publication also provides notice of substantial 90-day findings and the warranted-but-precluded 12-month findings pursuant to section 4(b)(3) for candidate species listed on Table 1 that we identified on our own initiative, and that subsequently have been the subject of a petition to list. Even though all candidate species identified through our own initiative already have received the equivalent of substantial 90-day and warranted-but-precluded 12-month findings, we reviewed the status of the newly petitioned candidate species and through this CNOR are publishing specific section 4(b)(3) findings (*i.e.*, substantial 90-day and warranted-but-precluded 12-month findings) in response to the petitions to list these candidate species. We publish these findings as part of the first CNOR following receipt of the petition.

Pursuant to section 4(b)(3)(C)(i) of the Act, once a petition is filed regarding a candidate species, we must make a 12-month petition finding in compliance with section 4(b)(3)(B) of the Act at least once a year, until we publish a proposal to list the species or make a final not-warranted finding. We make this annual finding for petitioned candidate species through the CNOR.

Section 4(b)(3)(C)(iii) of the Act requires us to "implement a system to monitor effectively the status of all

species" for which we have made a warranted-but-precluded 12-month finding, and to "make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species." The CNOR plays a crucial role in the monitoring system that we have implemented for all candidate species by providing notice that we are actively seeking information regarding the status of those species. We review all new information on candidate species as it becomes available, prepare an annual species assessment form that reflects monitoring results and other new information, and identify any species for which emergency listing may be appropriate. If we determine that emergency listing is appropriate for any candidate, whether it was identified through our own initiative or through the petition process, we will make prompt use of the emergency listing authority under section 4(b)(7). We have been reviewing and will continue to review, at least annually, the status of every candidate whether or not we have received a petition to list it. Thus, the CNOR and accompanying species assessment forms also constitute the Service's annual finding on the status of petitioned species pursuant to section 4(b)(3)(C)(i).

On June 20, 2001, the United States Court of Appeals for the Ninth Circuit held that the 1999 CNOR (64 FR 57534, October 25, 1999) did not demonstrate that we fulfilled the second component of the warranted-but-precluded 12-month petition findings for the Gila chub and Chiracahua leopard frog (*Center for Biological Diversity v. Norton*, 254 F.3d 833 (9th Cir. 2001)). The court found that the one-line designation in the table of candidates in the 1999 CNOR, with no further explanation, did not satisfy section 4(b)(3)(B)(iii)'s requirement that the Service publish a finding "together with a description and evaluation of the reasons and data on which the finding is based." The court suggested that this one-line statement of candidate status also precluded meaningful judicial review.

On June 21, 2004, the United States District Court for Oregon agreed that we can use the CNOR as a vehicle for making petition findings and that our reasoning for why listing is precluded does not need to be based on an assessment at a regional level (as opposed to a national level) (*Center for Biological Diversity v. Norton* Civ. No. 03-111-AA (D. Or.)). However, this court found that our discussion on why listing the candidate species were precluded by other actions lacked

specificity; in the list of species that were the subject of listing actions that precluded us from proposing to list candidate species, we did not state the specific action at issue for each species in the list and we did not indicate which actions were court-ordered.

On June 22, 2004, in a similar case, the United States District Court for the Eastern District of California also concluded that our determination of preclusion may appropriately be based on a national analysis (*Center for Biological Diversity v. Norton* No. CV S-03-1758 GEB/DAD (E.D. Cal.)). This court also found that the Act's imperative that listing decisions be based solely on science applies only to the determination about whether listing is warranted, not the question of when listing is precluded.

On March 24, 2005, the United States District Court for the District of Columbia held that we may not consider critical habitat activities in justifying our inability to list candidate species, requiring that we justify both our preclusion findings and our demonstration of expeditious progress by reference to listing proceedings for unlisted species (*California Native Plant Society v. Norton*, Civ. No. 03-1540 (JR) (D.D.C.)). The court further found that we must adequately itemize priority listings, explain why certain species are of high priority, and explain why actions on these high-priority species preclude listing species of lower priority. The court approved our reliance on national rather than regional priorities and workload in establishing preclusion and approved our basic explanation that listing candidate species may be precluded by statutorily mandated deadlines, court-ordered actions, higher-priority listing activities, and a limited budget.

We drafted the previous CNOR to address the concerns of these courts and continue to incorporate those changes that addressed the courts' concerns in this CNOR. We include a description of the reasons why the listing of every petitioned candidate species is both warranted and precluded at this time. 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 (*see below*). Regional priorities can also be discerned from Table 1, which includes the lead region and the listing priority number for each species. Our preclusion determinations are further based upon our budget for listing activities for unlisted species and we explain the priority system and why the work we

have accomplished does preclude action on listing candidate species.

Pursuant to section 4(b)(3)(C)(ii) and the Administrative Procedure Act (5 U.S.C. 206), any party with standing may challenge the merits of any not-warranted or warranted-but-precluded petition finding incorporated in this CNOR. The analysis included herein, together with the administrative record for the decision at issue (particularly the supporting species assessment form), will provide an adequate basis for a court to review the petition finding.

Nothing in this document or any of our policies should be construed as in any way modifying the Act's requirement that we make a resubmitted 12-month petition finding for each petitioned candidate within one year of the date of publication of this CNOR. If we fail to make any such finding on a timely basis, whether through publication of a new CNOR or some other form of notice, any party with standing may seek judicial review.

In this CNOR, we are addressing the concerns of the courts by adding more specific information into our discussion on preclusion (*see below*). In preparing this CNOR, we reviewed the current status of and threats to the 245 candidates and 5 listed species for which we have received a petition and for which we have found listing or reclassification from threatened to endangered to be warranted-but-precluded. We find that the immediate issuance of a proposed rule and timely promulgation of a final rule for each of these species has been, for the preceding months, and continues to be, precluded by higher priority listing actions. Additional information that is the basis for this finding is found in the species assessments and our administrative record for each species.

This is the first 12-month petition finding for two species, the New England cottontail and the red knot, that were petitioned prior to this CNOR but for which we have not already published a separate warranted-but-precluded 12-month finding. We previously published a separate substantial 90-day petition finding for the New England cottontail (69 FR 39395).

Our review included updating the status of and threats to petitioned candidate or listed species for which we published findings, pursuant to section 4(b)(3)(B), in the previous CNOR. We have incorporated new information we gathered since the prior finding and, as a result of this review, we are making continued warranted-but-precluded 12-month findings on the petitions for these species.

We have identified the candidate species for which we received petitions by the code "C*" in the category column on the left side of Table 1. As discussed above, the immediate publication of proposed rules to list these species was precluded by our work on higher priority listing actions, listed below, during the period from May 2, 2005, through August 23, 2006. We will continue to monitor the status of all candidate species, including petitioned species, as new information becomes available. This review will determine if a change in status is warranted, including the need to emergency-list a species under section 4(b)(7) of the Act.

In addition to identifying petitioned candidate species in Table 1 below, we also present brief summaries of why these particular candidates warrant listing. More complete information, including references, is found in the species assessment forms. You may obtain a copy of these forms from the Regional Office having the lead for the species, or from the Fish and Wildlife Service's Internet Web site: <http://endangered.fws.gov/>. As described above, under section 4 of the Act we may identify and propose species for listing based on the factors identified in section 4(a)(1), and section 4 also provides a mechanism for the public to petition us to add a species to the lists of species determined to be threatened species or endangered species under the Act. Below we describe the actions that continue to preclude the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action, and we describe the expeditious progress we are making to add qualified species to the lists of endangered or threatened species.

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. (As described above in the Summary, the listing priority of a species is represented by the listing priority number we assign to it.) 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 appropriations process, and we cannot spend more than is appropriated for the Listing Program without

violating the Anti-Deficiency Act (31 U.S.C. 1341 (a)(1)(A)). The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions, *i.e.*, more complex actions generally are more costly. For example, for FY 2005, the costs (excluding publication costs) for conducting a 12-month finding, without a proposed rule, 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 was wide-ranging and involved a complex analysis.

In FY 1998 and for each fiscal year since then, Congress placed a statutory cap on funds which may be expended for listing and critical habitat actions (*i.e.*, 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 ESA functions, or for other Service programs, from being used for listing or critical habitat actions (*see* House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Beginning in FY 2002, Congress also put in place the critical habitat “subcap,” which put an upper limit on the Listing Program funds that could be spent on work related to critical habitat designations for already listed species. Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress put the subcap in place to ensure that some funds would be available to make other listing determinations: “The critical habitat designation subcap will ensure that some funding is available to address other listing activities” (H.R. Rep. No. 103, 107th Cong., 1st Sess. 2001 at 30, 2001 WL 695998). Because the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, Congress and the Courts have in effect determined, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, the amount available for other listing activities. It is this amount (*i.e.*, the funds in the listing cap other

than those needed to address court-mandated critical habitat for already listed species) that is used in the determination here of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding whether we would issue a listing proposal or make a “warranted but precluded” finding for a given species. The Conference Report accompanying Public Law 97–304, which established the current statutory deadlines and the warranted-but-precluded finding, states (in a discussion on 90-day petition findings that by its own terms also covers 12-month findings) that the deadlines 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 [*i.e.*, for a lower-ranking species] unwise.” Therefore, in fiscal year 2005, the outer parameter within which “expeditious progress” must be measured is that amount of progress that could be achieved by spending \$5.6 million, which included \$4.6 million available in the Listing Program appropriation not within the critical habitat subcap plus approximately \$1.0 million from the critical habitat subcap that was not needed to comply with court orders or court-approved settlement agreements for critical habitat designations. The rest of the critical habitat subcap funds were used to comply with court orders or court-approved settlement agreements for designating critical habitat for previously listed species, and thus were not available for other listing activities.

Our process is to 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. However, through court orders and court-approved settlements, federal district courts have mandated that we must complete certain listing activities with respect to specified species and have established

the schedules by which we must complete those activities. The species involved in these court-mandated listing activities are not always those that we have identified as being most in need of listing. A large majority of the appropriation available for new listings of species (*i.e.* \$5.6 million) was consumed by such court-mandated listing activities in FY 2005, and by ordering or sanctioning these actions the courts essentially determined that these were the highest priority actions to be undertaken with available funding. Copies of the court orders and settlement agreements referred to below are available from the Service and are part of the administrative record for these resubmitted petition findings.

On December 8, 2004, the President signed the 2005 Interior and Related Agencies Appropriations Act (Pub. L. 108–447), which, as a result of the subcap and subsequent rescissions, in effect included \$4,643,000 for listing activities not related to critical habitat designations for species that already are listed. However, as discussed above, a relatively small portion of the critical habitat subcap was used for listing actions resulting in a total of \$5,604,178 being expended for listing actions. This appropriation was fully allocated to fund the following categories of actions in the Listing Program: Essential litigation-related, and administrative- and program-management functions; compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 listing actions with absolute statutory deadlines; and a few high-priority listing actions. While more funds were available in FY 2005 than in previous years to work on listing actions that were not the subject of court-orders or court-approved settlement agreements, based on the available funds and their allocation for these purposes, only limited FY 2005 funds were available for work on proposed listing determinations for the following candidate species included in Table 1 of this notice: Arctic grayling, Georgia pigtoe, interrupted rocksnail, *Astelia waialealae*, *Cyrtandra kaulantha*, and *Phyllostegia hispida*.

FY 2005 LISTING ALLOCATION

	Allocated	Available balance
FY05 Appropriation (including space reprogramming)	\$5,604,178	\$5,604,178
Space reprogramming (program's portion of rent for building space)	254,749	5,349,429
Regional & Washington Offices (staff salaries & benefits)	1,344,660	4,004,769
Printing	612,405	3,392,364
90-day findings	613,224	2,779,140

FY 2005 LISTING ALLOCATION—Continued

	Allocated	Available balance
12-month findings	1,342,159	1,436,981
Proposed Listing/CH	579,370	857,611
Final Listing/CH	550,116	307,495
Attorney Fees/Litigation Expenses	307,400	95

Specific details regarding the individual actions taken using the FY 2005 funding, which precluded our ability to undertake listing proposals for any of the candidate species, except the species noted above, are provided below (information on the cost of individual actions is part of our administrative record).

We note here that the category of “high-priority listing actions” mentioned above refers to actions for which no timeline has been established by a court order or settlement agreement, and that also are not subject to an absolute statutory deadline. Our ability to work on such listing actions is quite limited. Until FY 2006, our allocation of Listing Program funds has included a limited amount of funding (100,000) to each Regional office to ensure that the office maintains minimal core capacity (at least one staff person) for listing actions (e.g., evaluating the status of species to help ensure that an emergency listing action can be taken if necessary, and participating in work to meet the statutory requirement to annually review and make findings on

resubmitted petitions). In a Region that faces a relatively limited workload in the Listing Program with regard to deadlines resulting from court orders or settlement agreements, and a relatively limited workload related to meeting statutory deadlines, some of this “capability” funding may be available to address high priority listing actions. However, in most Regions the limited amount of capability funding for Regional offices included in an allocation is used for work associated with supporting listing actions related to court orders or settlement agreements, and for meeting statutory deadlines. This work includes providing training and oversight of field personnel and reviewing their work and making recommendations to the Regional Director on listing actions. Where this is the case, there are no funds available for high-priority listing actions.

The overall Listing Program situation in FY 2006 is similar to that in FY 2005. For FY 2006, Congress appropriated \$5,131,000 (after rescissions) to the listing program for activities other than critical habitat designations for already

listed species (Pub. L. 109–54, signed on August 2, 2005). We have fully allocated the \$5,131,000 to fund the following listing actions: Any emergency listings; essential litigation-related, administrative, and program management functions; compliance with court orders or court-approved settlement agreements requiring petition findings or listing determinations; statutorily-required petition findings; other high-priority listing actions; and work on proposed listing determinations for some high-priority candidate species. In addition, by the end of FY 2005 we had realized some savings, largely in printing costs, as compared to our estimated costs. Therefore, we were able to reallocate these remaining FY 2005 funds to help cover some of the printing costs associated with listing actions in FY 2006. As a result, The FY 2006 funds needed for printing costs were reduced and we are able to fund more work than otherwise would have been possible with only our FY 2006 listing budget.

FY 2006 LISTING ALLOCATION

	Allocated	Available \ balance
FY06 Appropriation (including space reprogramming)	\$5,130,594	\$5,130,594
Space reprogramming (program’s portion of rent for building space)	261,817	4,868,777
Regional & Washington Offices (staff salaries and benefits)	1,610,150	3,258,627
Printing	33,000	3,225,627
90-day findings	508,796	2,716,831
12-month findings	1,350,653	1,366,178
Proposed Listing/CH	813,460	552,718
Final Listing/CH	452,718	100,000
Attorney Fees/Litigation Expenses	100,000	0

For FY 2006 we have eliminated capability funding, and instead have allocated to the regions an amount necessary to support a regional office staff capable of supervising the workload of packages in the region. With respect to funds appropriated for designation of critical habitat, the majority of these funds in the critical habitat subcap will be spent complying with designating critical habitat under court-order or court-approved settlement agreements. We allocated a

small portion of the money not needed to fund these critical habitat designations for work on statutorily-required petition findings. While we have more funds in FY 2006 (than in FY 2005) available for listing actions that are not court-ordered or the subject of court-approved settlement agreements, we must use the majority of these funds to work on or complete statutorily-required petition findings. During the current fiscal year, we will issue proposed listing rules for the highest

priority candidate species only if doing so does not jeopardize our ability to comply with court orders, court-approved settlement agreements, or unqualified statutory deadlines. Thus, as of the date of the publication of this CNOR, we anticipate that we will have only limited FY 2006 funds available to work on proposals to list any of the candidate species included in Table 1. Consequently we continue to find that proposals to list all of the petitioned candidate species included in Table 1

are warranted but precluded, except the Arctic grayling, Georgia pigtoe, interrupted rocksnail, *Astelia waialealae*, *Cyrtandra kaulanthera*, and *Phyllostegia hispida* (which are being funded this year). We note also that all of the actions that demonstrate our expeditious progress on listing that we have completed to date or will complete in FY 2006 (see below) contribute to the preclusion of work on listing proposals for these candidate species.

In addition to being precluded by lack of available funds, work on proposed rules for candidates with lower priority (*i.e.*, those that have listing priority numbers of 4–12) is also precluded by the need to issue proposed rules for higher priority species facing high-magnitude, imminent threats (*i.e.*, listing priority numbers of 1–3). Table 1 shows the listing priority number for each candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since the listing of the species already affords the protection of the Act and implementing regulations.

As explained above, part of the basis for making a warranted-but-precluded finding is that expeditious progress is being made to add and remove qualified species to the Lists. Our progress in FY 2005 includes work in the following categories: (1) Preparation and publication of final listing determinations involving 6 species; (2) preparation of final listing determinations (not completed in FY 2005) for 13 species; (3) preparation of proposed listing actions (not yet completed so not yet published) for 8 species; and (4) listing petition findings for 303 species (includes 10 completed, 33 not completed, and 260 resubmitted findings). Specific information regarding each of these categories for FY 2005 is provided below, followed by a description of our anticipated FY 2006 progress.

FY 2005 (1) Final listing determinations—We prepared and published in the **Federal Register** final listing determinations for six species, all of which had absolute statutory deadlines imposed by section 4(b)(6). These included final regulations listing the following species:

- Southwest Alaska distinct population segment of the northern sea otter (70 FR 46365; August 9, 2005; LPN=3) (This final listing was not the result of a deadline established by a court order or a court-approved settlement agreement. Rather, this was the highest priority listing action for the Alaska Region. The Alaska Region generally has not faced the relatively heavy Listing Program workload

experienced by several other Regions, and consequently was able to use their limited Regional office capability funding in FY 2005 to support the completion of this listing regulation. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise).

- Koster's springsnail, Roswell springsnail, Noel's amphipod, and Pecos assimineia (70 FR 46303; August 9, 2005, LPN=2) (The work on the final listing package that included these four species was in response to a court-approved settlement agreement as well as having an absolute statutory deadline).

- Salt Creek tiger beetle (70 FR 58335; October 6, 2005; LPN=3) (The work on this species was in response to a court-order).

We note that the work on these species, except the northern sea otter and Salt Creek tiger beetle, included funding for the designation of critical habitat. The critical habitat subcap pertains to critical habitat designations for species already listed; we may use listing funds for critical habitat designation work conducted in conjunction with a listing action, as was the case with these four species. This work was necessary to comply with the Act's deadline for designating critical habitat: Concurrent with listing or within one year thereafter if concurrent designation is not determinable.

(2) We funded work on final listing determinations for the Gila chub and 12 species of picture wing flies from Hawaii for which work was not completed in FY 2005. The work on these species was also in response to court-approved settlement agreements.

(3) We funded work on proposed listing determinations for the following species for which work was not completed in FY 2005: Cowhead Lake tui chub (reproposal), fluvial Arctic grayling (distinct population segment of the Upper Missouri River) (LPN=3) (the work on this species was also in response to a court-approved settlement agreement), Georgia pigtoe (LPN=2), interrupted rocksnail (LPN=2), *Astelia waialealae* (LPN=2), *Cyrtandra kaulanthera* (LPN=2), *Penstemon grahamii* (Graham's beardtongue) (LPN=2) (the work on this species was also in response to a court-approved settlement agreement), and *Phyllostegia hispida* (LPN=2).

(4) We funded work on 300 petition findings. This involved 90-day findings, initial 12-month findings, and findings

on resubmitted petitions. As explained below, in some instances, the work has been based on meeting deadlines established by court order or by settlement agreements. In other instances, the work has been done in order to meet statutory deadlines. All 12-month findings are subject to an unqualified statutory deadline. With regard to 90-day findings, the decision in *Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166 (9th Cir. 2002), held that the Act requires that 90-day petition findings (*i.e.*, the initial finding as to whether a petition contains substantial information, which the Act directs us to make within 90 days of receipt of a petition, if practicable) must be made no later than 12 months after receipt of the petition, regardless of whether it is practicable to do so. Thus, all 90-day findings are arguably subject to an absolute statutory deadline. As a result of this ruling, which was contrary to our previous interpretation of section 4(b)(3) of the Act, we have been working to issue petition findings on most of the outstanding petitions for those species that we have not previously determined to warrant candidate status.

Some petition findings are "complete" actions. This includes 12-month petition findings in which we determine that listing was not warranted and 90-day petition findings in which we determine that the petition did not present substantial information. In these cases, our listing work is complete.

In FY 2005, we funded work on and published petition findings for the following 10 species: Pygmy rabbit (not-substantial 90-day finding) (70 FR 29253; May 20, 2005), California spotted owl (substantial 90-day finding) (70 FR 35607; June 21, 2005), boreal toad (not-warranted 12-month finding) (70 FR 56880; September 29, 2005), headwater chub and Lower Colorado River Basin population of the roundtail chub (substantial 90-day finding) (70 FR 39981; July 12, 2005), American eel (substantial 90-day finding) (70 FR 38849; July 6, 2005), 3 springsnails (Jackson Lake, Harney Lake, and Columbia) (substantial 90-day finding) (70 FR 20515; April 20, 2005), and *Dalea tentaculoides* (Gentry indigo bush) (not-warranted 12-month finding) (70 FR 56426; September 27, 2005). All 12-month findings have absolute statutory deadlines. Because of *Badgley*, all 90-day findings arguably also have absolute statutory deadlines. In addition, the work on all these species, with the following exception, was in response to court orders or court-approved settlement agreements. The American eel was the highest priority listing action for the Northeast Region.

The Northeast Region generally has not faced the relatively heavy Listing Program workload experienced by several other Regions, and consequently was able to use their limited Regional office capability funding in FY 2005 to support the completion of this petition finding. We could not have utilized this capability funding to complete listing actions in other Regions without eliminating the ability of this Region to monitor the status of candidate species and address any emergency situations that might arise.

The allocated funds also supported work on petition findings that were not completed in FY 2005 for the following 34 species (we worked on these petition findings pursuant to a court order, a court-approved settlement agreement, or to meet statutory deadlines; those marked with a “+” we worked on pursuant to a court order/court-approved settlement agreement, the others (unmarked) we worked on to meet statutory deadlines): Yellowstone population of buffalo (90-day finding), New England cottontail (warranted but precluded 12-month finding—published as part of this CNOR), Douglas County subspecies of northern pocket gopher+ (90-day finding), Anacapa deer mouse (90-day finding), American dipper+ (90-day finding), long-tailed duck+ (90-day finding), red knot (90-day finding), yellow-billed loon+ (90-day finding), southeastern snowy plover and wintering population of piping plover (90-day finding), cerulean warbler (12-month finding), Mexican garter snake+ (90-day finding), northern water snake (90-day finding), Berry Cave salamander (90-day finding), American eel (12-month finding), kokanee (90-day finding), longnose sucker (90-day finding), California golden trout (12-month finding), Yellowstone cutthroat trout+ (12-month finding) (we published the opening of a comment period for a 12-month finding for this species on September 1, 2005; 70 FR 52059), Black Hills (Cooper’s Rocky) mountainsnail+ (90-day finding), Uinta mountainsnail+ (90-day finding), *Cicurina cueva*+ (12-month finding) (we published two notices to reopen the comment period (on May 23, 2005, and August 16, 2005) (70 FR 29471 and 70 FR 48093) in order to provide the public an opportunity to consider and comment on new information we received after publishing the 90-day finding for this species), 4 subspecies of *Pseudocapacodes enus* (12-month finding), Andrew’s dune scarab beetle (90-day finding), 3 invertebrates (*Stygobromus kenki*, *Stygobromus phreaticus*, and *Acanthocyclops*

columbiensis—90-day finding), *Castanea ozarkensis* (Ozark chinquapin) (90-day finding), *Gilia* (=Alicellia) *tenuis* (Mussentuchit gilia)+ (90-day finding), *Sidalcea hendersonii* (Henderson’s checkermallow) (90-day finding), *Usnea longissima* (90-day finding).

In addition, we completed some initial and some resubmitted petition findings required by statute for a total of 260 petitioned species that are candidates. We published these findings on May 11, 2005, as part of the previous Candidate Notice of Review (CNOR) (70 FR 24870). Since we had identified the majority of these species as candidates prior to receiving a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program (a separate budget item within the Endangered Species Program).

Our anticipated progress in FY 2006 includes work in the following categories: (1) Work toward preparation and publication of final listing actions for 15 species; (2) work toward preparation and publication of proposed listing actions for 6 species; and (3) work on petition findings for 72 species that are not candidate species (we made or are making these petition findings pursuant to a court order, a court-approved settlement agreement, or to meet statutory deadlines), initial petition findings for 2 species that are also included in this notice as candidate species, resubmitted petition findings for 245 candidate and 5 listed species that were petitioned prior to the last CNOR, and revised 12-month petition findings for 10 candidate species that are we removing from candidate status through this notice. Specific information regarding each of these categories for FY 2006 is provided below. We note also that Regions will continue to monitor the status of candidates and prepare emergency listing packages as needed.

FY 2006 (1) We funded work on the final listing determinations for the following species: Queen Charlotte goshawk (remand of our previous listing determination), Gila chub (70 FR 66663; November 2, 2005, LPN=2), 12 species of picture-wing flies from Hawaii (71 FR 26835; May 9, 2006) (prior to publishing the final rule, we published a notice to reopen the comment period on the proposed listing rule; 70 FR 57851; October 4, 2005), and *Penstemon grahamii* (Graham’s beardtongue) (work not yet completed). These final listing determinations were in response to court orders or court-approved settlement agreements. Additionally, since the Gila chub, 12 species of

picture-wing flies, and Graham’s beardtongue were proposed for listing, a final listing determination is subject to an absolute statutory deadline.

(2) We funded listing determinations for flat-tailed horned lizard (remand of our withdrawal of a proposed rule to list) (we published a withdrawal of the proposed rule on June 28, 2006; 71 FR 36745)(we also had published notices to reopen the comment period on our reinstated proposed rule on March 2 and again on April 21, 2006; 71 FR 10631 and 71 FR 20637), fluvial Arctic grayling (distinct population segment of the Upper Missouri River) (LPN=3) (the work on this species was also in response to a court-approved settlement agreement), Cowhead Lake tui chub (reproposal), and *Penstemon grahamii* (Graham’s beardtongue) (71 FR 3157; January 19, 2006). We also funded work on proposed listing proposals for the following 5 high-priority candidate species for which work was not completed in FY 2006 prior to the publication of this CNOR: Rough hornsnail (LPN=2), black mudalia (LPN=2), Georgia pigtoe (LPN=2), interrupted rocksnail (LPN=2), *Astelia waialealae* (LPN=2), *Cyrtandra kaulantha* (LPN=2), and *Phyllostegia hispida* (LPN=2).

(3) We funded work on and published petition findings for the following species (listing actions for species marked with a “+” are per court order/court-approved settlement agreement in addition to having a statutory deadline): Gunnison’s prairie dog+ (not-substantial 90-day finding) (71 FR 6241; February 7, 2006); Douglas County subspecies of the northern pocket gopher+ (not-substantial 90-day finding) (71 FR 7715; February 14, 2006); polar bear (substantial 90-day finding) (71 FR 6745; January 9, 2006); Black Hills, South Dakota, population of the American dipper+ (not-substantial 90-day finding) (71 FR 4341; January 26, 2006); Florida scrub-jay+ (not-substantial 90-day petition findings on 2 petitions to reclassify as endangered) (71 FR 4092; January 25, 2006); Gunnison sage-grouse+ (not-warranted 12-month finding) (71 FR 19953; April 18, 2006); California spotted owl+ (not warranted 12-month finding) (71 FR 298896; May 24, 2006) (we also published a notice to reopen the comment period on the 90-day petition on October 14, 2005; 70 FR 60051); northern Mexican gartersnake+ (substantial 90-day finding) (71 FR 315; January 4, 2006); Siskiyou Mountains and Scotts Bar salamanders+ (not-substantial 90-day finding) (71 FR 23886; April 25, 2006); Distinct Population Segment of the roundtail

chub in the Lower Colorado River Basin and the Headwater chub* (not-warranted and warranted 12-month findings) (71 FR 26007; May 3, 2006), Yellowstone cutthroat trout* (not-warranted 12-month finding) (71 FR 8818; February 21, 2006); Black Hills (Cooper's Rocky) mountainsnail* (not-substantial 90-day finding) (71 FR 9988; February 28, 2006), Uinta mountainsnail* (not-substantial 90-day finding) (70 FR 69303; November 15, 2005); Greater Adams cave beetle and Lesser Adams cave beetle (not-warranted 12-month finding) (70 FR 72973; December 8, 2005); Casey's June beetle (substantial 90-day finding) (71 FR 44960; August 8, 2006); Andrews' Dune scarab beetle (not-substantial 90-day finding) (71 FR 26444 May 5, 2006); island marble butterfly* (substantial 90-day finding) (71 FR 7497; February 13, 2006); Hermes copper butterfly (not-substantial 90-day finding) (71 FR 44966; August 8, 2006); Sand Mountain blue butterfly (substantial 90-day finding) (FR 71 44988; August 8, 2006); Thorne's hairstreak butterfly (not-substantial 90-day finding) (71 FR 44980; August 8, 2006); *Cicurina cuevata** (not-warranted 12-month finding) (70 FR 75071; December 19, 2005); 16 insect species from Algodones Dunes (not-substantial 90-day finding) (71 FR 47765; August 18, 2006); *Agave eggersiana* and *Solanum conocarpum** (not-warranted 12-month finding) (71 FR 11367; March 7, 2006); *Gilia* (= *Aliciella*) *tenuis** (Mussentuchit *gilia*) (not-substantial 90-day finding) (71 FR 4337; January 26, 2006); and *Sidalcea hendersonii* (Henderson's checkermallow—not-substantial 90-day finding) (71 FR 8252; February 16, 2006). We funded work on statutorily-required petition findings for the following species (not yet completed so not yet published): Polar bear (12-month finding) (we reopened the comment period on the status review for the 12-month petition finding on May 17, 2006; 71 FR 28653), Utah prairie dog (90-day finding on reclassification to endangered), black-footed albatross (90-day finding), tricolored blackbird (90-day finding), long-tailed duck* (90-day finding), southwestern population of bald eagle (90-day finding), Columbian sharp-tailed grouse (90-day finding), yellow-billed loon* (90-day finding), Mono Basin population of greater sage-grouse (90-day finding), southeastern snowy plover and wintering population of piping plover (12-month finding), cerulean warbler (12-month finding), northern Mexican garter snake* (12-month finding), northern water snake (12-month finding), Tucson shovel-

nosed snake (90-day finding), Florida population of gopher tortoise (90-day finding), Berry Cave salamander (12-month finding), Jollyville plateau salamander (90-day finding), American eel (12-month finding), San Felipe gambusia (90-day finding), longnose sucker (12-month finding), 3 springsnails (Jackson Lake, Harney Lake, and Columbia) (12-month finding), 3 invertebrates (*Stygobromus kenki*, *Stygobromus phreaticus*, and *Acanthocyclops columbiensis*) (12-month finding), island marble butterfly* (12-month finding), Mt. Charleston blue butterfly (90-day finding), *Astragalus anserinus* (Goose Creek milkvetch) (90-day finding), *Astragalus debequaeus* (DeBeque milkvetch) (90-day finding), *Castanea ozarkensis* (Ozark chinquapin) (90-day finding), *Sclerocactus brevispinus* (Pariette cactus) (90-day finding). We funded work on statutorily-required initial 12-month petition findings for the New England cottontail (substantial 90-day finding was published on June 30, 2004) and red knot (we also made the statutorily-required 90-day finding through this CNOR), which are being published as part of this CNOR (warranted but precluded findings). We also funded work on resubmitted petitions findings for 245 candidate species and 5 listed species (species petitioned prior to the last CNOR). Note, we have not updated our resubmitted petition findings for the Columbia Basin population of the greater sage-grouse or for the Missouri River population of fluvial Arctic grayling in this notice as we are considering new information and will update our findings at a later date. As explained above, these resubmitted petition findings are required by statute and findings for these 245 candidates and 5 listed species are being published as part of this CNOR. We also funded revised 12-month petition findings for 10 candidate species that we are removing from candidate status, which are being published as part of this CNOR (see *Summary of Candidate Removals*). We are also funding work on the next annual review of those resubmitted petition findings, which will be published as part of the next CNOR. Because the majority of these species were already candidate species prior to our receipt of a petition to list them, we had already assessed their status using funds from our Candidate Conservation Program. We also continue to monitor the status of these species through our Candidate Conservation Program. The cost of updating the species assessment forms and publishing the joint publication of the

CNOR and resubmitted petition findings is shared between the Listing Program and the Candidate Conservation Program.

As with our “precluded” finding, “expeditious progress” is a function of the resources that are available and the competing demands for those funds. As discussed above, the funds in the Listing Program that would be otherwise available for adding other qualified species to the Lists in FY 2005 and FY 2006 have been spent or must be spent on complying with court orders and court-approved settlement agreements to make petition findings, court orders and court-approved settlement agreements to make final listing determinations for other species, meeting statutory deadlines for petition findings or listing determinations, a few high-priority Service-initiated listing determinations, essential litigation support, and administrative and management tasks. We note that we are not discussing specific actions we have taken on progress towards removing species from the lists of threatened or endangered species in this notice since that work is conducted with appropriations to our Recovery program, a separately-budgeted component of the Endangered Species Program. However, we do note that in FY 2005 we delisted one species (*Helianthus eggertii* (Eggert's sunflower); 70 FR 48482; August 18, 2005) and, to date in FY2006, we have delisted two species (the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl; 71 FR 19452; April 14, 2006; and, *Agave arizonica* (Arizona agave); 71 FR 35195; June 19, 2006).

The majority of the money to add qualified species to the list is consumed in complying with court orders or court-approved settlement agreements requiring petition findings or listing determinations, and essential litigation-related, administrative, and program management functions related to these findings and determinations (including preparing and allocating budgets, responding to Congressional and public inquiries, public outreach, gathering and assessing the scientific information used as the basis for our listing decisions, writing the document, and reviewing those listing recommendations made by our Field and Regional Office staff). Therefore, 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.

Although we have not been able to resolve the listing status of many of the candidates, several programs in the Service contribute to the conservation of these species. In particular, we have a separate budgeted program, the Candidate Conservation program, which focuses on providing technical expertise for developing conservation strategies and agreements to guide voluntary on-the-ground conservation work for candidate and other at-risk species. The main goal of this program is to address the threats facing candidate species. If sufficiently successful, this eliminates the need to list them, allowing us to remove them from the candidate list. Through this program, we work with our partners (other Federal agencies, State agencies, Tribes, private landowners, and private conservation organizations) to address the threats to candidate species and other species at-risk. We are actively engaged in the conservation of these species and have over 115 voluntary conservation agreements that are being implemented for 190 species covering 4.8 million acres of habitat. For example, we are currently implementing a Candidate Conservation Agreement for the Louisiana pine snake, a candidate species. This agreement between the Fish and Wildlife Service, U.S. Forest Service, U.S. Department of Defense, Texas Parks and Wildlife Department, and Louisiana Department of Wildlife and Fisheries was completed in 2003 and is designed to identify and establish management for the Louisiana pine snake on Federal lands in Texas and Louisiana. The agreement provides a means for all the partnering agencies to work cooperatively on projects that avoid and minimize impacts to the snake. We also have provided funds from the Endangered Species Private Landowner Incentive Program and Private Stewardship Grants to a private landowner for habitat restoration and prescribed burning at Louisiana pine snake sites on their property. Several other Service programs (e.g. Fisheries, Partners for Fish and Wildlife, Refuge Wildlife and Habitat Management, and Federal Assistance) contribute to candidate conservation.

Through sustained implementation of strategically designed conservation efforts, we are actively working to conserve many candidate species. In some instances, this culminates in making listing unnecessary. In the past two years, for example, we have

obviated the need to list six species through conservation efforts, including four candidate species: The Greater and Lesser Adams Cave beetles, Camp Shelby burrowing crayfish, and Holsinger's cave beetle.

Findings for Petitioned Candidate Species

For our revised 12-month petition findings for species we are removing from candidate status, see summaries above under "Summary of Candidate Removals."

Mammals

Pacific Sheath-tailed Bat, American Samoa DPS (*Emballonura semicaudata semicaudata*)—The following summary is based on information contained in our files. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the CNMI), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined drastically in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis*, endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)); *E. s. sulcata*, occurring in Chuuk and Pohnpei; *E. s. palauensis*, found in Palau; and *E. s. semicaudata*, occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment form addresses the distinct population segment of *E. s. semicaudata* that occurs in American Samoa. *E. s. semicaudata* historically occurred in American and Independent Samoa, Tonga, Fiji, and Vanuatu. It is extant in Fiji and Tonga, but may be extirpated from Vanuatu and Independent Samoa.

Current threats to this subspecies include habitat loss, predation by introduced species, small population size, and disturbance to roosting caves. The greatest threats at this time are likely habitat loss and degradation, the small numbers of bats detected in the past two decades, and tropical storms. Habitat loss and degradation and predation by nonnative species are believed to have been occurring for

several decades. The Listing Priority Number for *E. s. semicaudata* remains at 3 because the magnitude of the threats is high, the threats are imminent, and the taxon in question is a population of a subspecies.

Pacific Sheath-tailed Bat (*Emballonura semicaudata rotensis*), Guam and the Commonwealth of the Northern Mariana Islands—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This small bat is a member of the Emballonuridae, an Old World bat family that has an extensive distribution, primarily in the tropics. The Pacific sheath-tailed bat was once common and widespread in Polynesia and Micronesia and it is the only insectivorous bat recorded from a large part of this area. The species as a whole (*E. semicaudata*) occurred on several of the Caroline Islands (Palau, Chuuk, and Pohnpei), Samoa (Independent and American), the Mariana Islands (Guam and the CNMI), Tonga, Fiji, and Vanuatu. While populations appear to be healthy in some locations, mainly in the Caroline Islands, they have declined drastically in other areas, including Independent and American Samoa, the Mariana Islands, Fiji, and possibly Tonga. Scientists recognize four subspecies: *E. s. rotensis*, endemic to the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands (CNMI)); *E. s. sulcata*, occurring in Chuuk and Pohnpei; *E. s. palauensis*, found in Palau; and *E. s. semicaudata*, occurring in American and Independent Samoa, Tonga, Fiji, and Vanuatu. This candidate assessment form addresses the Mariana Islands subspecies. *E. s. rotensis* is historically known from the Mariana Islands and formerly occurred on Guam and in the CNMI on Rota, Aguiguan, Tinian (known from prehistoric records only), Saipan, and possibly Anatahan and Maug. Currently, *E. s. rotensis* appears to be extirpated from all but one island in the Mariana archipelago. The single remaining population of this subspecies occurs on Aguiguan, CNMI.

Threats to this subspecies have not changed over the past year. The primary threats to the subspecies include predation by nonnative species, habitat loss and degradation, small population size, occurrence on one small island, and disturbance to roosting caves. Habitat loss and degradation (through various means, but mainly by feral ungulates at present) and predation by nonnative species are believed to be occurring now, and likely have been occurring for several decades on

Aguiguan and are, therefore, affecting the entire remaining population of *E. s. rotensis*. The subspecies may be near the point where stochastic events, such as typhoons, are increasingly likely to affect its continued survival. The disappearance of the remaining population on Aguiguan would result in the extinction of the subspecies. In addition, scientists believe that a more complete genetic examination of the subspecies may result in its elevation to a distinct species. The Listing Priority Number for *E. s. rotensis* remains at 3 because the magnitude of the threats is high, the threats are imminent, and the taxon in question is a subspecies.

Cottontail, New England (*Sylvilagus transitionalis*)—See above in “Summary of New Candidates.” The above summary is based on information in our file and in the petition dated August 30, 2000.

Fisher, West Coast DPS (*Martes pennanti*)—The following summary is based on information in our files and in the Service’s initial warranted-but-precluded finding published in the **Federal Register** on April 8, 2004 (68 FR 18770). The fisher is a carnivore in the family Mustelidae and is the largest member of the genus *Martes*. Historically the West Coast population of the fisher extended south from British Columbia into western Washington and Oregon, and in the North Coast Ranges, Klamath-Siskiyou Mountains and Sierra Nevada in California. The fisher is believed to be extirpated or reduced to scattered individuals from the lower mainland of British Columbia through Washington and in the central and northern Sierra Nevada range in California. Native populations of fisher currently occur in the North Coast Ranges of California, the Klamath-Siskiyou Mountains of northern California and southern Oregon, and in isolated populations occurring in the southern Sierra Nevada in California. Descendants of a fisher reintroduction effort also occur in the southern Cascade range in Oregon. There is a lack of precise empirical data on West Coast DPS fisher numbers. However, there is a lack of detections over much of the fisher’s historic range, even with standardized survey and monitoring efforts in California, Oregon and Washington. There is also a high degree of genetic relatedness within some populations, and populations of native fisher in California are separated by four times the species’ maximum dispersal distance. The above listed factors all indicate that the likely extant fisher populations are small and isolated from one another.

Major threats that fragment or remove key elements of fisher habitat include various forest vegetation management practices such as timber harvest and fuels reduction treatments. Other potential major threats include: Stand-replacing fire, Sudden Oak Death Phytophthora, urban and rural development, recreation development, and highways. Major threats to fisher that lead to direct mortality and injury to fisher include; collisions with vehicles, predation, and viral borne diseases such as rabies, parvovirus, canine distemper and *Anaplasma phagocytophilum*. Existing regulatory mechanisms on Federal, State and private lands affect key elements of fisher habitat and do not provide sufficient certainty that conservation efforts will be effective or will be implemented. The magnitude of threats is high as they occur across the range of the DPS resulting in a negative impact on fisher distribution and abundance. However, the threats are non-imminent as the greatest long-term risks to the fisher in its west coast range are the subsequent ramifications of the isolation small populations, and the three remaining areas containing fisher populations appear to be stable or not rapidly declining based on recent survey and monitoring efforts. We assigned this DPS a listing priority number of 6 due to nonimminent threats of a high magnitude.

Mazama pocket gopher (*Thomomys mazama* (ssp. *couchi*, *glacialis*, *louiei*, *melanops*, *pugetensis*, *tacomensis*, *tumuli*, *yelmensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received December 11, 2002. These eight subspecies of pocket gopher are associated with glacial outwash prairies in western Washington. Of these eight subspecies, six are likely still extant (*couchi*, *glacialis*, *melanops*, *pugetensis*, *tumuli*, and *yelmensis*). Few of these glacial outwash prairies remain in Washington today. Historically, such prairies were only patchily distributed. Now, residential and commercial development, fire regime alteration, and ingrowth of woody vegetation have further reduced their numbers. In addition, development in or adjacent to these prairies has likely increased predation on Mazama pocket gophers by dogs and cats.

The magnitude of threat is high for these subspecies due to their patchy and isolated distribution, location in habitats desirable for residential and commercial development, threat of invasive plants, and limited dispersal capability of the species. Where human

development occurs in proximity to Mazama pocket gophers, predation by domestic pets is an additional threat to the species. The immediacy of threat is imminent. Two of the subspecies (*T. m. louiei* and *T. m. tacomensis*) are likely extinct. Gravel pits threaten persistence of one of the remaining subspecies (Roy Prairie), and the populations of two other subspecies (*T. m. couchi* and *T. m. yelmensis*) are located on airports with planned development. Yelm pocket gophers (*T. m. yelmensis*) are also threatened by other proposed development on Fort Lewis. Thus we assign a listing priority number of 3 to these subspecies.

Palm Springs round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The range for the Palm Springs round-tailed ground squirrel is generally described as the Coachella Valley region that roughly spans between San Geronio Pass and the Salton Sea. A recent study demonstrated that the primary habitat for the Palm Springs round-tailed ground squirrel in the Coachella Valley is the mesquite sand dune/hummock community. They are also found in other low flat sandy areas or sand dunes containing various types of desert shrub communities, including creosote and *Atriplex* ssp. Squirrels are also occasionally found in fine sand accumulated along banks, roads, and among shrubs; as well as areas with more coarse, hard-packed sand and gravel.

Rapid growth of desert cities such as Palm Springs and Palm Desert has raised concerns about the conservation of a squirrel restricted to the Coachella Valley. Urban development and drops in the groundwater table have eliminated all but approximately 10 percent of *Prosopis glandulosa* var. *torreyana* (mesquite) in the Valley; the plant with which this squirrel is strongly associated with. The mesquite sand dune/hummock community is also threatened by the decreasing water table in the Coachella Valley. Mesquite is phreatophytic, meaning that its roots are adapted to grow deep into the water table. Increasing water consumption associated with growing urbanization is lowering the water table below the level at which mesquite roots can reach. No formal protection is currently available to this species in the majority of its range. The California Environmental Quality Act affords some indirect protection to *S. tereticaudus chlorus* by addressing impacts to other protected species, most notably, the federally

threatened Coachella Valley fringe-toed lizard (*Uma inornata*). In 1993, the Coachella Valley Association of Governments initiated the Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP) for the Coachella Valley to address rare species including *S. tereticaudus chlorus*. However, this planning effort remains in preparation and has not yet been approved or implemented. Further, the Coachella Valley MSHCP is proposing to protect only 136 ha (336 acres) of mesquite hummocks, which is only 35 percent of the remaining mesquite hummocks left within the planning area of the Coachella Valley MSHCP. Mesquite hummocks near faults in the Upper valley are not directly addressed by the Coachella Valley Water District Water Management Plan, and are threatened by the planned and proposed groundwater pumping for the rapidly growing cities of Desert Hot Springs, Cathedral City, and Indio.

We assigned the Palm Springs ground squirrel subspecies a listing priority of 3 because the threats are ongoing and are of a high magnitude. This round-tailed ground squirrel has lost approximately 90 percent of its preferred habitat, mesquite sand dune/hummocks and suitable habitat in the Coachella Valley has a high rate of development.

Southern Idaho ground squirrel (*Spermophilus brunneus endemicus*)—The following summary is based on information in our files. The southern Idaho ground squirrel is endemic to four counties in southwest Idaho; its total known range is approximately 209,628 hectares (518,000 acres). Threats to southern Idaho ground squirrels include habitat deterioration and fragmentation, direct killing from shooting, trapping or poisoning, predation, competition with Columbian ground squirrels, and inadequacy of existing regulatory mechanisms. Habitat deterioration and fragmentation appear to be the primary threats to the species. Nonnative annuals now dominate much of this species' range, have changed the species composition of vegetation, and have altered the fire regime in a perpetuating cycle throughout much of the range. Habitat deterioration, destruction, and fragmentation are thought to have resulted in the current patchy distribution of southern Idaho ground squirrels. Based on recent genetic work, southern Idaho ground squirrels are subject to more genetic drift and inbreeding than expected. Cost-effective methods of habitat restoration are currently unknown for southern Idaho ground squirrels. Two Candidate Conservation Agreements with

Assurances (CCAAs) have been completed for this species, both of which allow agency access for population and habitat surveys and habitat enhancement/restoration work. The magnitude of threat is low to moderate for this species due to the two CCAAs that have been completed, and ongoing survey and habitat enhancement/restoration efforts conducted by other agencies. The immediacy of the threat is imminent for this species due to the prevalence and dominance of nonnative vegetation and the current patchy distribution of the species. Thus, we assign a listing priority number of 9 to this species.

Washington ground squirrel (*Spermophilus washingtoni*)—The following summary is based on information contained in our files and the petition received on March 2, 2000. The Washington ground squirrel is one of the smallest members of the *subgenus Spermophilus* and is found within the shrub-steppe habitat of the Columbia Basin ecosystem of Oregon and Washington. The soil types used by the squirrels are distributed sporadically within the species' range, and have been significantly fragmented by human development in the Columbia Basin. Approximately two-thirds of the Washington ground squirrel's total historic range has been converted to agriculture. When agriculture occurs, little evidence of ground squirrel use has been documented, and reports indicate that agriculture (along with other development) continues to eliminate Washington ground squirrel habitat in portions of its range.

Most remaining habitat is threatened by the occurrence and spread of nonnative species, particularly cheatgrass. Nonnative plants threaten squirrels by out-competing native plants, thereby altering available cover, food quantity and quality, and altering fire intervals. The ultimate effects of cheatgrass invasion on this species are not fully understood. While Washington ground squirrels eat cheatgrass, it is not likely a viable long-term dietary option since cheatgrass populations are unstable during drought and contain large amounts of indigestible silica which may make it a poor nutrition source. Fire recurrence intervals typically switch from 20–100 years in sagebrush-grassland ecosystems to 3–5 years in cheatgrass-dominant sites. Increased fire occurrence reduces native bunchgrass and shrub cover (by competition or preventing the re-establishment of shrub cover) and allows exotic species to further out-compete native species.

The most contiguous, least-disturbed expanse of suitable Washington ground squirrel habitat within the species' range occurs on the Boeing site and Naval Weapons Training Facility near Boardman, Oregon. In Washington, the largest expanse of known suitable habitat occurs on State and Federal land. In Washington, recent declines in some colonies have been precipitous for unknown (possibly weather-related) reasons. For example, in 2001 entire colonies of ground squirrels were no longer occupied on the Columbia National Wildlife Refuge and Seep Lakes Management Area near Othello, Washington, despite protection for species in this area. Recent surveys have located additional sites in Washington and Oregon. However, detections are primarily located in the three disjunct metapopulations, indicating fragmentation and increased vulnerability to natural and man-made factors is still a widespread threat.

In Oregon, some threats are addressed by the State listing of this species, and by the recently signed Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (Agreement). Participants in the 25-year agreement include Threemile Canyon Farms, The Nature Conservancy, Portland General Electric (PGE), the Oregon Department of Fish and Wildlife (ODFW), and the Service. Parties will implement habitat management, operational modifications, and conservation measures for four non-listed species, including the Washington ground squirrel. Under this agreement, 22,600 ac (9,145 ha) of the Boeing tract was placed in a permanent ODFW conservation easement (Boardman Conservation Area) and 888 ac (356 ha) of PGE property will be managed as part of the BCA for the duration of the Agreement.

Current threats to the long-term persistence of this species include the following: Historic and current habitat loss from the conversion of habitat to agriculture and other development, habitat fragmentation, limited dispersal corridors, recreational shooting, genetic isolation and drift, spread of nonnative species, and predation. Potential threats include disease, drought, and possible competition with related ground squirrel species in disturbed habitat at the periphery of their range. While there are a variety of conservation actions and research activities, they do not address all of the threats throughout the species' range. Due to the widespread current and potential threats to the species we conclude the magnitude of threats remains high. Because the Agreement addressed the imminent loss of a large

portion of habitat to agriculture, and because there are no other known, large-scale efforts to convert suitable habitat to agriculture, overall the threats are nonimminent. We, therefore, kept the listing priority number at 5.

Birds

Spotless crane, American Samoa DPS (*Porzana tabuensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *P. tabuensis* is a small, dark, cryptic rail found in wetlands and rank scrub or forest in the Philippines, Australia, Fiji, Tonga, Society Islands, Marquesas, Independent Samoa, and American Samoa (Ofu, Tau). The genus *Porzana* is widespread in the Pacific, where it is represented by numerous island-endemic and flightless species (many of which are extinct as a result of anthropogenic disturbances) as well as several more cosmopolitan species, including *P. tabuensis*. No subspecies of *P. tabuensis* are recognized. The American Samoa population is the only population of spotless cranes under U.S. jurisdiction. The available information indicates that distinct populations of the spotless crane, a species not noted for long-distance dispersal, are definable. The population of spotless cranes in American Samoa is discrete in relation to the remainder of the species as a whole, which is distributed in widely separated locations. Although the spotless crane (and other rails) have dispersed widely in the Pacific, island rails have tended to reduce or lose their power of flight over evolutionary time and so become isolated (and vulnerable to terrestrial predators such as rats). The population of this species in American Samoa is therefore distinct based on geographic and distributional isolation from spotless crane populations on other islands in the oceanic Pacific, the Philippines, and Australia. The American Samoa population of the spotless crane links the Central and Eastern Pacific portions of the species' range. The loss of this population could cause an increase of roughly 500 miles in the disjunction between the central and eastern Polynesian portions of the spotless crane's range, and could result in the isolation of the Marquesas and Society Islands populations by further limiting the potential for even rare genetic exchange. Based on the discreteness and significance of the American Samoa population of the spotless crane, we consider this population to be a distinct vertebrate population segment which warrants review for listing under the Act.

Threats to this species have not changed over the past year. The population in American Samoa is threatened by small population size, limited distribution, predation by nonnative mammals, continued development of wetland habitat, and natural catastrophes such as hurricanes. The co-occurrence of a known predator of ground-nesting birds, the Norway rat, and the only known population of the spotless crane under U.S. jurisdiction, along with the extremely restricted observed distribution and low numbers, indicate that the American Samoa distinct population segment of this species continues to merit status as a candidate for listing. Based on our assessment of existing information about the imminence and high magnitude of these threats, we assigned the spotless crane a listing priority number of 3.

Kauai creeper (*Oreomystis bairdi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Kauai creeper is a small, insectivorous forest bird that is found only on the Hawaiian island of Kauai. It occurs in mesic and wet montane forests at higher elevations on the Alakai Plateau. Surveys in 2000 showed that in the last 30 years the range of the Kauai creeper has decreased from 88 to 36 square kilometers (21,750 to 8,896 acres), that the species has disappeared from much of the periphery of its range, and that the estimated population has declined from $6,832 \pm 966$ to $1,472 \pm 680$ birds.

The creeper is primarily threatened by diseases carried by nonnative mosquitoes that occur over most or all of its range. Experimental evidence has shown that the malarial parasite does not develop in birds below 13° Celsius (C) (55° Fahrenheit (F)), and field studies have found that maximum malaria transmission occurs where mean ambient summer temperature is 17 °C (63 °F). There are no forested areas on Kauai where mean ambient temperature is below 13 °C (55 °F), meaning all areas are subject to malaria at least periodically. Mosquitoes have been found recently near the highest elevations on Kauai. The disappearance of the Kauai creeper from lowland habitats indicates the species has not evolved resistance to these diseases, and it is very unlikely that such evolution could occur rapidly enough to keep pace with expansion of mosquito populations. The creeper's habitat is being adversely affected by invasive nonnative plants and by the browsing and rooting of feral ungulates. Nonnative plants displace native plant

species required by the creeper, and ungulates destroy the forest understory and spread the seeds of nonnative plants. Efforts are underway to control nonnative plants in some areas, but over most of the species range there is no effective control of nonnative plants or feral ungulates. Based on the imminent threats of a high magnitude, we assigned this species a listing priority number of 2.

Yellow-billed cuckoo, western U.S. DPS (*Coccyzus americanus*)—The following summary is based on information contained in our files and the petition received on February 9, 1998. See also our 12-month petition finding published on July 25, 2001 (66 FR 38611). The yellow-billed cuckoo is a medium-sized bird of about 12 inches (30 centimeters) in length with a slender, long-tailed profile and a fairly stout and slightly down-curved bill. Plumage is grayish-brown above and white below, with rufous primary flight feathers with the tail feathers boldly patterned with black and white below. Western cuckoos breed in large blocks of riparian habitats (particularly woodlands with cottonwoods (*Populus fremontii*) and willows (*Salix* sp.)). Dense understory foliage appears to be an important factor in nest site selection, while cottonwood trees are an important foraging habitat in areas where the species has been studied in California. We consider the yellow-billed cuckoos that occur in the western U.S. a distinct population segment (DPS). The area for this DPS is west of the crest of the Rocky Mountains.

The threats currently facing the yellow-billed cuckoo include habitat loss, cattle grazing, and pesticide application. Principal causes of riparian habitat losses are conversion to agricultural and other uses, dams and river flow management, stream channelization and stabilization, and livestock grazing. Available breeding habitats for cuckoos have also been substantially reduced in area and quality by groundwater pumping and the replacement of native riparian habitats by invasive nonnative plants, particularly tamarisk. Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the western U.S. The effects include changes in plant community structure and species composition and in relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology. Livestock grazing in riparian habitats typically results in reduction of plant species diversity and density, especially of palatable broadleaf plants

like willows and cottonwood saplings, and is one of the most common causes of riparian degradation. In addition to destruction and degradation of riparian habitats, pesticides may affect cuckoo populations. In areas where riparian habitat borders agricultural lands, *e.g.*, in California's central valley, pesticide use may indirectly affect cuckoos by reducing prey numbers, or by poisoning nestlings if sprayed directly in areas where the birds are nesting. We retain a listing priority number of 3 for the yellow-billed cuckoo due to imminent threats of a high magnitude.

Friendly ground-dove, American Samoa DPS (*Gallicolumba stairi stairi*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Streaked horned lark (*Eremophila alpestris strigata*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on January 7, 2003.

Red knot (*Calidris canutus rufa*)—See above in “Summary of New Candidates.” The above summary is based on information in our files and in the petitions dated August 6, 2004, July 28, 2005, and August 2, 2005.

Kittlitz's murrelet (*Brachyramphus brevirostris*)—The following summary is based on information contained in our files and the petition received on May 9, 2001. Kittlitz's murrelet is a small diving seabird whose entire North American population, and most of the world's population, inhabits Alaskan coastal waters discontinuously from Point Lay south to northern portions of Southeast Alaska. Most recent population estimates (9,500–26,700 birds) indicate that it has the smallest population of any seabird considered a regular breeder in Alaska. This species appears to have undergone significant population declines in four of its core population centers—Prince William Sound, Malaspina Forelands, Glacier Bay, and Kenai Fjords. As populations become smaller, they become increasingly vulnerable to events that may result in local extirpation. Causes for the declines in populations are not well known, but we believe that glacial retreat and oceanic regime shifts are the most likely causes. Kittlitz's murrelets seem to prefer areas near stable or advancing tidewater glacier faces as these areas have higher primary productivity compared to siltier, less saline fjords with receding glaciers, but the ecological mechanisms linking

Kittlitz's murrelets to their preferred habitats remains a topic for further research. Other causes of decline may include: Habitat loss or degradation, increased adult and juvenile mortality, and low recruitment. Existing regulatory mechanisms appear inadequate to stop or reverse population declines or to reduce the threats to this species. Due to the nonimminent threats of high magnitude, we retained a listing priority number of 5 for this species.

Xantus's murrelet (*Synthliboramphus hypoleucus*)—The following summary is based on information contained in our files and the petition received on April 16, 2002. The Xantus's murrelet is a small seabird in the Alcidae family that occurs along the west coast of North America in the U.S. and Mexico. The species has a very limited breeding distribution, only nesting on the Channel Islands in southern California and on islands off the west coast of Baja California, Mexico. Nesting populations in the U.S. and Mexico appear to have declined due to a wide variety of threats, with substantial declines evident at some of the largest nesting colonies and extirpations on three of the seven Mexican islands. Some identified threats include the possibility of oil spills, reductions in prey availability, introduced nonnative predators at several nesting colonies, chronic human disturbance, and artificial light pollution. A dramatic decline (up to 70 percent) from 1977 to 1991 was detected at the largest nesting colony in southern California, possibly due to high levels of predation on eggs by the endemic deer mouse (*Peromyscus maniculatus elusus*). Data on population trends from other islands are scarce, particularly on the Mexican nesting islands. Although substantial declines in the Xantus's murrelet population appear to have occurred over the last century, some of the largest threats are being addressed, and, to some degree, ameliorated in the U.S.. Declines and extirpations of Xantus's murrelets at several nesting colonies were thought to have been caused by nonnative predators such as rats (*Rattus* sp.) and feral cats (*Felis catus*), which have been removed from many of the islands where they once occurred. Most notably, in 2002, rats were eradicated from Anacapa Island in southern California, which has resulted in immediate improvements in reproductive success at that island.

The Service has been working with the State of California, National Park Service, and National Oceanographic and Atmospheric Administration (NOAA Fisheries) to address the threats of light pollution and human disturbance. Many nocturnal seabirds

are attracted to bright lights on commercial fishing vessels. Xantus's murrelets and other seabirds become exhausted by their continual attraction and fluttering near lights or collide with lighted vessels, the impact resulting in injury or death. Chicks have been known to become separated from their parents due to vessel lights, and this would have resulted in death of the chicks because they are dependent on their parents for survival. High-wattage lights on commercial market squid (*Loligo opalescens*) fishing vessels are used at night to attract squid to the surface of the water. These boats have been reported operating in shallow waters near Xantus's murrelet nesting colonies in the California Channel Islands, with several vessels often fishing simultaneously in the same area. Unusually high predation on Xantus's murrelets by Western Gulls and Barn Owls was reported at Santa Barbara Island in 1999, and was attributed to bright lights from the squid fishing that occurred directly offshore for much of the breeding season. To address this threat, the California Fish and Game Commission requires light shields and a limit of 30,000 watts per boat, made effective on May 31, 2000. The resulting effects are still unknown.

The recent proposal to build a liquid natural gas (LNG) facility 600 meters (1,969 feet) off Islas Los Coronados in Baja California, Mexico, is another threat to the species. This island contains one of the largest nesting populations of Xantus's murrelets in the world. The construction and operation of the proposed LNG facility at Islas Los Coronados could increase human disturbance to Xantus's murrelets. Potential sources of disturbance include: (1) Bright lights at night from the facility and visiting tanker vessels; (2) noise from the facility; (3) noise from helicopters visiting the facility; (4) ingress and egress of tanker vessels; and (5) other vessels transporting personnel and supplies. Due to the imminent threats of high magnitude, we assigned this species a listing priority number of 2.

Lesser prairie-chicken (*Tympanuchus pallidicinctus*)—The following summary is based on information contained in our files and the petition received on October 5, 1995. Additional information can be found in the 12-month finding published on June 7, 1998 (63 FR 31400). Biologists estimate that the occupied range has declined by 92 percent since the 1800s. The most serious threats to the lesser prairie-chicken are loss of habitat from conversion of native rangelands to introduced forages and cultivation,

cumulative habitat degradation caused by severe grazing, woody plant invasion of open prairies, fire suppression, herbicides, and habitat fragmentation caused by structural and transportation developments. Many of these threats may exacerbate the normal effects of periodic drought on lesser prairie-chicken populations. In many cases, the remaining suitable habitat has become fragmented by the spatial arrangement of these individual threats. We view current and continued habitat fragmentation to be a serious ongoing threat that facilitates the extinction process through several mechanisms: Remaining habitat patches may become smaller than necessary to meet the yearlong requirements of individuals and populations, necessary habitat heterogeneity may be lost to large areas of monoculture vegetation and/or homogeneous habitat structure, areas between habitat patches may harbor high levels of predators or brood parasites, and the probability of recolonization decreases as the distance between suitable habitat patches expands.

The Service is currently working to quantify the ongoing level of habitat fragmentation throughout the range of the species. Although Federal lands comprise only five percent of currently occupied habitat, these tracts are located in areas essential to population recovery and dispersal. As a result, the Service views habitat management considerations on Federal lands within current and historic range as very important. Due to their potential to affect the species, current planning efforts for grazing and wind, oil, and gas development on public lands is of particular relevance to the future listing status of the species.

Based on all currently available information, we find that ongoing threats to the lesser prairie-chicken, as outlined in the 12-month finding, remain unchanged and lesser prairie-chickens continue to warrant Federal listing as threatened. We have determined that the overall magnitude of threats to the lesser prairie-chicken throughout its range is moderate, and that the threats are ongoing and thus, imminent. Consequently, a listing priority number of 8 remains appropriate for the species.

Greater sage-grouse, Columbia Basin DPS (*Centrocercus urophasianus*)—We have not updated our finding with regard to the Columbia Basin DPS of the greater sage-grouse in this notice. In the May 4, 2004, notice, we found that a listing proposal for this DPS was still warranted but precluded by higher priorities, and maintained its listing

priority number of 6. The following summary is based on information in our files and a petition, dated May 14, 1999, requesting the listing of the Washington population of western sage grouse (*C. u. phaios*). Currently, the American Ornithologists' Union recognizes two subspecies of greater sage-grouse. Compared to the eastern subspecies (*C. u. urophasianus*), the western subspecies has reduced white markings and darker grayish-brown feathering, resulting in a more dusky overall appearance. Pursuant to Service policy (61 FR 4722), on May 7, 2001, we concluded that listing the Columbia Basin DPS of western sage grouse, which was historically found in northern Oregon and central Washington, was warranted, but precluded by higher priority listing actions (66 FR 22984). The Service subsequently received two petitions requesting the listing of the entire ranges of the nominal western and eastern subspecies of greater sage-grouse, dated January 24 and July 3, 2002, respectively. However, based on communications with recognized experts, disagreement as to the validity of these subspecies designations exists. When informed taxonomic opinion is not unanimous, the Service must evaluate the available information with regard to our section 4 listing responsibilities under the Endangered Species Act (USFWS 1992). We subsequently concluded that the subspecies designations for greater sage-grouse are inappropriate given current taxonomic standards (68 FR 6500 and 69 FR 933). In response to recent judicial direction (*Institute for Wildlife Protection v. Norton* (9th Cir. 2005, Unpublished opinion)), we are in the process of revisiting our current interpretation of the taxonomic status of the greater sage-grouse subspecies. We will publish an updated finding addressing the Columbia Basin DPS in the **Federal Register**, either in the next CNOR or in a separate notice, following our judicially-directed reassessment of the species' taxonomy.

Band-rumped storm-petrel, Hawaii DPS (*Oceanodroma castro*)—The following summary is based on information contained in our files and the petition received on May 8, 1989. No new information was provided in the second petition received on May 11, 2004. The band-rumped storm-petrel is a small seabird that is found in several areas of the subtropical Pacific and Atlantic Oceans. In the Pacific, there are three widely separated breeding populations—one in Japan, one in Hawaii, and one in the Galapagos.

Populations in Japan and the Galapagos are comparatively large and number in the thousands, while the Hawaiian birds represent a small, remnant population of possibly only a few hundred pairs. Band-rumped storm-petrels are most commonly found in close proximity to breeding islands. The three populations in the Pacific are separated by long distances across the ocean where birds are not found. Extensive at-sea surveys of the Pacific have revealed a broad gap in distribution of the band-rumped storm-petrel to the east and west of the Hawaiian Islands, indicating the distribution of birds in the central Pacific around Hawaii is disjunct from other nesting areas. The available information indicates that distinct populations of band-rumped storm-petrels are definable and that the Hawaiian population is distinct based on geographic and distributional isolation from other band-rumped storm-petrel populations in Japan, the Galapagos, and the Atlantic Ocean. A population also can be considered discrete if it is delimited by international boundaries across which exist differences in management control of the species. The Hawaiian population of the band-rumped storm-petrel is the only population within U.S. borders or under U.S. jurisdiction. Loss of the Hawaiian population would cause a significant gap in the distribution of the band-rumped storm-petrel in the Pacific, and could result in the complete isolation of the Galapagos and Japan populations without even occasional genetic exchanges.

The band-rumped storm-petrel probably was common on all of the main Hawaiian Islands when Polynesians arrived about 1,500 years ago, based on storm-petrel bones found in middens on the island of Hawaii and in excavation sites on Oahu and Molokai. Nesting colonies of this species in the Hawaiian Islands currently are restricted to remote cliffs on Kauai and Lehua Islet and high-elevation lava fields on Hawaii. Vocalizations of the species were heard in Haleakala Crater on Maui in 1992, but have not been detected there recently. The significant reduction in numbers and range of the band-rumped storm-petrel from prehistoric population levels is due primarily to predation by humans and nonnative predators introduced by humans, including the domestic cat (*Felis catus*), small Indian mongoose (*Herpestes auropunctatus*), common barn owl (*Tyto alba*), black rat (*R. rattus*), Polynesian rat (*Rattus exulans*), and Norway rat (*R. norvegicus*), which occur throughout the main Hawaiian

Islands, with the exception of the mongoose, which is not established on Kauai but may have an incipient population there. Attraction of fledglings to artificial lights and collisions with artificial structures such as communication towers and utility lines are also a threat. Erosion of nest sites caused by the actions of nonnative ungulates and feral rabbits is a threat in some locations. Efforts are underway in some areas to reduce light pollution and mitigate the threat of collisions, but there are no large-scale efforts to control nonnative predators in the Hawaiian Islands. Based on the imminent threats of a high magnitude, we assign this distinct population segment a listing priority number of 3.

Elfin woods warbler (*Dendroica angelae*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The elfin woods warbler is a small, entirely black and white warbler, endemic to Puerto Rico. This species was at first thought to occur only in the high-elevation dwarf or elfin forests, but it has since been found at lower elevations, including shade coffee plantations and secondary forests. *Dendroica angelae* builds a compact cup nest, usually close to the trunk and well hidden among the epiphytes of a small tree, and its breeding season extends from March to June. This species forages in the middle part of trees, gleaned insects from leaves in the outer portion of the tree crown. *Dendroica angelae* has been documented from four locations: Luquillo Mountains, Sierra de Cayey, and the Commonwealth forests of Maricao and Toro Negro. However, it has not been recorded again in Toro Negro and Cayey, following Hurricane Hugo in 1989. Although there is no estimate of total population of *D. angelae*, the latest estimate of 138 pairs for the Luquillo Mountains suggests that the total population may be less than 300 pairs.

Habitat destruction from expansion of public facilities within the forests, potential construction of additional telecommunication towers and their maintenance, disruption of breeding activities from pedestrians and high human use areas, switching from shade to sun coffee plantations, timber management practices, potential predators, and catastrophic natural events such as hurricanes and forest fires threaten this species. Although these threats are not imminent, because most of the range of *D. angelae* is within protected lands and there are no known projects or management activities planned that would result in mortality

of this species, the magnitude of threat to *D. angelae* is high, due to its restricted distribution and low population numbers. Therefore, we assign a listing priority number of 5 to this species.

Reptiles

Sand dune lizard (*Sceloporus arenicolus*)—The following summary is based on information contained in our files and in the petition received June 6, 2002. The sand dune lizard is endemic to a small area in southeastern New Mexico (Chaves, Eddy, Lea, and Roosevelt Counties) and adjacent west Texas (Andrews, Crane, Ward, and Winkler Counties). Within this area, the known occupied and potentially occupied habitat is only 1,697 square kilometers (655 square miles) in New Mexico and an area of unknown size in west Texas. The sand dune lizard's distribution is localized and fragmented (i.e., known populations are separated by vast areas of unoccupied habitat), and the species is restricted to sand dune blowouts associated with active sand dunes and shinnery oak (*Quercus harvardii*) and scattered sandsage (*Artemisia filifolia*) vegetation. Sand dune lizards are not found at sites lacking shinnery-oak dune habitat.

Extensive surveys within New Mexico, conducted in conjunction with a 5-year study, documented sand dune lizards at only half of the sites surveyed. Since February 2003, a Stakeholder Group has met to create a conservation strategy for the conservation of shinnery-oak habitat that offers a range of specific actions for the recovery of the lesser prairie-chicken and sand dune lizard and takes into account other uses of the land. The group has broad representation from the oil and gas and livestock industries, conservation/environmental interests, local governments, sportsmen/recreation, State and Federal agencies (New Mexico State Land Office, New Mexico Department of Agriculture, Natural Resources Conservation Service, Fish and Wildlife Service, and Bureau of Land Management), and independent technical advisors. The group completed its Conservation Strategy that outlines broad policies and plans for land management and a set of voluntary conservation efforts by stakeholders.

It is clear that shinnery-oak removal (e.g., by treating with the herbicide Tebuthiuron for livestock range improvements) results in dramatic reductions and extirpation of sand dune lizards. Scientists repeatedly confirmed the extirpation of sand dune lizards from areas with herbicide treatment to remove shinnery oak. In 1999, biologists

estimated that about 25 percent of the total sand-dune-lizard habitat in New Mexico had been eliminated in the previous 10 years. The population of sand dune lizards has also been affected by oil and gas field development. An estimated 50-percent decline in sand dune lizard populations can be expected in areas with approximately 25 to 30 oil and/or gas wells per section. The distribution of sand dune lizards is localized and fragmented, and this species is a habitat specialist. Therefore, impacts to its habitat will most likely greatly decrease populations. If current herbicide application continues and oil and gas development progresses as expected, the magnitude of threat to sand dune lizards will increase. Continued pressure to develop oil and gas resources in areas with sand dune lizards poses an imminent threat to the species. Therefore, we continue to assign this species a listing priority number of 2.

Eastern massasauga (*Sistrurus catenatus catenatus*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The eastern massasauga is one of three recognized subspecies of massasauga. It is a small, thick-bodied rattlesnake that occupies shallow wetlands and adjacent upland habitat in portions of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Wisconsin, and Ontario. Although the current range of *S. c. catenatus* resembles the subspecies' historical range, the geographic distribution has been restricted by the loss of the subspecies from much of the area within the boundaries of that range. Approximately 40 percent of the counties that were historically occupied by *S. c. catenatus* no longer support the subspecies. *S. c. catenatus* is currently considered imperiled in every State and province in which it occupies. Each State and Canadian province across the range of *S. c. catenatus* has lost more than 30 percent, and for the majority more than 50 percent, of their historical populations. Furthermore, less than 35 percent of the remaining populations are considered secure. Approximately 59 percent of the remaining *S. c. catenatus* populations occur wholly or in part on public land, and state-wide and/or site-specific Candidate Conservation Agreements with Assurances (CCAAs) are currently being developed for many of these areas in Iowa, Illinois, Michigan, Missouri, Ohio, and Wisconsin. Populations soon to be under CCAs and CCAAs have a high

likelihood of persisting and remaining viable. Other populations are likely to suffer additional losses in abundance and genetic diversity and some will likely be extirpated unless threats are removed in the near future. Therefore, the magnitude of threats from habitat modification, habitat succession, incompatible land management practices, illegal collection for the pet trade, and human persecution is moderate overall, with most imminent threats occurring to remaining populations on private lands. Due in large part to the numerous CCAAs currently being developed and implemented, we do not believe emergency listing is warranted and have kept the listing priority number at 9 for the eastern massasauga subspecies.

Black pine snake (*Pituophis melanoleucus lodingi*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Louisiana pine snake (*Pituophis ruthveni*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received on July 19, 2000.

Sonoyta mud turtle (*Kinosternon sonoriense longifemorale*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Sonoyta mud turtle occurs in a spring and pond at Quitobaquito Springs on Organ Pipe Cactus National Monument in Arizona, and in the Rio Sonoyta and Quitovac Spring of Sonora, Mexico. Loss and degradation of stream habitat from water diversion and groundwater pumping, along with its very limited distribution, is the primary threat to the Sonoyta mud turtle. Sonoyta mud turtles are highly aquatic and depend on permanent water for survival. The area of southwest Arizona and northern Sonora where the Sonoyta mud turtle occurs is one of the driest regions of the southwest. Due to continuing irrigated agriculture and development in the region, surface water in the Rio Sonoyta can be expected to dwindle further. This species may also be vulnerable to aerial spraying of pesticides on nearby agricultural fields. Due to imminent threats of a high magnitude, we are keeping the listing priority number of 3 for this subspecies.

Amphibians

Columbia spotted frog, Great Basin DPS (*Rana luteiventris*)—The following

summary is based on information contained in our files and the petition received on May 1, 1989. Currently, Columbia spotted frogs appear to be widely distributed throughout southwestern Idaho, eastern Oregon, and northeastern and central Nevada, but local populations within this entire general area appear to be small and isolated from each other. Recent work by researchers in Idaho and Nevada has documented the loss of historically known sites, reduced numbers of individuals within local populations, and declines in the reproduction of those individuals. Habitat degradation and fragmentation are probably a combined result of past and current influences of heavy livestock grazing, spring alterations, agricultural development, urbanization, beaver control, and mining activities. Fragmentation of habitat may be one of the most significant barriers to Columbia spotted frog recovery and population persistence. Loss of vegetation and/or lowering of the water table as a result of the above mentioned activities can significantly threaten frogs moving from one area to another. Likewise, fragmentation and loss of habitat can prevent frogs from colonizing suitable sites elsewhere.

Two conservation agreements and strategies were signed by Federal, State, county, and university representatives on September 30, 2003, for the central and northeast Nevada subpopulations. The goals of the conservation agreements are to reduce threats to Columbia spotted frogs and their habitat to the extent necessary to prevent populations from becoming extirpated throughout all or a portion of their historic range and to maintain, enhance, and restore a sufficient number of populations of Columbia spotted frogs and their habitat to ensure their continued existence throughout their historic range. Despite the signing of these two conservation agreements and implementation of many actions in one of them, population levels have not increased significantly over levels that were present at the time the agreements were signed. There are several reasons for this, including the fact that the agreements do not cover entire range of the species (Oregon and Idaho are not included); the agreements mainly focus on data collection and research to assess current threats and distribution and abundance, and important factors affecting the populations are outside the scope of the agreement/conservation actions. Factors outside the agreements are threats such as disease, winter kill, and unexpected habitat degradation due

to impacts of unauthorized livestock use at a core population site of the species. Also, implementation of one of the agreements has been severely constrained due to funding limitations faced by the implementing agency. Based on imminent threats of high magnitude, we are continuing to assign a listing priority number of 3 to this DPS of the Columbia spotted frog.

Mountain yellow-legged frog, Sierra Nevada DPS (*Rana muscosa*)—The following summary is based on information contained in our files and the petition received on February 8, 2000. Also see our 12-month petition finding published on January 16, 2003 (68 FR 2283). The mountain yellow-legged frog inhabits the high elevation lakes, ponds, and streams in the Sierra Nevada Mountains of California, from near 4,500 feet (1,370 meters) to 12,000 feet (3,650 meters). The distribution of the mountain yellow-legged frog is from Butte and Plumas counties in the north to Tulare and Inyo counties in the south. A separate population in southern California is already listed as endangered (67 FR 44382).

Predation by introduced trout is the best-documented cause of the decline of the Sierra Nevada mountain yellow-legged frog, because it has been repeatedly observed that nonnative fishes and mountain yellow-legged frogs rarely co-exist. Mountain yellow-legged frogs and trout (native and nonnative) do co-occur at some sites, but these co-occurrences probably are mountain yellow-legged frog populations with negative population growth rates in the absence of immigration. To help reverse the decline of the mountain yellow-legged frog, the Sequoia and Kings Canyon National Parks have been removing introduced trout since 2001. Over 18,000 introduced trout have been removed from 11 lakes since the project started in 2001. The lakes are completely-to-mostly fish-free and substantial mountain yellow-legged frog population increases have resulted. The California Department of Fish and Game (CDFG) has also removed or is in the process of removing nonnative trout from a total of between 10 and 20 water bodies in the Inyo, Humboldt-Toiyabe, Sierra, and El Dorado National Forests. In the El Dorado National Forest, golden trout were removed from Leland Lakes, and attempts have been made to remove trout from two sites near Gertrude Lake and a tributary of Cole Creek; no data showing increase in mountain yellow-legged frogs at these sites were available.

In California, chytridiomycosis, more commonly known as chytrid fungus, has been detected in many amphibian

species, including the mountain yellow-legged frog within the Sierra Nevada. Recent research has shown that this pathogenic fungus is widely distributed throughout the Sierra Nevada, and that infected mountain yellow-legged frogs die soon after metamorphosis. Several infected and uninfected populations were monitored in Sequoia and Kings Canyon National Parks over multiple years, documenting dramatic declines and extirpations in infected but not in uninfected populations. In the summer of 2005, 39 of 43 populations assayed in Yosemite National Park were positive for chytrid fungus.

The current distribution of the Sierra Nevada mountain yellow-legged frog is restricted primarily to publicly managed lands at high elevations, including streams, lakes, ponds, and meadow wetlands located on national forests, including wilderness and non-wilderness on the forests, and national parks. In several areas where detailed studies of the effects of chytrid fungus on the mountain yellow-legged frog are ongoing, substantial declines have been observed over the past several years. For example, in 2005 surveys in Yosemite National Park mountain yellow-legged frogs were not detectable at 37 percent of 113 sites where they had been observed in 2000 to 2002; in 2005 in Sequoia and Kings Canyon National Parks, mountain yellow-legged frogs were not detected at 47 percent of sites where they had been recorded 3 to 8 years earlier. A compounding effect of disease-caused extinctions of mountain yellow-legged frogs is that recolonization may never occur, because streams connecting extirpated sites to extant populations now contain introduced fishes, which act as barriers to frog movement within metapopulations. The listing priority for the mountain yellow-legged frog in the Sierra Nevada is highest for a population and is a 3.

Oregon spotted frog (*Rana pretiosa*)—The following summary is based on information contained in our files and the petition received on May 4, 1989. Historically, the Oregon spotted frog ranged from British Columbia to the Pit River drainage in northeastern California. Based on surveys of historical sites, the Oregon spotted frog is now absent from at least 76 percent of its former range. The majority of the remaining Oregon spotted frog populations are small and isolated.

The threats to the species' habitat include development, livestock grazing, introduction of nonnative plant species, changes in hydrology due to construction of dams and alterations to seasonal flooding, and poor water

quality. Additional threats to the species are predation by nonnative fish and introduced bullfrogs; competition with bullfrogs for habitat; and diseases, such as oomycete water mold *Saprolegnia* and chytrid fungus infections. The magnitude of threat is high for this species because the small populations with patchy and isolated distributions are subject to a wide range of threats to both individuals and their habitats that could seriously reduce or eliminate any of these isolated populations and further reduce the range of the species. Habitat restoration and management actions have not prevented a decline in the reproductive rates in some populations. The threats are imminent because each population is faced with multiple ongoing and potential threats.

Therefore, we retained a listing priority number of 2 for the Oregon spotted frog.

Relict leopard frog (*Rana onca*)—See above in “*Summary of Listing Priority Changes in Candidates*.” The above summary is based on information contained in our files and the petition received on May 9, 2002.

Ozark hellbender (*Cryptobranchus alleganiensis bishopi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Since the species was elevated to candidate status in 2001 (66 FR 54808), the known threats have increased. In particular, recreational pressures on Ozark hellbender rivers have increased substantially on an annual basis. The Missouri Department of Conservation reports that gigging popularity and pressure have increased, and present a significant threat to hellbenders during the breeding season as they tend to move greater distances and congregate in small groups where they are an easy target for giggers. Canoe, kayak, and motor/jet boat traffic has increased in recent years on the Jacks Fork, Current, Eleven Point, and North Fork Rivers. The popularity of these float streams has grown to the point that the National Park Service is considering alternatives to reducing the number of boats that can be launched daily by concessionaires. In 2003, the Missouri Department of Natural Resources added a 7-mile stretch of the Jacks Fork River to the list of impaired waters for organic wastes (fecal coliform).

To date, nothing has been done to reduce or ameliorate ongoing threats to Ozark hellbenders. The Ozarks region continues to experience rapid urbanization, expansion of industrial agricultural practices such as concentrated animal feeding operations (chickens, turkeys, hogs, cattle), and

logging. No laws are in place that preclude livestock from grazing in riparian corridors and resting in or along streams and rivers. Missouri is the second largest beef cattle producing state in the nation, with the majority of animal units produced in the Ozarks. Both Arkansas and Missouri are the leading States in poultry production. The fact that the majority of the Ozarks region in Missouri and Arkansas is comprised of karst topography (caves, springs, sinkholes, and losing streams) further complicates the containment and transport of potential contaminants. In short, the abundance of waste being generated and lack of adequate treatment facilities or practices for both human and livestock waste poses a significant and ever increasing threat to aquatic ecosystems. The decrease in Ozark hellbender range and population size and the shift in age structure are likely caused by a variety of historic and ongoing activities. The primary causes of these trends are habitat destruction and modification. Among these are impoundment, channelization, and siltation and water quality degradation from a variety of sources, including industrialization, agricultural runoff, mine waste, and timber harvest. Overutilization of hellbenders for commerce and scientific purposes is also likely contributing to their decline. The regulations in place that could prevent these impacts, including the Clean Water Act and State laws, have been inadequate in preventing Ozark hellbender declines to this point. Finally, most of the remaining Ozark hellbender populations are small and isolated, making them vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extinctions. Due to the existence of ongoing, high magnitude threats, particularly the substantial increases in recreational pressures on Ozark hellbender rivers on an annual basis, we assigned a listing priority number of 3 to the subspecies.

Austin blind salamander (*Eurycea waterlooensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Austin blind salamander is known to occur in and around three of the four spring sites that comprise the Barton Springs complex in the City of Austin, Travis County, Texas.

Primary threats to this species are degradation of water quality and quantity due to expanding urbanization. The Austin blind salamander depends on a constant supply of clean water in the Edwards Aquifer discharging from

Barton Springs for its survival. Urbanization dramatically alters the normal hydrologic regime and water quality of an area. Increased impervious cover caused by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged in salamander habitat at Barton Springs and have serious morphological and physiological effects to the salamander. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the Edwards Aquifer can result in reduced springflows that may also detrimentally impact the salamander. The Texas Commission on Environmental Quality adopted the Edwards Rules in 1995 and 1997, which require a number of water quality protection measures for new development occurring in the recharge and contributing zones of the Edwards Aquifer. However, Chapter 245 of the Texas Local Government Code permits "grandfathering" of state regulations. Grandfathering allows developments to be exempted from any new local or state requirements for water quality controls and impervious cover limits if the developments were planned prior to the implementation of such regulations. As a result of the grandfathering law, very few developments have followed these ordinances. New developments are still obligated to comply with regulations that were applicable at the time when project applications for development were first filed. In addition, it is significant that even if they were followed with every new development, these ordinances do not span the entire watershed for Barton Springs. Consequently, development occurring outside these jurisdictions can have negative consequences on water quality and thus impact the species. Despite having the Edwards Rules in place and the existence of other local ordinances, 10 years of trend data continues to show that water quality at Barton Springs is declining. Because of the limited distribution of this species, the magnitude of the threats facing it is high. We also consider the threats to be imminent because urbanization is ongoing and continues to expand over the Barton Springs Segment of the Edwards Aquifer and water quality continues to degrade. Thus, we retained a listing priority number of 2 for this species.

Georgetown salamander (*Eurycea naufragia*)—The following summary is based on information in our files. No new information was provided in the

petition received on May 11, 2004. The Georgetown salamander is known from spring outlets along five tributaries to the San Gabriel River and one cave in the City of Georgetown, Williamson County, Texas. The Georgetown salamander has a very limited distribution and depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival.

Primary threats to this species are degradation of water quality and quantity due to expanding urbanization. Increased impervious cover by development increases the quantity and velocity of runoff that leads to erosion and greater pollution transport. Pollutants and contaminants that enter the Edwards Aquifer are discharged from spring outlets in salamander habitat and have serious morphological and physiological effects to the species. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the Edwards Aquifer results in reduced springflows that may also detrimentally impact the salamander.

The information regarding the Edwards Rules described above in relation to the Austin blind salamander also applies to the Georgetown salamander and is incorporated here by reference. Because of the limited distribution of the Georgetown salamander, the magnitude of the threats facing it is high. The threats are also imminent because urbanization is ongoing and continues to expand over the Northern Segment of the Edwards Aquifer. Thus, we retained a listing priority number of 2 for this species.

Salado salamander (*Eurycea chisolmensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Salado salamander is historically known from two spring sites, Big Boiling Springs and Robertson Springs, near Salado, Bell County, Texas. Salamanders have not been located at Robertson Springs since 1991.

Primary threats to this species are habitat modification and degradation of water quality and quantity due to expanding urbanization. Many of the spring outlets in the City of Salado have been modified by dam construction. Because Big Boiling Springs is located near Interstate 35 and in the center of the city, increasing traffic and urbanization increase threats of contamination from spills, higher levels of impervious cover, and subsequent impacts to groundwater. Several groundwater contamination incidents have occurred within Salado

salamander habitat. The Salado salamander depends on a constant supply of clean water from the Northern Segment of the Edwards Aquifer for its survival. Pollutants and contaminants that enter the Edwards Aquifer discharge in salamander habitat and have serious morphological and physiological effects to the salamander. As the human population increases in central Texas, greater demand on groundwater sources occurs. Increased pumping of the Edwards Aquifer can result in reduced springflows that may also detrimentally impact the salamander.

Controls of nonpoint source pollution in the watershed are implemented through the Edwards Rules (water quality protection measures for the recharge and contributing zones of the Edwards Aquifer) adopted by the Texas Commission on Environmental Quality (TCEQ) in 1995 and 1997. Although implementation of the Edwards Rules in other areas of the Northern Segment of the Edwards Aquifer may have the potential to affect conditions at spring sites occupied by the Salado salamander, the jurisdiction of TCEQ does not extend into Bell County. For this reason, compliance with the Edwards Rules is not required in this part of the Edwards Aquifer. There are no other local or regional water protection measures that have been put in place for areas that feed the springs known to be occupied by the Salado salamander. Because of the limited distribution of this species, the magnitude of the threats facing it is high. We also consider the threats to be imminent because urbanization is ongoing and contamination events are occurring near spring sites known to support Salado salamanders. Thus, we retained a listing priority number of 2 for this species.

Yosemite toad (*Bufo canorus*)—The following summary is based on information contained in our files and the petition received on April 3, 2000. See also our 12-month petition finding published on December 10, 2002 (67 FR 75834). Yosemite toads are moderately sized toads with females having black spots edged with white or cream that are set against a grey, tan or brown background. Males have a nearly uniform coloration of yellow-green to olive drab to greenish brown. Yosemite toads are most likely to be found in areas with thick meadow vegetation or patches of low willows near or in water, and use rodent burrows for overwintering and temporary refuge during the summer. Breeding habitat includes the edges of wet meadows, slow flowing streams, shallow ponds

and shallow areas of lakes. The historic range of Yosemite toads in the Sierra Nevada occurs from the Blue Lakes region north of Ebbetts Pass (Alpine County) to south of Kaiser Pass in the Evolution Lake/Darwin Canyon area (Fresno County). The historic elevational range of Yosemite toads is 1,460 to 3,630 meters (4,790 to 11,910 feet).

The threats facing the Yosemite toad include cattle grazing, timber harvesting, recreation, disease, and climate change. Inappropriate grazing has shown to cause loss in vegetative cover and destroying peat layers in meadows, which lowers the groundwater table and summer flows. This may increase the stranding and mortality of tadpoles, or make these areas completely unsuitable for Yosemite toads. Grazing can also degrade or destroy moist upland areas used as non-breeding habitat by Yosemite toads and collapse rodent burrows used by Yosemite toads as cover and hibernation sites. Timber harvesting and associated road development could severely alter the terrestrial environment and result in the reduction and occasional extirpation of amphibian populations in the Sierra Nevada. These habitat gaps may act as dispersal barriers and contribute to the fragmentation of Yosemite toad habitat and populations. Trails (foot, horse, bicycle, or off-highway motor vehicle) compact soil in riparian habitat, which increases erosion, displaces vegetation, and can lower the water table. Trampling or the collapsing of rodent burrows by recreationists, pets, and vehicles could lead to direct mortality of all life stages of the Yosemite toad and disrupt their behavior. Various diseases have been confirmed in Yosemite toads. Mass die-offs of amphibians have been attributed to: Chytrid fungal infections of metamorphs and adults; *Saprolegnia* fungal infections of eggs; iridovirus infection of larvae, metamorphs, or adults; and bacterial infections. Yosemite toads probably are exposed to a variety of pesticides and other chemicals throughout their range. Environmental contaminants could negatively affect the species by causing direct mortality; suppressing the immune system; disrupting breeding behavior, fertilization, growth or development of young; and disrupting the ability to avoid predation. We retained a listing priority number of 11 for the Yosemite toad since the threats are of moderate to low magnitude and the threats are nonimminent at this time.

Black Warrior waterdog (*Necturus alabamensis*)—The following summary

is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Black Warrior waterdog inhabits streams above the Fall Line within the Black Warrior River Basin in Alabama. There is very little specific locality information available on the historical distribution of the Black Warrior waterdog since little attention was given to this species between its description in 1937 and the 1980's. There are a total of only 11 known historical records from 4 Alabama counties. Two of these sites have now been inundated by impoundments. Extensive survey work was conducted in the 1990's to look for additional populations. Currently, the species is known from 14 sites in 5 counties.

Water quality degradation is the biggest threat to the continued existence of the Black Warrior waterdog. Most streams that have been surveyed for the waterdog showed evidence of pollution and many appeared biologically depauperate. Sources of point and nonpoint pollution in the Black Warrior River Basin have been numerous and widespread. Pollution is generated from inadequately treated effluent from industrial plants, sanitary landfills, sewage treatment plants, poultry operations, and cattle feedlots. Surface mining represents another threat to the biological integrity of waterdog habitat. Runoff from old, abandoned coal mines generates pollution through acidification, increased mineralization, and sediment loading. The North River, Locust Fork, and Mulberry Fork, all streams that this species inhabits are all on the Environmental Protection Agency's list of impaired waters. An additional threat to the Black Warrior waterdog is the creation of large impoundments that have flooded thousands of square hectares (acres) of its habitat. These impoundments are likely marginal or unsuitable habitat for the salamander. Due to the continuing, imminent, high magnitude of the pervasive water quality degradation in the Black Warrior Basin, we assigned a listing priority number of 2 to this species.

Fishes

Arkansas darter (*Etheostoma cragini*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Arkansas darter is a small fish in the perch family native to portions of the Arkansas River basin. The species' range includes sites in extreme northwestern Arkansas, southwestern Missouri, and

northeastern Oklahoma. It also occurs in a number of watersheds and isolated streams in eastern Colorado, south-central and southwestern Kansas, and in the Cimarron watershed in northwest Oklahoma. The species is most often found in small spring-fed streams with sand substrate and aquatic vegetation. It appears stable at most sites where spring flows persist. It has declined in areas where spring flows have decreased or been eliminated. We estimate that currently there are approximately 145 locality occurrences of the Arkansas darter distributed across the 5 States. However, status information from much of the Arkansas darter's range is dated, and new surveys are needed; some survey work is being conducted in 2006. Major threats to the species include stream dewatering resulting from groundwater pumping in the western portion of the species' range, and development pressures in portions of its eastern range. Spills and runoff from confined animal feeding operations also threaten the species locally throughout its range. We have retained a listing priority number of 11 for this species based on nonimminent threats of a moderate magnitude.

Cumberland darter (*Etheostoma susanae*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Pearl darter (*Percina aurora*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Little is known about the specific habitat requirements or natural history of the Pearl darter. Pearl darters have been collected from rivers and streams with a variety of attributes, but are mainly found over a gravel bottom substrate. This species is historically known only from localized sites within the Pascagoula and Pearl River drainages in Louisiana and Mississippi. Currently, the Pearl darter is considered extirpated from the Pearl River drainage and rare in the Pascagoula River drainage. Since 1983, the range of the Pearl darter has decreased by 55 percent. Pearl darters are vulnerable to the cumulative impacts of a variety of non-point pollution types, such as sedimentation and chemical, and also to more localized and concentrated pollution events. The steady yet gradual change in river and tributary geomorphology and hydrology over time is believed to impact this species. Efforts are underway to improve habitat by reducing these threats and to increase

and augment the numbers of Pearl darters through husbandry efforts. The magnitude of threat to this species is high due to the species limited and disjunct populations and threat due to high vulnerability to sedimentation. However, this threat is nonimminent since no known projects are planned directly affecting the species and the decline of water quality is slow and gradual. Therefore, we assigned this species a listing priority number of 5.

Rush darter (*Etheostoma phytophilum*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Yellowcheek darter (*Etheostoma moorei*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The yellowcheek darter is endemic to four headwater tributaries of the Little Red River. Factors affecting the remaining populations include loss of suitable breeding habitat, habitat and water quality degradation, population isolation, and severe population declines exacerbated by stochastic drought conditions. It is vulnerable to alterations in physical habitat characteristics such as the impoundment of Greers Ferry Reservoir, channel maintenance in the Archey Fork, increased sedimentation from eroding stream banks and poor riparian management, and illegal gravel mining. A 2004–2005 threats assessment by Service personnel documented occurrences of eroding stream banks, poor riparian management, and illegal gravel mining, and found 52 sites of these activities on the Middle Fork, 28 sites on the South Fork, 8 sites on Archey Fork, and 1 site in the Turkey/Beech/Devils Fork system that are potential contributors to the decline of the species. The Middle Fork was listed as an impaired waterbody by the Arkansas Department of Environmental Quality in 2004 due to excessive bacteria and low dissolved oxygen. Recent studies have documented significant declines in the numbers (60,000 in 1981; 10,300 in 2000) of this fish in the remaining populations and continuing range restriction within the tributaries (130.4 to 65.0 stream km). According to a 2000 status survey, yellowcheek darter numbers had declined over a 20-year period by 83 percent in both the Middle Fork and South Fork, and 60 percent in the Archey Fork. No yellowcheek darters were found in the Turkey Fork between

1999 and 2005; the species has apparently been extirpated in that reach. Due to imminent threats of a high magnitude that are not currently targeted by conservation actions, we assigned this species a listing priority number of 2.

Fluvial arctic grayling, upper Missouri River DPS (*Thymallus arcticus*)—We have not updated our finding with regard to fluvial arctic grayling DPS in this notice. We received a petition to list this species on October 2, 1992, and published our 12-month finding on July 25, 1994 (59 FR 37738). In the 2004 CNOR (70 FR 24870), we found that a listing proposal for this species was still warranted but precluded by higher priorities, with a listing priority number of 3. We are in the process of considering new information and conducting additional evaluations regarding the fluvial arctic grayling. Upon completion, we intend to publish a listing determination for this DPS species in the **Federal Register**.

Chucky madtom (*Noturus crypticus*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The chucky madtom is a rare catfish known from only 15 specimens collected from two Tennessee streams. A lone individual was collected in 1940 from Dunn Creek (a Little Pigeon River tributary) in Sevier County and 14 specimens have been encountered since 1991 in Little Chucky Creek (a Nolichucky River tributary) in Greene County. Only 3 specimens have been encountered since 1994 from two riffle areas in a short reach of Little Chucky Creek. All Little Chucky Creek specimens have been collected from stream runs with slow to moderate current over pea gravel, cobble, or slab-rock substrates.

Threats to the chucky madtom include both extrinsic and intrinsic factors. Extrinsic factors include potential degradation of water quality and breeding and sheltering habitat due primarily to agricultural landuse practices and secondarily to urban and rural development in the watersheds of Little Chucky and Dunn creeks. The Service believes that intrinsic factors including the potential demographic effects of inbreeding, limited species distribution, presumed low number of individuals, and presumed low fecundity and short life span characteristic of closely related madtom species pose imminent threats of a high magnitude to the chucky madtom in its only known extant and historic locations. Therefore, we assigned the

chucky madtom a listing priority number of 2.

Grotto sculpin (*Cottus* sp., sp. nov.)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Grotto sculpin is restricted to two karst areas (limestone regions characterized by sink holes, abrupt ridges, caves, and underground streams), the Central Perryville Karst and Mystery-Rimstone Karst in Perry County, southeast Missouri. Grotto sculpins have been documented in only 5 caves. The current overall range of the grotto sculpin has been estimated to encompass approximately 260 square kilometers (100 square miles).

The small population size and endemism of the grotto sculpin make it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance changes to the environment. The species' karst habitat is located down-gradient of the city of Perryville, Missouri, which poses a potential threat if contaminants from this urban area enter cave streams occupied by grotto sculpins. Various agricultural chemicals, such as ammonia, nitrite/nitrate, chloride, and potassium have been detected at levels high enough to be detrimental to aquatic life within the Perryville Karst area. More than half of the sinkholes in Perry County contain anthropogenic refuse, ranging from household cleansers and sewage to used pesticide and herbicide containers. As a result, potential water contamination from various sources of point and non-point pollution poses a significant threat to the grotto sculpin. Of the 5 cave systems documented to have grotto sculpins, populations in one cave system were likely eliminated, presumably as the result of point-source pollution. When the cave was searched in the spring of 2000, a mass mortality of grotto sculpin was noted, and subsequent visits to the cave have failed to document a single live grotto sculpin. Thus, the species appears to have suffered a 20-percent decrease in the number of populations from the single event. Predatory fish such as common carp, fat-head minnow, yellow bullhead, green sunfish, bluegill, and channel catfish occur in all of the caves occupied by grotto sculpin. These potential predators may escape surface farm ponds that unexpectedly drain through sinkholes into the underground cave systems and enter grotto sculpin habitat. No regulatory mechanisms are in place that would provide protection to the grotto sculpin. Current threats to the habitat of the grotto sculpin may exacerbate potential problems

associated with its low population numbers and increase the likelihood of extinction. Due to the high magnitude of ongoing threats we assigned this species a listing priority number of 2.

Sharpnose shiner (*Notropis oxyrhynchus*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The sharpnose shiner is a small, slender minnow, endemic to the Brazos River Basin in Texas. Historically, the sharpnose shiner existed throughout the Brazos River and several of its major tributaries within the watershed. It has also been found in the Wichita River (within the Red River Basin), where it may have once naturally occurred but has since been extirpated. Current information indicates that the population within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is apparently stable, while the population within the Middle and Lower Brazos River Basins may only exist in remnant areas of suitable habitat, or may be completely extirpated, representing a reduction of approximately 68 percent of its historical range.

The most significant threat to the existence of the sharpnose shiner is potential reservoir development within its current range. Additional threats include irrigation and water diversion, sedimentation, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the sharpnose shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. The magnitude of threat is high since the major threat of reservoir development within the current range of the species may render its remaining habitat unsuitable. The immediacy of threat is nonimminent due to major reservoir projects not likely occurring in the near future and the potential implementation of other water supply options that could preclude reservoir development. For these reasons, we assigned a listing priority number of 5 to this species.

Smalleye shiner (*Notropis buccula*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The smalleye shiner is a small, pallid minnow endemic to the Brazos River Basin in Texas. The population of smalleye shiners within the Upper Brazos River drainage (upstream of Possum Kingdom Reservoir) is

apparently stable. However, the shiner has not been collected since 1976 downstream from the reservoir, and in all likelihood the species is completely extirpated from this area, representing a reduction of approximately 54 percent of its historical range.

The most significant threat to the existence of the smalleye shiner is potential reservoir development within its current range. Additional threats include irrigation and water diversion, sedimentation, industrial and municipal discharges, agricultural activities, in-stream sand and gravel mining, and the spread of invasive saltcedar. The current limited distribution of the smalleye shiner within the Upper Brazos River Basin makes it vulnerable to catastrophic events such as the introduction of competitive species or prolonged drought. The magnitude of threat is high since the major threat of reservoir development within the current range of the species may render its remaining habitat unsuitable. The immediacy of threat is nonimminent due to major reservoir projects not likely occurring in the near future and the potential implementation of other water supply options that could preclude reservoir development. For these reasons, we assigned a listing priority number of 5 to this species.

Zuni bluehead sucker (*Catostomus discobolus yarrowi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The range of the Zuni bluehead sucker has been reduced by over 90 percent. The Zuni bluehead sucker currently occupies 9 river miles in 4 areas of New Mexico, and approximately 6 miles in one stream of Arizona. Zuni bluehead sucker range reduction and fragmentation is caused by discontinuous surface water flow, separation of inhabited reaches by reservoirs, and habitat degradation from fine sediment deposition. The principal uses of surface and ground water within the Zuni River watershed are human consumption, raising livestock, and irrigation. Diverting water for agricultural use is the primary purpose of at least five impoundments, and several other reservoirs act as flood-control structures. Degradation of the upper watershed has led to increased sedimentation, and many of the reservoirs are now only shallow, eutrophic (low oxygen) ponds or wetlands with little or no storage capacity. The impoundments have also changed the downstream channel morphology and substrate composition of streams. Another major impact to

populations of Zuni bluehead sucker was the application of fish toxicants through at least two dozen treatments in the Nutria and Pescado rivers between 1960 and 1975. Large numbers of Zuni bluehead suckers were killed during these treatments.

For several years, the New Mexico Department of Game and Fish has been the lead agency to develop a conservation plan for Zuni bluehead sucker. A study funded through section 6 of the Act was initiated in 2000, and continued through 2005. The grant included funding for development and implementation of a Zuni Bluehead Sucker Conservation Plan and the acquisition of additional information on distribution, life history, and species associations. The Zuni Bluehead Sucker Recovery Plan was approved by the New Mexico State Game Commission during a State Game Commission on December 15, 2004. The Recovery Plan recommends preservation and enhancement of extant populations and restoration of historical Zuni bluehead sucker populations. The recovery actions prescribed by the State Recovery Plan that we believe will reduce and remove threats to this subspecies, will require further discussions and authorizations before they can be implemented. Still, because of the ongoing threats of high magnitude, including loss of habitat, degradation of remaining habitat, and others (*i.e.*, drought and fire), we maintained the current listing priority number of 3 for this subspecies.

Clams

Texas hornshell (*Popenaias popei*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Texas hornshell is a freshwater mussel found in the Black River of New Mexico and one confirmed locality in the mainstem Rio Grande of Texas and Mexico. The primary threats are habitat alterations such as stream bank channelization, impoundments, and diversions for agriculture and flood control; contamination of water by the oil and gas industry; alterations in the natural riverine hydrology; and increased sedimentation from prolonged overgrazing and loss of native vegetation. Riverine habitats in both the Black River and the Rio Grande are under constant threats from these adverse changes. The magnitude of threats is high because of the existence of only one confirmed location in New Mexico and Texas each, which makes this species highly vulnerable to extinction. The threats are imminent

because past alterations to riverine habitats have already occurred that resulted in the much reduced distribution of this species and demands for water from the Rio Grande continue to increase and make future habitat degradation likely. Thus, we maintained the listing priority number of 2 for this species.

Fluted kidneyshell (*Ptychobranthus subtentum*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The fluted kidneyshell is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to its decline. This species has been extirpated from numerous regional streams and is no longer found in the State of Alabama. The fluted kidneyshell was historically known from at least 37 streams but is currently restricted to no more than 14 isolated stream segments, of which only 1 (upper Clinch River) appears to be stable and viable. The threats are high in magnitude since all populations of this species are potentially threatened by impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural run-off, nutrient enrichment, and coal processing pollution. However, the threats are nonimminent at this time, and therefore, we retained a listing priority number of 5 for this mussel.

Neosho mucket (*Lampsilis rafinesqueana*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Neosho mucket is a freshwater mussel native to Arkansas, Kansas, Missouri, and Oklahoma. The species has been extirpated from approximately 62 percent (835 river miles) of its range, most of which has occurred in Kansas and Oklahoma. The Neosho mucket survives in four river drainages, however, only two of these, the Spring and Illinois Rivers, currently support relatively large populations.

Significant portions of the historic range have been inundated by the construction of at least 11 dams. Channel instability downstream of these dams has further reduced suitable habitat and mussel distribution. Range restriction and population declines have

occurred due to habitat degradation attributed to impoundments, mining, sedimentation, and agricultural pollutants. Rapid development and urbanization in the Illinois River watershed will likely continue to increase sedimentation and eutrophication to this river but populations are currently stable in this river. The remaining extant populations are vulnerable to random catastrophic events (e.g., flood scour, drought, toxic spills), land use changes within the limited range, and genetic isolation and the deleterious effects of inbreeding. These threats have led to the species being intrinsically vulnerable to extirpation. Although State regulations limit harvest of this species, there is little protection for habitat. The threats are high in magnitude, as they occur throughout the range of this species. While some of the threats are ongoing and thus, imminent, others are nonimminent, but on the balance are nonimminent. Thus, we assigned a listing priority number of 5 to this species.

Alabama pearlshell (*Margaritifera marrianae*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Alabama pearlshell inhabits shallow riffles and pool margins of small creeks and streams of southwest Alabama. Only three populations of Alabama pearlshell have been confirmed to survive during the past 15 years. One of these has declined significantly over the past few years, apparently due to increased sedimentation at this location and possibly other forms of non-point source (NPS) pollution. The other two populations appear to be small, but relatively stable and recruiting. We assigned the Alabama pearlshell a listing priority of 2 due to the vulnerability of small stream habitat to continuing NPS pollution and the decline of one of three known populations.

Slabside pearlshell (*Lexingtonia dolabelloides*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The slabside pearlshell is a freshwater mussel (Unionidae) endemic to the Cumberland and Tennessee River systems (Cumberlandian Region) in Alabama, Kentucky, Tennessee, and Virginia. It requires shoal habitats in free-flowing rivers to survive and successfully recruit new individuals into its populations. Habitat destruction and alteration (e.g., impoundments, sedimentation, and pollutants) are the chief factors contributing to its decline.

This species has been extirpated from numerous regional streams and is no longer found in the State of Kentucky. The slabside pearlshell was historically known from at least 32 streams but is currently restricted to no more than 10 isolated stream segments. Current status information for most of the nine populations deemed to be extant is available from recent periodic sampling efforts (sometimes annually) and other field studies. Comprehensive surveys have taken place in the Middle and North Forks Holston River, Paint Rock River, and Duck River in the past several years. Based on recent information, the overall population of the slabside pearlshell is declining rangewide and the species remains in good numbers and is clearly viable in just four streams. Two of the four largest populations have undergone recent declines (i.e., Middle and upper North Fork Holston Rivers) and most of the other populations are of doubtful viability for the long term. Since the nine remaining populations of the slabside pearlshell face potential threats from impoundments, sedimentation, small population size, isolation of populations, gravel mining, municipal pollutants, agricultural run-off, nutrient enrichment, and coal processing pollution, the threats are high in magnitude but are nonimminent. Thus, we continue to assign a listing priority number of 5 to this mussel.

Georgia pigtoe (*Pleurobema hanleyanum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Georgia pigtoe was historically found in shallow runs and riffles in large creeks and rivers of the Coosa River drainage of Alabama, Georgia, and Tennessee. The species is currently known from localized portions of the upper Conasauga River in Murray and Whitfield Counties, Georgia. In 2005, the Coosa River in Cherokee County, Alabama, was removed as “Current Range,” due to a lack of documentation that the species continues to exist at that locality. The Georgia pigtoe is very rare, with only a few observations of living animals over the past 15 years. Impoundment and pollution are implicated in the decline and disappearance of the species; pollution remains an ongoing threat. We assigned the Georgia pigtoe a listing priority of 2 due to its restricted range and continued lack of success in locating living animals.

Altamaha spiny mussel (*Elliptio spinosa*)—See above in “Summary of Listing Priority Changes in Candidates.”

The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Snails

Ogden mountainsnail (*Oreohelix peripherica wasatchensis*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Ogden mountain snail is known from a single population near the mouth of Ogden Canyon, Weber County, Utah. The total occupied habitat is an area approximating 100 meters (328 ft) wide by 1 kilometer (0.5 miles) long. The restricted range of this snail, the proximity to an expanding residential area, and impacts from relatively heavy recreational use, makes it vulnerable to extirpation from stochastic or human-caused events. Threats to the colony have not substantially changed or increased over the past year. Recent molecular phylogenetic studies are expected to clarify the level of uniqueness of this taxon. With the threats continuing at a moderate to low and imminent level, we retained a listing priority number of 9 for this subspecies.

Bonneville pondsnail (*Stagnicola bonnevillensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The fat-whorled pondsnail, also known as the Bonneville pondsnail, occupies four spring pools north of the Great Salt Lake in Box Elder County, Utah. While the number of individuals is unknown, the total known occupied habitat is less than one hectare. As a result of the implementation of a Conservation Agreement and Strategy, surveys are being conducted to determine if other populations are present. Previous and ongoing threats include chemical contamination of the groundwater. Significant actions are underway to remediate this threat, including implementation of a Corrective Action Plan to characterize and remediate groundwater contamination, implementation of a site management plan, and development of a groundwater model and risk assessment. These efforts have not been underway for a sufficient period to reduce the threat from contamination, so we retained a listing priority number of 8 for this species, reflecting imminent threats of a moderate magnitude.

Interrupted rocksnail (*Leptoxis foremani* (= *downei*)—The following summary is based on information

contained in our files. No new information was provided in the petition received on May 11, 2004. Interrupted rocksnails historically occurred in shoals, riffles, and reefs of small to large rivers in the Coosa River Basin of Alabama and Georgia. Today, only a single surviving natural population is known from a short reach of the Coosawatee River, Georgia. During a 1999 census, 10 to 45 interrupted rocksnail snails per square meter were found in this reach. In 2004, a 6 man-hour search was required to find 20 individuals. We believe water quality was the cause of this decline. A captive colony of approximately 200 snails was established at the Tennessee Aquarium Research Institute (TNARI) in 2000 for study and propagation. During the winter of 2003, the Alabama Department of Conservation and Natural Resources (ADCNR) released about 3000 juvenile interrupted rocksnails from the TNARI colony into the Coosa River above Wetumpka, Elmore County, Alabama. In 2004 and 2005 approximately 1200 and 3000 juvenile snails, respectively, from the TNARI culture were released at the lower Coosa River site by ADCNR. A small number of the 2003 hatchery-cultured interrupted rocksnails were observed in the vicinity of the release site in 2005. The magnitude of threat is high for this species since it is only known from one naturally occurring site. Despite the ongoing conservation efforts, threats remain imminent, as water quality degradation of the stream is currently occurring and evident, in that the natural population has undergone a precipitous decline. Thus, we assigned a listing priority of 2 to the interrupted rocksnail.

Sisi snail (*Ostodes strigatus*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The sisi snail is a ground-dwelling species in the Potaridae family and is endemic to American Samoa. The species is now known from a single population on the island of Tutuila, American Samoa.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. The decline of the sisi in American Samoa have resulted, in part, from loss of habitat to forestry and agriculture and loss of forest structure to hurricanes and alien weeds that establish after these storms. All live sisi snails have been found in the leaf litter beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three

hurricanes (1987, 1990, and 1991). Under natural historic conditions, loss of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) and weedy tree species such as *Funtumia elastica* may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by an expanding agriculture. Agricultural plots have spread from low elevation up to middle and some high elevations on all the islands, greatly reducing the forest area and thus reducing the resilience of native forests and its populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining canopy forest. In an effort to eradicate the giant African snail, *Euglandia rosea* and another alien predatory snail, *Gonaxis kibweziensis*, were introduced in 1980 and 1977, respectively. *Euglandia rosea* have spread throughout the main island of Tutuila and by 1984 was considered to be well-established on Tutuila. *Gonaxis kibweziensis* is also present on Tutuila though it seems to be in decline. Numerous studies show that *E. rosea* feeds on endemic island snails including the sisi, and is a major agent in their declines and extirpations. At present, the major threat to long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. There are no conservation efforts being implemented to alleviate these threats and all these threats are ongoing and are therefore imminent. Since the threats occur throughout the entire range of the species, they are of a high magnitude. Therefore we assigned this species an LPN of 2.

Diamond Y Spring snail (*Pseudotryonia adamantina*) and Gonzales springsnail (*Tryonia circumstriata*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Diamond Y Spring snail and Gonzales springsnail are small aquatic snails endemic to Diamond Y Spring in Pecos County, Texas. The spring and its outflow channel are owned and managed by The Nature Conservancy. These snails are primarily threatened with habitat loss due to springflow declines from drought and from

pumping of groundwater. Additional threats include water contamination from accidental releases of petroleum products, as their habitat is in an active oil and gas field. Also, a nonnative aquatic snail (*Melanooides* sp.) was recently introduced into the native snails' habitat and may compete with endemic snails for space and resources. The magnitude of threats is high because limited distribution of these narrow endemics makes any impact from increasing threats (e.g., loss of springflow, contaminants, nonnative species) likely to result in the extinction of the species. These species occur in one location in an arid region currently plagued by drought and ongoing aquifer withdrawals, making the eventual loss of spring flow an imminent threat of total habitat loss. Thus, we maintain the listing priority number of 2 for both species.

Fragile tree snail (*Samoana fragilis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the fragile tree snail is a member of the Partulidae family of snails and is endemic to the islands of Guam and Rota (Mariana Islands). Requiring cool and shaded native forest habitat, the species is now known only from a single population on Rota. This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. On Rota, large numbers of pigs, goats and deer, along with extensive logging, further contribute to the expansion of savanna grasslands and directly alter the understory plant community and overall forest microclimate. Savanna grassland habitat is unsuitable for tree snails. Predation by the alien rosy carnivore snail (*Euglandina rosea*) is a serious threat to the survival of the fragile tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. All of the threats occur rangewide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus

are imminent. Therefore, we assigned this species a listing priority number of 2.

Guam tree snail (*Partula radiolata*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the Guam tree snail is a member of the Partulidae family of snails and is endemic to the island of Guam. Requiring cool and shaded native forest habitat, the species is now known from only 11 populations on Guam. This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. On Guam, open agricultural fields and other areas prone to erosion were seeded with tangantangan (*Leucaena leucocephala*) by the U.S. Military. Tangantangan grows as a single species stand with no substantial understory. The microclimatic condition is dry, with little accumulation of leaf litter humus and is particularly unsuitable as Guam tree snail habitat. In addition, native forest cannot reestablish and grow where this alien weed has become established. Large numbers of pigs, goats, and deer, along with extensive logging, further contribute to the expansion of savanna grasslands and directly alter the understory plant community and overall forest microclimate. Savanna grassland habitat is unsuitable for tree snails. Predation by the alien rosy carnivore snail (*Euglandina rosea*) is a serious threat to the survival of the Guam tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae, such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. All of the threats occur range wide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Humped tree snail (*Partula gibba*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the humped tree

snail is a member of the Partulidae family of snails, and was originally known from the island of Guam and the Commonwealth of the Northern Mariana Islands (islands of Rota, Aguijan, Tinian, Saipan, Anatahan, Sarigan, Alamagan, and Pagan). Most recent surveys revealed a total of 28 populations on the islands of Guam, Rota, Aguijan, Tinian, Anatahan, Sarigan, Alamagan, and Pagan. Although still the most widely distributed tree snail endemic in the Mariana Islands, remaining population sizes are often small.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatorial snails. In recent times, remaining populations of the snail have been threatened by ongoing development. For example, a road was cut within the coastal area containing the remaining three Guam populations of the snail, and it is believed that the decline in these populations may be due to the indirect effects of this road. Throughout the Mariana Islands, feral ungulates (pigs (*Sus scrofa*), Philippine deer (*Cervus mariannus*), cattle (*Bos taurus*), water buffalo (*Bubalus bubalis*), and goats (*Capra hircus*)) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for the humped tree snail. Currently, populations of feral ungulates are found on the islands of Guam (deer, pigs, and water buffalo), Rota (deer and cattle), Aguijan (goats), Tinian (cattle), Saipan (deer, pigs, and cattle), Anatahan (pigs and goats), Alamagan (goats, pigs, and cattle), and Pagan (cattle, goats, and pigs). Goats were eradicated from Sarigan in 1998 and the humped tree snail has increased in abundance on that island, likely in response to the removal of all the goats. However, the population of humped tree snails on Anatahan is likely extirpated due to the massive volcanic explosions of the island beginning in 2003 and still continuing, and the resulting loss of up to 95 percent of the vegetation on the island. Predation by the alien rosy carnivore snail (*Euglandina rosea*) is also a serious threat to the survival of the Humped tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the

Pacific islands. All of the threats occur range-wide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because limited distribution of this species makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Lanai tree snail (*Partulina semicarinata*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, *P. semicarinata* is a member of the Achatinellidae family of snails. Endemic to the island of Lanai, the species is currently known from 3 populations totaling 29 individuals. This species is highly threatened throughout its limited range by habitat loss and modification and by predation from rats. No efforts are being undertaken to remove rats in areas that *P. semicarinata* occur. The threat from this predator is expected to continue or increase unless the rats are actively controlled or eradicated. Habitat loss also continues due to the trampling and browsing of native vegetation required by *P. semicarinata* by nonnative ungulates. Although the snails are in an area to be fenced, until the fence is constructed and the ungulates have been removed, the habitat will continue to be degraded. The small number of individuals and the small number of populations make this species very susceptible to the negative effects of stochastic events such as hurricanes and storms. There is a population in captivity that is protected from the effects of unexpected droughts, though the effects of severe storms may still affect this population as evidenced by the loss of snails when a severe flood interrupted the power supply to the University and temperatures increased within the environmental chambers containing the snails. In addition, these snails are likely subjected to the same concerns of reproductive vigor and loss of genetic variability. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Lanai tree snail (*Partulina variabilis*)—The following summary is

based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, *P. variabilis* is a member of the Achatinellidae family of snails. Endemic to the island of Lanai, the species is currently known from 12 populations totaling 90 individuals. This species is highly threatened throughout its limited range by habitat loss and modification and by predation from rats. No efforts are being undertaken to remove rats in areas that *P. variabilis* occur. The threat from this predator is expected to continue or increase unless the rats are actively controlled or eradicated. Habitat loss also continues due to the trampling and browsing of native vegetation required by *P. variabilis* by nonnative ungulates. Although the snails are in an area to be fenced, until the fence is constructed and the ungulates have been removed, the habitat will continue to be degraded. The small number of individuals and the small number of populations make this species very susceptible to the negative effects of stochastic events such as hurricanes and storms. There is a population in captivity that is protected from the effects of unexpected droughts, though the effects of severe storms may still affect this population as evidenced by the loss of snails when a severe flood interrupted the power supply to the University and temperatures increased within the environmental chambers containing the snails. In addition, these snails are likely subjected to the same concerns of reproductive vigor and loss of genetic variability as the wild population. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Langford's tree snail (*Partula langfordi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, Langford's tree snail is a member of the Partulidae family of snails and is known from one population on the island of Aguiquan. This species is currently threatened by habitat loss and modification and by predation from nonnative predatorial snails. In the 1930s, the island of Aguiquan was mostly cleared of native forest to support sugar cane and pineapple

production. The abandoned fields and airstrip are now overgrown with alien weeds. The remaining native forest understory has greatly suffered from large and uncontrolled populations of alien goats and the invasion of weeds. Goats (*Capra hircus*) have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion, and retarding forest growth and regeneration. This in turn reduces the quantity and quality of forested habitat for Langford's tree snail. Predation by the alien rosy carnivore snail (*Euglandina rosea*) is also a serious threat to the survival of Langford's tree snail. Field observations have established that the rosy carnivore snail will readily feed on native Pacific island tree snails, including the Partulidae such as those of the Mariana Islands. The rosy carnivore snail has caused the extirpation of many populations and species of native snails throughout the Pacific islands. All of the threats occur rangewide and no efforts to control or eradicate the nonnative predatory snail species or to reduce habitat loss are being undertaken. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Phantom Cave snail (*Cochliopa texana*) and Phantom springsnail (*Tryonia cheatumi*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Phantom Cave snail and Phantom springsnail are small aquatic snails that occur in three spring outflows in the Toyah Basin in Reeves and Jeff Davis Counties, Texas. The primary threat to both species is the loss of surface flows due to declining groundwater levels from drought and pumping for agricultural production. Although much of the land immediately surrounding their habitat is owned and managed by The Nature Conservancy, Bureau of Reclamation, and Texas Parks and Wildlife Department, the water needed to maintain their habitat has declined due to a reduction in spring flows, possibly as a result of private groundwater pumping in areas beyond that controlled by these landowners. As an example, Phantom Lake Spring, one of the sites of occurrence, has already ceased flowing and aquatic habitat is supported only by a pumping system. The magnitude of the threats is high

because spring flow loss would result in complete habitat destruction and permanent elimination of all populations of the species. The immediacy of the threats is imminent, as evidenced by the drastic decline in spring flow at Phantom Lake Spring that is happening now and will likely extirpate this population in the near future. Declining spring flows in San Solomon Spring are also becoming evident and will affect that spring site as well within the foreseeable future. Thus, we maintained the listing priority number of 2 for both species.

Tutuila tree snail (*Eua zebrina*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, the Tutuila tree snail is a member of the Partulidae family of snails and is endemic to American Samoa. The species is now known only from two populations on the island of Tutuila.

This species is currently threatened by habitat loss and modification and by predation from nonnative predatory snails. All live Tutuila tree snails were found on understory vegetation beneath remaining intact forest canopy. No snails were found in areas bordering agricultural plots or in forest areas that were severely damaged by three hurricanes (1987, 1990, and 1991). Under natural historical conditions, loss of forest canopy to storms did not pose a great threat to the long-term survival of these snails; enough intact forest with healthy populations of snails would support dispersal back into newly regrown canopy forest. However, the presence of alien weeds such as mile-a-minute vine (*Mikania micrantha*) and weedy tree species such as *Funtumia elastica*, may reduce the likelihood that native forest will re-establish in areas damaged by the hurricanes. This loss of habitat to storms is greatly exacerbated by an expanding agricultural footprint. Agricultural plots have spread from low elevation up to middle and some high elevations on all the islands, greatly reducing the forest area and thus reducing the resilience of native forests and its populations of native snails. These reductions also increase the likelihood that future storms will lead to the extinction of populations or species that rely on the remaining canopy forest. In an effort to eradicate the giant African snail, *Euglandina rosea* and another alien predatory snail, *Gonaxis kibweziensis*, were introduced in 1980 and 1977, respectively. *Euglandia rosea* have spread throughout the main island of Tutuila and by 1984, was considered to be well established on Tutuila.

Gonaxis kibweziensis is also present on Tutuila though it seems to be in decline. Numerous studies show that *E. rosea* feeds on endemic island snails, including the Tutuila tree snail, and is a major agent in their declines and extirpations. At present, the major threat to the long-term survival of the native snail fauna in American Samoa is predation by nonnative predatory snails. There are currently no conservation efforts being implemented to alleviate the threats to this species. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from increasing threats (e.g., nonnative species) likely to result in the extinction of the species. The threats are also ongoing and thus are imminent. Therefore, we assigned this species a listing priority number of 2.

Chupadera springsnail (*Pyrgulopsis chupaderae*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. See also our 12-month petition finding published on October 4, 1988 (53 FR 38969). This aquatic species is endemic to Willow Spring on the Willow Spring Ranch (formerly Cienega Ranch) at the south end of the Chupadera Mountains in Socorro County, New Mexico. The Chupadera springsnail has been documented from two hillside groundwater discharges that flow through grazed areas among rhyolitic gravels containing sand, mud, and hydrophytic plants. Regional and local groundwater depletion, springrun dewatering, and riparian habitat degradation represent the principal threats. The survival and recovery of the Chupadera springsnail is contingent upon protection of the riparian corridor immediately adjacent to Willow Spring and the availability of perennial, oxygenated flowing water within the species' thermal range. Due to several factors, including the extremely localized distribution of the snail, its occurrence only on private property, the lack of regulatory protection of its habitat, and the inability of land managers to participate in its management, the magnitude of the threats to this species is high. There is an imminent threat to this species because the threats are ongoing (e.g., grazing of cattle, water withdrawal, and fire). Therefore, due to the continuing high magnitude and imminence of threats to this species, we retained a listing priority number of 2 for this species.

Elongate mud meadows springsnail (*Pyrgulopsis notidicola*)—The following summary is based on information

contained in our files. No new information was provided in the petition received on May 11, 2004. *Pyrgulopsis notidicola* is endemic to Soldier Meadow, which is located at the northern extreme of the western arm of the Black Rock Desert, in the transition zone between the Basin and Range Physiographic Province and the Columbia Plateau Province, Humboldt County, Nevada. The type locality, and the only known location of the species, occurs in a stretch of thermal (between 45° Celsius (C) (113° Fahrenheit (F)) and 32 °C (90 °F)) aquatic habitat that is approximately 300 m (984 ft) long and 2 m (6.7 ft) wide. *Pyrgulopsis notidicola* occurs only in shallow, flowing water on gravel substrate. The species does not occur in deep water (i.e., impoundments) where water velocity is low, gravel substrate is absent, and sediment levels are high. The present or threatened destruction, modification, or curtailment of its habitat or range by recreational bathers in the thermal waters is the greatest threat to the species. The small size of their habitat and their limited range makes them highly susceptible to any factors that negatively affect their habitat. Regulatory mechanisms are beginning to be put in place, but few actions have been implemented to date. Based on imminent threats of high magnitude, we retained a listing priority number of 2 for this species.

Gila springsnail (*Pyrgulopsis gilae*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The Gila springsnail is an aquatic species known from 13 populations in New Mexico. The long-term persistence of the Gila springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats (i.e., habitat at the springhead and along the watercourse running from the springhead), thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. Sites on both private and Federal lands are subject to levels of recreational use and livestock grazing that negatively affect this species, thus placing the long-term survival of the Gila springsnail at risk. Natural events such as drought, forest fire, sedimentation, and flooding; wetland habitat degradation by recreational bathing in thermal springs; and poor watershed management practices represent the primary threats to the Gila springsnail. Fire suppression

activities and fire retardant chemicals have potentially deleterious effects on this species. Because several of the springs occur on U.S. Forest Service land, management options for the protection of the snail should be possible. However, randomly occurring events, especially fire and drought, could have a major impact on the species. Moderate use by recreationalists and livestock is ongoing. If these uses remain at current or lower levels, they will not pose an imminent threat to the species. Of greater concern is the current drought that could affect spring discharge and which increases the potential for fire. Significant fires have occurred in the Gila National Forest, and subsequent floods and ash flows have severely affected aquatic life in streams. If the drought continues or worsens, the imminence of threats from decreased discharge or fire will increase. Based on these nonimminent threats that are currently of a low magnitude, we retained a listing priority number of 11 for this species.

Gonzales springsnail (*Tryonia circumstriata*)—See paragraph above under Diamond Y Spring snail (*Pseudotryonia adamantina*).

Huachuca springsnail (*Pyrgulopsis thompsoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Huachuca springsnail inhabits 13 springs and cienegas at elevations of 4,500 to 7,200 feet in southeastern Arizona (11 sites) and adjacent portions of Sonora, Mexico (2 sites). The springsnail is typically found in the shallower areas of springs or cienegas, often in rocky seeps at the spring source. Potential threats include habitat modification, wildfire, cattle grazing, and groundwater pumping. Recent communication with personnel from Fort Huachuca indicates they are in the process of evaluating the status of this species on Department of Defense lands and developing conservation strategies; this may result in a reduction or elimination of threats in the future. Currently, however, due to nonimminent threats of a high magnitude, we retained a listing priority number of 5 for this species.

New Mexico springsnail (*Pyrgulopsis thermalis*)—The following summary is based on information contained in our files and the petition received on November 20, 1985. Also see our 12-month petition finding published on October 4, 1988 (53 FR 38969). The New Mexico springsnail is an aquatic species known from only two separate populations associated with a series of spring-brook systems along the Gila

River in the Gila National Forest in Grant County, New Mexico. The long-term persistence of the New Mexico springsnail is contingent upon protection of the riparian corridor immediately adjacent to springhead and springrun habitats (*i.e.*, habitat at the springhead and along the watercourse running from the springhead), thereby ensuring the maintenance of perennial, oxygenated flowing water within the species' required thermal range. While the New Mexico springsnail populations may be stable, the sites inhabited by the species are subject to levels of recreational use and livestock grazing that can negatively affect this species. Wetland habitat degradation by recreational use and overgrazing in or near the thermal springs and/or inadequate watershed management practices represent the primary threats to the New Mexico springsnail. Moderate use by recreationalists and livestock is ongoing. If these uses remain at the current or lower levels, they will not pose an imminent threat to the species. Of greater concern is the current drought, which could affect spring discharge and increases the potential for fire. Significant fires have occurred in the Gila National Forest and subsequent floods and ash flows have severely affected aquatic life in streams. If the drought continues or worsens, the imminence of threats from decreased discharge and fire will increase. Based on these nonimminent threats of a low magnitude, we retained a listing priority number of 11 for this springsnail.

Page springsnail (*Pyrgulopsis morrisoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Page springsnail is known to exist only within a complex of springs located within an approximately 1.5-kilometer (0.93-mile) stretch along the west side of Oak Creek around the community of Page Springs, Yavapai County, Arizona. Many of the springs where the springsnail occurs have been subjected to some level of modification for domestic, agricultural, ranching, fish hatchery, and recreational activities. Arizona Game and Fish Department management plans for the Bubbling Ponds and Page Springs fish hatcheries include commitments to replace lost habitat and to monitor remaining populations of invertebrates such as the Page springsnail. Based on recent survey data, it appears that the Page springsnail is abundant within its habitats and is more widely distributed than previously known. Monitoring by Arizona Game and Fish Department and Service

biologists no longer entails snail removal, which appears to have had a temporary positive impact on population numbers. The threat of groundwater withdrawal is not imminent because recent studies indicate that the groundwater system of the Verde Valley has not yet been affected by development, and base flow in the Verde River Valley has remained virtually unchanged since 1915. However, the magnitude of threats is high because limited distribution of this narrow endemic makes any impact from the threat (*e.g.*, groundwater withdrawal) likely to result in the extinction of the species. Therefore, we retained a listing priority number of 5 for this species.

Three Forks springsnail (*Pyrgulopsis trivialis*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Three Forks springsnail is an endemic species with distribution limited to the Three Forks Springs and Boneyard Springs spring complexes in the North Fork East Fork Black River Watershed of east-central Arizona. The springsnail is known from free-flowing spring heads, concrete boxed spring heads, spring runs, and spring seepage at these sites. The primary threats include habitat modification from recreational activities, damage from elk wallowing, and predation from nonnative crayfish. The Arizona Game and Fish Department currently maintains an active monitoring program for the Three Forks springsnail in cooperation with the U.S. Fish and Wildlife Service and U.S. Forest Service. This program includes population monitoring, habitat sampling, and removal of nonnative predatory crayfish. However, in the absence of a management strategy to effectively address the threat from both elk and crayfish in the long-term, the threats are ongoing and therefore, imminent. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from the threats likely to result in the extinction of the species. Therefore, we retained a listing priority number of 2 for the Three Forks springsnail.

Newcomb's tree snail (*Newcombia cumingi*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. A tree-dwelling species, Newcomb's tree snail is a member of the snail family, Achatinellidae. The species is endemic to the island of Maui, where it is currently known from a single remaining population. The greatest threats to the Newcomb's tree

snail are the loss of the only known remaining population due to stochastic events and predation from rats and *Euglandina rosea*. There are no efforts being made to reduce the threat from the carnivorous snail and only minimal rat control in the area occupied by this snail. Our attempts to raise this species in a captive propagation facility have been unsuccessful. We have assigned a listing priority number of 2 for this species because threats are occurring in the only known remaining population making it of high magnitude and because the threats are ongoing which make them imminent.

Insects

Warm Springs Zaitzevian riffle beetle (*Zaitzevia thermae*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The warm springs riffle beetle is an aquatic flightless beetle endemic to a single warm spring in southwestern Montana whose surface area is approximately 35 square meters. Because of its naturally limited range, this riffle beetle is at risk of randomly occurring natural- and human-caused events. The warm spring is under the jurisdiction of the Service, which built a structure that provides a considerable level of physical protection for the warm spring. Because of the physical and jurisdictional protection, we determined that the magnitude of threats is low and the threats are nonimminent. Based on this, we assigned this species a listing priority number of 11.

Wekiu bug (*Nysius wekiuicola*)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Mariana eight spot butterfly (*Hypolimnas octocula mariannensis*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Mariana eight spot butterfly is a nymphalid butterfly species that feeds upon two host plants, *Procris pedunculata* and *Elatostema calcareum*. Endemic to the islands of Guam and Saipan, the species is now known from ten populations on Guam. This species is currently threatened by alien predation and parasitism and impacts to its host plants by browsing ungulates. The Mariana eight spot butterfly has extremely high mortality of eggs and larvae due to predation by alien ants and wasps. Nonnative deer degrade the

habitat by browsing, trampling, and uprooting the butterfly's host plants. The threats of habitat loss by nonnative deer, and parasitism and predation by nonnative insects occur range-wide. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from these threats likely to result in the extinction of the species. Direct threats to the Mariana eight spot butterfly from alien predators and parasites and indirect threats from impacts to its host plants by browsing ungulates are all imminent because they have been occurring for many years and are ongoing. Therefore, we assigned a listing priority number of 3 for this subspecies.

Mariana wandering butterfly (*Vagrans egestina*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The Mariana wandering butterfly is a nymphalid butterfly species which feeds upon a single host plant species, *Maytenus thompsonii*. Originally known from and endemic to the islands of Guam and Rota, the species is now known only from one population on Rota. This species is currently threatened by alien predation and parasitism and impacts to its host plants by browsing ungulates. The Mariana wandering butterfly has extremely high mortality of eggs and larvae due to predation by alien ants and wasps. Nonnative deer degrade the habitat by browsing, trampling, and uprooting the butterfly's host plants. The threats of habitat loss by nonnative deer, and parasitism and predation by nonnative insects occur range-wide. The magnitude of threats is high because limited distribution of this narrow endemic makes any impact from these threats likely to result in the extinction of the species. Direct threats to the Mariana wandering butterfly from alien predators and parasites and indirect threats from impacts to its host plants by browsing ungulates are all imminent because they have been occurring for many years and are ongoing. Therefore, we assigned a listing priority number of 2 for this species.

Miami blue butterfly (*Cyclargus thomasi bethunebakeri*)—The following summary is based on information contained in our files and in the petition received on June 15, 2000. The Miami blue appears to be endemic to south Florida. Historically, it occurred throughout the Florida Keys, north to Hillsborough and Volusia Counties. None were documented between 1996 and 1999. In 1999, an extant population was discovered at Bahia Honda State Park on Bahia Honda Key. It is now

restricted to that park, other than several larvae that were documented on West Summerland Key, on unprotected land approximately 2.2 miles west of the Bahia Honda site, in November 2003. This butterfly occupies about 1.28 acres on Bahia Honda. The Miami blue is predominantly a coastal species, occurring in disturbed and early successional habitats such as the edges of tropical hardwood hammock, coastal berm forest, and along trails and other open sunny areas, and historically in pine rocklands. These habitats provide larval host plants and adult nectar sources that are required to occur in close juxtaposition, due to the very restricted range of movement exhibited by the butterfly. The magnitude of threat is high for this species, due to threats associated with limited population size and range, mosquito control activities, and hurricanes. The threats are nonimminent since the current range is within a state park wherein threats from mosquito control actions are substantially controlled, and because threats associated with small population size and stochastic events (like hurricanes) are long-term, not immediate threats. Therefore, the Miami blue is assigned a listing priority number of 6.

Sequatchie caddisfly (*Glyphopsyche sequatchie*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Sequatchie caddisfly is known from two spring runs that emerge from caves in Marion County, Tennessee: Owen Spring Branch (the type locality) and Martin Spring run in the Battle Creek system. The Owen Spring Branch population occurs within Sequatchie Cave Park, which is a Class II Natural-Scientific State Natural Area, thus providing statutory protection from collection for the population in Owen Spring Branch. Estimated population sizes are 500 to 5000 individuals for Owen Spring Branch and 2 to 10 times higher at Martin Spring, due to the greater amount of apparently suitable habitat. Threats to the species include siltation; agricultural, municipal, and industrial chemical runoff (both direct and from subsurface flows); vandalism; and pollution from trash thrown into the springs. This species is vulnerable to extinction due to its restricted distribution and small population sizes. These threats are gradual and/or not necessarily imminent but are of a high magnitude; therefore, we retained a listing priority number of 5 for this species.

Beaver Cave beetle (*Pseudanophthalmus major*)—The

following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. Beaver Cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. The Beaver Cave beetle is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was observed in 2005 during a survey of the cave. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years; we therefore have assigned a listing priority number of 5 to this species.

Clifton cave beetle (*Pseudanophthalmus caecus*)—The following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. Clifton cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. Clifton cave beetle is only known from two privately owned Kentucky caves. Soon after the species was first collected in 1963 the entrance to the cave was sealed due to road construction. Other caves in the vicinity of this cave were surveyed for the species during a 1995 to 1996. Only one additional site was found to support the Clifton Cave beetle. It can not be determined at this time if the species still occurs at the original location or if the species has been extirpated from the site by the closure of the cave entrance. The limestone caves in which this species are found provide a unique and fragile environment that supports a variety of

species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years; we therefore assigned a listing priority number of 5 to this species.

Icebox cave beetle (*Pseudanophthalmus frigidus*)—The following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. Icebox cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. Icebox cave beetle is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since it was originally collected from the only site known to support the species, but species experts believe that it may still exist there in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years; we therefore have

assigned a listing priority number of 5 to this species.

Inquirer cave beetle (*Pseudanophthalmus inquisitor*)—The following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. The inquirer cave beetle is a fairly small, eyeless, reddish-brown predatory insect that feeds upon small cave invertebrates. It is cave dependent and is not found outside the cave environment. The inquirer cave beetle is only known from one privately owned Tennessee cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species was last observed in 1997. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. The area around the only know site for the species is in a rapidly expanding urban area and indirect impacts, such as chemical or other pollution, could significantly affect both the cave and the species the cave supports. The entrance to the cave is protected by the landowner through a cooperative management agreement with the Service, The Nature Conservancy, and Tennessee Wildlife Resources Agency; however, a sinkhole that drains into the cave system is located away from the protected entrance and is near a highway. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities could adversely affect the species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years and it receives some protection under a cooperative management agreement; we therefore have assigned a listing priority number of 5 to this species.

Louisville cave beetle (*Pseudanophthalmus troglodytes*)—The following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. The Louisville cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is cave dependent and is not found outside the cave environment. Louisville cave beetle is only known from two privately

owned Kentucky caves. The limestone caves in which this species are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years; we therefore have assigned a listing priority number of 5 to this species.

Surprising cave beetle (*Pseudanophthalmus inexpectatus* Barr)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Cave beetles in the genus *Pseudanophthalmus* are fairly small, eyeless, reddish-brown insects. The limestone caves in which these cave beetles are found provide a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The surprising cave beetle was described from specimens collected in the historic section of Mammoth Cave and White Cave, Mammoth Cave National Park (MCNP), Edmonston County, Kentucky. Subsequent to these original discoveries, the species was also found in MCNP's Great Onyx Cave. Recently, an additional population was discovered in a cave some distance from the previously known sites. Its limited distribution makes this species vulnerable to isolated events that would only have a minimal effect on the more wide-ranging members of the genus. Events such as toxic chemical spills, discharges of large amounts of polluted water, closure of entrances, alteration of entrances, or the creation of new entrances can have serious adverse impacts on this species and could result in its extinction. The magnitude and imminence of the threat to the surprising cave beetle is reduced because of its location on Federal land

and the implementation of a Candidate Conservation Agreement between MCNP and the Service to protect the species. Therefore we have assigned a listing priority of 11 to this species.

Tatum Cave beetle (*Pseudanophthalmus parvus*)—The following summary is based upon information in our files. No new information was provided in the petition received on May 11, 2004. Tatum Cave beetle is a small, eyeless, reddish-brown predatory insect that feeds upon cave invertebrates. It is cave dependent and is not found outside the cave environment. Tatum Cave beetle is only known from one privately owned Kentucky cave. The limestone cave in which this species is found provides a unique and fragile environment that supports a variety of species that have evolved to survive and reproduce under the demanding conditions found in cave ecosystems. The species has not been observed since 1965 but species experts believe that it still exists in low numbers. The limited distribution of the species makes it vulnerable to isolated events that would only have a minimal effect on the more wide-ranging insects. Events such as toxic chemical spills, discharges of large amounts of polluted water or indirect impacts from off-site construction activities, closure of entrances, alteration of entrances, or the creation of new entrances could have serious adverse impacts on this species. The likelihood of one of the events eventually occurring combined with the narrow range of the species makes the magnitude of threats high. The immediacy of threat is nonimminent because there are no known projects planned that would affect the species in the next 1 to 2 years; we therefore have assigned a listing priority number of 5 to this species.

Taylor's (Whulge, Edith's) checkerspot butterfly (*Euphydryas editha taylori*)—The following summary is based on information from our files and in the petition received on December 11, 2002. Historically, the Taylor's checkerspot butterfly was known from 70 locations: 23 in British Columbia, 34 in Washington, and 13 in Oregon. Following surveys during the 2005 flight period, only 15 populations were confirmed, with a total of about 2,500 to 3,000 individuals observed. Twelve populations are known from Washington, two in the Willamette Valley of Oregon and the new location found in British Columbia, Canada. The species was thought to have been extirpated in Canada until this new population was discovered at a new location on Denman Island, British Columbia.

Threats include degradation and destruction of native grasslands by conversion to agriculture, residential development, commercial purposes, encroachment by nonnative plants, and natural succession from grasslands to native shrubs and trees, and fire. The application of *Bacillus thuringiensis* var. *kurstaki* for Asian gypsy moth control likely contributed to extirpations of the subspecies at three locations in Pierce County, Washington. Magnitude of threats is high because of the extremely small size of remaining populations and reduction in distribution from the historical range and because the threats may occur at all or a major portion of the known butterfly locations. The size and location of the populations shift from year to year. Threats are imminent because they are currently occurring. The ecosystem on which this subspecies depends requires annual management to maintain its grassland habitat. We assigned the Taylor's checkerspot butterfly a listing priority number of 3.

Blackline Hawaiian damselfly (*Megalagrion nigrohamatum nigrolineatum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The blackline Hawaiian damselfly is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to 11 populations within the windward Koolau Mountains. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasive nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants also contribute to loss of habitat by either over shading streams or by forming dense, monotypic stands that completely eliminate any open water (e.g. California grass (*Brachiaria mutica*)). These threats are occurring in varying degrees range-wide for the blackline Hawaiian damselfly. Although there are no efforts being done to control or eradicate nonnative fish or insects or to stop the loss of habitat, the 11 streams are widely dispersed on both sides of the mountain range and are highly unlikely to experience complete loss of populations at the same time. Therefore the magnitude of the threats is moderate. Threats to the blackline Hawaiian damselfly from loss of habitat and introduced nonnative fish and

insects are ongoing and therefore are imminent. Therefore, we assigned this subspecies a listing priority number of 9.

Crimson Hawaiian damselfly (*Megalagrion leptodemas*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion leptodemas* is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to four populations. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasive plant species. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants also contribute to loss of habitat by either over shading streams or by forming dense, monotypic stands that completely eliminate any open water (e.g. California grass (*Brachiaria mutica*)). There are no conservation measures being taken to alleviate these threats for this species. Nonnative fish and plants are found in all the streams the crimson Hawaiian damselfly occurs in making these threats ongoing and imminent. These threats are of high magnitude because of their severity and because they are occurring throughout its limited range. We have assigned this species a listing priority number of 2 because the threats are of a high magnitude and are imminent.

Flying earwig Hawaiian damselfly (*Megalagrion nesiotetes*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion nesiotetes* is a terrestrial or semi-terrestrial damselfly species endemic to the islands of Hawaii and Maui, Hawaii. Despite surveys to locate extant populations, the species is now known to be restricted to a single population in windward east Maui. This species is threatened by predation from ants and other nonnative arthropods that likely feed on both naiads and emerging adults, and habitat loss due to disturbance by feral ungulates. While foraging, pigs root and trample the forest floor, encouraging the establishment of nonnative plants in the newly disturbed soil. In moist depressions, pigs completely remove all vegetation by wallowing, leaving nothing but mud and water. The complete removal of vegetation as well as the establishment of nonnative plants destroy the leaf

litter habitat that is likely used by the Flying earwig Hawaiian damselfly naiads. These threats are ongoing in the only known population of this species and no conservation efforts are being done to alleviate these serious threats for this species. We assigned this species a listing priority number of 2 because the threats are of a high magnitude and are imminent.

Oceanic Hawaiian damselfly (*Megalagrion oceanicum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion oceanicum* is a stream-dwelling damselfly species endemic to the island of Oahu, Hawaii. Once known from throughout Oahu, the species is now restricted to seven populations within the windward Koolau Mountains. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants also contribute to loss of habitat by either over shading streams or by forming dense, monotypic stands that completely eliminate any open water (e.g. California grass (*Brachiaria mutica*)). There are no conservation measures being taken to alleviate these threats for this species. Nonnative fish and plants are found in all the streams the oceanic Hawaiian damselfly occurs in making these threats ongoing and imminent. These threats are of high magnitude because of their severity and because they are occurring throughout its limited range. Therefore, we have assigned this species a listing priority number of 2.

Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion xanthomelas* is a stream-dwelling damselfly species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species is now restricted to 16 populations on the islands of Oahu, Molokai, Lanai, and Hawaii. This species is threatened by predation from alien aquatic species such as fish and predacious insects and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces

the amount of suitable naiad habitat available. Invasive plants also contribute to loss of habitat by either over shading streams or by forming dense, monotypic stands that completely eliminate any open water (e.g. California grass (*Brachiaria mutica*)). Nonnative fish and plants are found in all the streams the orangeblack damselfly occur in, except the Oahu location, where there are no nonnative fish, making these threats ongoing and imminent. Although no conservation efforts are being implemented for this species in particular on Molokai, Lanai, and the island of Hawaii, the Oahu location is located at Tripler Army Medical Center. The Army has consistently considered the damselfly's needs in all work done near or in the stream and maintains a supplemental water flow into the stream to maintain habitat after disrupting the original flow. We assigned this species a listing priority number of 8 because though the threats are imminent, they are of moderate magnitude given the more widely dispersed population and the conservation efforts at Tripler.

Pacific Hawaiian damselfly (*Megalagrion pacificum*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Megalagrion pacificum* is a slow-moving stream, pool, and pond-dwelling damselfly species endemic to the Hawaiian Islands of Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii. The species is now restricted to seven populations on the islands of Maui and Molokai. This species is threatened by predation from alien aquatic species, such as fish and predacious insects, and habitat loss through dewatering of streams and invasion by nonnative plants. Nonnative fish and insects prey on the naiads of the damselfly and loss of water reduces the amount of suitable naiad habitat available. Invasive plants also contribute to loss of habitat by either over shading streams or by forming dense, monotypic stands that completely eliminate any open water (e.g. California grass (*Brachiaria mutica*)). There are no conservation measures being taken to alleviate these threats for this species. Nonnative fish and plants are found in all the streams the Pacific Hawaiian damselfly occurs in making these threats ongoing and imminent. These threats are of high magnitude because of their severity and because they are occurring throughout its limited range. Therefore, we have assigned this species a listing priority number of 2.

Picture wing fly (*Drosophila attigua*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This picture wing fly, a member of the fly family Drosophilidae, feeds and breeds upon a single host plant, *Cheirodendron* sp. The fly is endemic to the Hawaiian Island of Kauai, where it is currently known from two populations. This species is currently threatened by loss and modification of its host plant's habitat by browsing ungulates and through the uncontrolled growth of nonnative plants. While foraging, pigs root and trample the forest floor, encouraging the establishment of nonnative plants in the newly disturbed soil. Pigs also disseminate nonnative plant seeds through their feces and on their bodies, accelerating the spread of nonnative plants through native forest. These nonnative plants often displace native plants including the host plant this species depends on. Feral goats also consume native vegetation including this species' host plant, trample roots and seedlings, accelerate erosion, and promote the invasion of nonnative plants. Additionally, nonnative insect species prey on and parasitize both the larvae and adult phases of the picture wing fly. All these threats are ongoing which make them imminent and are severe throughout the species range which makes the threats of high magnitude. Therefore, we assigned this species a listing priority number of 2.

Picture wing fly (*Drosophila digressa*)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This picture wing fly, a member of the fly family Drosophilidae, feeds and breeds upon a single host plant, *Charpentiera* sp. The fly is endemic to the island of Hawaii, where it is currently known from three populations. This species is currently threatened by loss and modification of its host plant's habitat by browsing ungulates and through the uncontrolled growth of nonnative plants. While foraging, pigs root and trample the forest floor, encouraging the establishment of nonnative plants in the newly disturbed soil. Pigs also disseminate nonnative plant seeds through their feces and on their bodies, accelerating the spread of nonnative plants through native forest. These nonnative plants often displace native plants including the host plant this species depends on. Feral goats also consume native vegetation including this species host plant, trample roots and seedlings, accelerate erosion, and

promote the invasion of nonnative plants. Additionally, nonnative insect species prey on and parasitize both the larvae and adult phases of the picture wing fly. All these threats are ongoing which make them imminent and are severe throughout the range of this species which makes the threats of high magnitude. Therefore, we assigned this species a listing priority number of 2.

Stephan's riffle beetle (*Heterelmis stephani*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. The Stephan's riffle beetle is an endemic riffle beetle found in limited spring environments within the Santa Rita Mountains, Pima County, Arizona. The beetle is known from Bog Spring and Sylvester Spring in Madera Canyon, within the Coronado National Forest. These springs are typical isolated, mid-elevation, permanently saturated, spring-fed aquatic climax communities commonly referred to as ci, negas. Threats are largely from habitat modification; we consider them to be of high magnitude due to the limited range of the species. However, because the Forest Service has no current plans to modify remaining habitat, the threats are not imminent. Due to the continued high magnitude of nonimminent threats, we retained a listing priority number of 5 for Stephan's riffle beetle.

Dakota skipper (*Hesperia dacotae*)—The following summary is based on information contained in our files, including information from the petition received on May 12, 2003. The Dakota skipper is a small-to mid-sized butterfly that inhabits high-quality tallgrass and mixed grass prairie in Minnesota, North Dakota, South Dakota, and the provinces of Manitoba and Saskatchewan in Canada. The species is presumed to be extirpated from Iowa and Illinois and from many sites within occupied States.

The species is threatened by conversion of its native prairie habitat for agricultural purposes, overgrazing, invasive species, gravel mining, inbreeding, population isolation, and, in some cases, prescribed fire. In addition, prairie succeeds to shrubland or forest without periodic fire, grazing, or mowing; thus, the species is also threatened at sites where such disturbances are not applied. Although the species is listed as threatened by the State of Minnesota, this designation lacks the habitat protections needed for long-term conservation. The species is also listed as endangered by the province of Manitoba. The Service, other agencies, and private organizations (e.g., The Nature Conservancy) protect and manage some

Dakota skipper sites. Although proper management is always necessary to ensure its persistence, it is generally secure at these sites. The species is also secure at some sites where private landowners manage native prairie in ways that conserve Dakota skipper. The threats are such that the species warrants listing; the threats are moderate in magnitude and, although some sites are imminently threatened, overall the threats are nonimminent. Therefore, we assigned a listing priority number of 11 to the species.

Mardon skipper (*Polites mardon*)—The following summary is based on information contained in our files and the petition received on December 24, 2002. The Mardon skipper is a rare northwestern butterfly with a remarkably disjunct range. Currently this species is known from four widely separated locations: South Puget Sound region, southern Washington Cascades, Siskiyou Mountains of southern Oregon, and coastal California. The Mardon skipper spends its entire life cycle in one location, and its dispersal ability is probably limited. Threats include habitat loss and degradation due to development, overgrazing, use of herbicides and pesticides, encroachment of nonnative and native vegetation, succession from grassland to forest, and fire suppression; and direct loss of individuals due to fire, recreational activities, insect collecting, and random, naturally occurring events. Limited dispersal ability restricts the likelihood of recolonization once a population is lost. The magnitude of threats is high because of the small population sizes and disjunct distribution of the species that limits its ability to disperse; just 10 of the known locations for Mardon Skipper have more than 50 individuals. Loss of any of the populations could threaten the continued existence of the species within each of its known separate locales. However, the number of documented locations for the species has increased from less than 10 in 1998 to as many as 65 rangewide in 2005 and it would be unlikely to have threats that would affect all known locales simultaneously. Overall, we consider the threats to be nonimminent because the threats are not currently occurring at all known population sites. We have assigned a listing priority number of 5 to the Mardon skipper.

Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*)—The following summary is based on information contained in our files, including information from the petition received on April 21, 1994. The Coral Pink Sand Dunes tiger beetle occurs

only at the Coral Pink Sand Dunes, approximately seven miles west of Kanab, Kane County, in south-central Utah. It is restricted to a small part of the dune field, situated at an elevation of about 1,820 m (6,000 ft). The beetle's habitat is being adversely affected by ongoing recreational off-road vehicle use that is destroying and degrading the beetle's habitat, especially the interdunal swales used by the larvae. The continued survival of the beetle depends on the preservation of its habitat. The two agencies that manage the dunes field, the Utah Department of Parks and Recreation and the Bureau of Land Management, have restricted recreational off-road vehicle use in some areas, which reduces impacts. The beetle's population is also vulnerable to over collecting by professional and hobby tiger-beetle collectors. Quantification of this threat is difficult without continuous population monitoring. Climatic factors, most recently drought conditions, have reduced the population, but it has shown some recent improvement. Based on imminent threats of a low to moderate magnitude, we retained a listing priority of 9.

Highlands tiger beetle (*Cicindela highlandensis*)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Highlands tiger beetle is narrowly distributed and restricted to areas of bare sand within upland oak scrub and longleaf pine vegetation on the ancient sand dunes of the Lake Wales Ridge in Polk and Highlands Counties, Florida. This tiger beetle has been found at 40 sites from near Haines City south to Josephine Creek. In the most recent survey, biologists found a total of 1,574 adults at 40 sites compared with 643 adults at 31 sites in 1996, 928 adults at 31 sites in 1995, and 742 adults at 21 sites in 1993. Of the 40 sites in the 2004–2005 surveys with one or more adults: Three sites were found to have large populations of over 100 adults [Catfish Creek Preserve (493), Snell Creek South (193), and Flaming Arrow Scout Camp (175)]; three sites had populations of 50–99 adults; eight sites had 20–49 adults, 13 sites had 10–19 adults, and 13 sites had < 10 adults. Results from a limited removal study at four sites suggest that the actual population size at the various survey sites is likely to be as much as two times as high as indicated by the visual index counts. Lack of fire to create open sand, pesticide use, small population sizes at some sites, and over-collecting pose serious threats to this species. Because

this species is narrowly distributed with specific habitat requirements and small populations, the magnitude of threats is high. Although the majority of its historic range has been lost, degraded, and fragmented, numerous sites are now protected, and land managers are implementing prescribed fire, which should restore habitat and help reduce threats. Overall, the threats are nonimminent. Therefore, the Highlands tiger beetle is assigned a listing priority number of 5.

Arachnids

Warton's cave meshweaver (*Cicurina wartoni*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004, or has been received since the last Candidate Notice of Review published on May 11, 2005. Warton's Cave meshweaver is an eyeless, cave-dwelling, unpigmented, 0.25 inch long invertebrate known only from female specimens. This meshweaver is known to occur in only one cave (Pickle Pit) in Travis County, Texas. Primary threats to the species and its habitat are predation and competition from fire ants and surface and subsurface effects from runoff from an adjacent subdivision. The magnitude of threats is high because the single location for this species makes it highly vulnerable to extinction. The threats are imminent because fire ants are known to occur in the vicinity of the cave, and impacts to the cave from runoff and human activities are an imminent threat. Thus, we assign a listing priority number of 2 to this species.

Crustaceans

Anchialine pool shrimp (*Metabetaeus lohena*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Anchialine pool shrimp (*Palaemonella burnsi*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Anchialine pool shrimp (*Procaris hawaiiiana*)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Anchialine pool shrimp (*Vetericaris chaceorum*)—See above in "Summary of

Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Troglobitic groundwater shrimp (*Typhlatya monae*)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Typhlatya monae* is a subterranean small shrimp known from Puerto Rico, Barbuda, and Dominican Republic. It is classified as a troglobite, or obligatory cave organism, of which its most extraordinary feature is the reduction or loss of vision and pigmentation. They feed on organic waste material and debris, such as bat guano. Little is known concerning the status of *T. monae* in either Barbuda or Dominican Republic. Although in Puerto Rico this species was previously found at Mona Island, currently *T. monae* is known from only three caves within the Gurca Commonwealth Forest in the municipalities of Gurca, Yauco, and Guayanilla. However, the species may still be found in the reef deposit aquifers in Mona Island that have not yet been surveyed. In 1995, the population in Puerto Rico was estimated to be close to 2,000 individuals; over 95% of these were observed in only one cave. Changes in groundwater quality, collection of rare animals, predation, limited distribution of the species, limited availability of appropriate habitat (i.e., underground aquifers within cave formations), potential reduction of food sources (e.g., mortality or reduction in bat populations), and low population numbers, threaten populations of *T. monae*. These threats are not imminent because the known range of *T. monae* is within protected lands and there are no known projects or management activities planned within the Gurca Commonwealth Forest or Mona Island that would result in mortality of this species. The magnitude of threat to *T. monae* is high due to its restricted distribution, low population numbers, and aggregation of most individuals at only one location. Therefore, we assign a listing priority number of 5 to this species.

Flowering Plants

Abronia alpina (Ramshaw Meadows sand-verbena)—See above in "Summary of Listing Priority Changes in Candidates." No new information was provided in the petition received on May 11, 2004.

Arabis georgiana (Georgia rockcress)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on

information contained in our files. No new information was provided in the petition received on May 11, 2004.

Argythamnia blodgettii (Blodgett's silverbush)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. Blodgett's silverbush has been found in open, sunny areas in pine rockland, edges of rockland hammock, edges of coastal berm, and sometimes disturbed areas at the edges of natural areas. Plants can be found growing from crevices on limestone, or on sand. The pine rockland habitat where it occurs in Miami-Dade County and the Florida Keys requires periodic fires to maintain habitat with a minimum amount of hardwoods. Approximately 10,000 plants may exist at 18 sites, with most of the plants on the large pinelands of Long Pine Key in Everglades National Park and Big Pine Key (in part on National Key Deer Refuge), as well as other smaller pinelands on conservation lands. If this plant's distribution were limited to the mainland, we would consider the magnitude of threat to be high due to exotic pest plant problems in the Miami-Dade urban and agricultural area, and the likely arrival of a serious new pest, Old World climbing fern. Because the Keys are drier and perhaps less fertile, managing vegetation is slightly easier. Fire return intervals are longer and Old World Climbing fern may prove to be less of a threat. As a result, we consider the magnitude of threats to be moderate to low. We are maintaining the immediacy of threat as nonimminent to reflect the intensive management and biological control efforts already aimed at Old World climbing fern, as well as the quality of management on conservation lands. Thus, we assigned a listing priority number of 11 to this species.

Artemisia campestris var. *wormskioldii* (Northern wormwood)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Historically known from eight sites, northern wormwood is currently known from only two populations in Klickitat and Grant Counties, Washington. This plant is restricted to exposed basalt, cobbly-sandy terraces, and sand habitat along the shore and on islands in the Columbia River. The two sites are separated by 200 miles (322 kilometers) of the Columbia River and three large hydroelectric dams. The Klickitat County population is declining; it is unclear whether the Grant County population is stable or declining, but it is vulnerable to environmental

variability. Surveys of apparently suitable habitat along the Hanford Reach have not detected any additional plants.

Threats to northern wormwood include direct loss of suitable habitat through regulation of water levels in the Columbia River and placement of riprap along the river bank; trampling of plants as a result of recreational use; competition with nonnative invasive species; a small population size that makes both sites susceptible to genetic drift and inbreeding; and the potential for hybridization with two other species of *Artemisia*. Ongoing conservation actions have reduced trampling, but have not eliminated or reduced the other threats at the Grant County site. The magnitude of threat is high for this variety because the only two remaining populations are widely separated and distributed such that one or both populations could be eliminated by a single disturbance. The threats are imminent because recreational use is ongoing, invasive nonnative species occur at both sites, erosion of the substrate is ongoing at the Klickitat County site, and high water flows are random, naturally occurring events that may occur unpredictably in any year. Therefore, we retained a listing priority number of 3 for this plant variety.

Astelia waialealae (Pa'āniu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Pa'āniu is a perennial herb found in *Metrosideros polymorpha* (ohia) dominated mixed montane bog on Kauai, Hawaii. *Astelia waialealae* is known from three populations in three bogs within the Alakai swamp region of Kauai. The total numbers have declined from 35 clumps, representing 10 to 15 genetically distinct individuals, in 2004 to 21 clumps in 2005, representing 7 genetically distinct individuals. No regeneration has been observed from 1995 to the present. The major threats to this species currently are the lack of regeneration and the low numbers of individuals. The species is also threatened by pigs that eat and trample this plant and its seedlings, degrade and/or destroy habitat, and spread the nonnative plant species *Juncus planifolius* and *Andropogon virginicus* that compete with *A. waialealae*. Pigs have been fenced out of the three bogs where *A. waialealae* currently occurs and nonnative plant control is underway; however, this species is not recovering and continues to decline, even though the known threats of feral pigs and nonnative plants have been controlled over the past nine years. The threats continue to be of a high

magnitude because of small population size and range make it extremely vulnerable, and efforts to address the threats have not halted the decline. In addition, the threats are imminent because they are ongoing as evidenced by the continuing decline of the species. Therefore, we retained a listing priority number of 2 for this species.

Astragalus tortipes (Sleeping Ute milkvetch)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Bidens amplexans (Kookoalu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is an erect perennial or facultatively annual herb found in mixed lowland dry shrubland/grassland on Oahu, Hawaii. Known from one population of 500 to 1,000 individuals in the Waianae Mountains, the threats to this species are nonnative plants that increase the fuel load and fire threat, and compete for habitat. The magnitude of threats continues to be high because no conservation measures have been taken to address them and because of the potential for the elimination of the only known population by a single stochastic or naturally occurring event. Threats continue to be imminent because they are ongoing. We retained a listing priority number of 2 for this species.

Bidens campylotheca ssp. *pentamera* (Kookoalu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This subspecies is an erect, perennial herb found in *Cheirodendron-Metrosideros polymorpha* (olapa-ohia) montane wet forest on Maui, Hawaii. This subspecies is known from 11 populations with a total of approximately 500 individuals. *Bidens campylotheca* ssp. *pentamera* is threatened by feral pigs that degrade and destroy habitat, and by nonnative plants that compete for habitat. Feral pigs have been fenced out of three of the 11 populations of *B. campylotheca* ssp. *pentamera* and nonnative plants have been greatly reduced in the three fenced areas. This subspecies is represented in an *ex-situ* collection and reintroduction or augmentation efforts have been attempted this year. However, these ongoing conservation efforts benefit only three of the 11 known populations and therefore threats continue to be of a high magnitude to this subspecies. In addition, threats to *B. campylotheca*

ssp. *pentamera* are imminent because they are ongoing in eight of the 11 populations. Therefore, we retained a listing priority number of 3 for this subspecies.

Bidens campylotheca ssp. *waihoiensis* (Kookoalu)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Bidens conjuncta (Kookoalu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Bidens conjuncta* is an erect, perennial herb found in *Metrosideros-Dicranopteris* (ohia-uluhe) lowland to montane wet forest and shrubland on Maui, Hawaii. Seven populations are known, and the number of individuals totals approximately 2,200 scattered throughout upper elevation drainages of west Maui. Although the overall range of the species has not changed, the number of individuals has declined over the last decade or so. This species is threatened by pigs that degrade and destroy habitat, and eat vegetative parts and fruit of *B. conjuncta*, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of about half of the populations of *B. conjuncta*, and nonnative plants have been greatly reduced in the fenced areas. The threats from feral pigs and nonnative plants are, therefore, of a moderate magnitude to this species because they impact only about half of its populations. In addition, these threats are imminent because they are ongoing in half of the populations. Therefore, we retained a listing priority number of 8 for this species.

Bidens micrantha ssp. *ctenophylla* (Kookoalu) “ The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This subspecies is an erect, perennial herb found in open mixed shrubland to dry *Metrosideros* (ohia) forest on the island of Hawaii, Hawaii. This subspecies is endemic to the island of Hawaii, where it is restricted to an area of less than 10 square miles (26 square kilometers). *Bidens micrantha* ssp. *ctenophylla* is known from four populations totaling approximately 3,000 individuals, the majority of which occur in only two populations. This subspecies is threatened by fire and nonnative plants, such as *Pennisetum setaceum* (fountain grass) and *Leucaena leucocephala* (koa haole), and two populations are

threatened by residential and commercial development. The threats to *B. micrantha* ssp. *ctenophylla* from fire and nonnative plants are of a high magnitude and imminent because they are occurring range-wide and no efforts for their control have been undertaken. In addition, two populations are also threatened by development. Therefore, we retained a listing priority number of 3 for this subspecies.

Brickellia mosieri (Florida brickell-bush)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is restricted to pine rocklands of Miami-Dade County, Florida. This habitat requires periodic prescribed fires to maintain the low understory and prevent encroachment by native tropical hardwoods and some exotic pest plants, such as Brazilian pepper. Only one large population (up to 10,000 individuals) is known to exist, plus 16 other populations that do not each exceed 100 individuals. There is little likelihood of finding additional populations because less than one percent of the original pineland habitat still exists and this habitat has been mapped and surveyed for rare plants over the past two years. Throughout its range, this species is threatened by exotic pest plants and conversion of pinelands to other uses. New exotic pest plants are expected to invade pine rocklands, even as effective control methods are found for existing pests. However, 15 of the 17 sites are on conservation lands where control of invasive species is being implemented and controlled burns are being conducted. In the limited area of protected conservation lands it is difficult to conduct prescribed fires in urban areas. Nonnative plant species also pose a threat and are difficult to control. Thus, the overall magnitude of threat is moderate. The threats are ongoing and thus imminent. We assigned this species a listing priority number of 8.

Calamagrostis expansa (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a robust, short-rhizomatous perennial found in wet forest, open bogs, and bog margins on the islands of Maui and Hawaii, Hawaii. Historically rare, *C. expansa* was restricted to wet forest and bogs on Maui. It is unknown what the historical status was on Hawaii. Currently, this species is known from 100 populations totaling approximately 400 individuals on Maui, and was recently discovered in

five populations totaling approximately 300 individuals on the island of Hawaii. *Calamagrostis expansa* is threatened by pigs that degrade and destroy habitat and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of most of the west Maui populations where *C. expansa* currently occurs and nonnative plants have been reduced in the fenced areas. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and in all of the populations on the island of Hawaii. Therefore, the threats from feral pigs and nonnative plants are of a high magnitude and imminent for *C. expansa*, and we retained a listing priority number of 2 for this species.

Calamagrostis hillebrandii (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Calamagrostis hillebrandii* is a slender, short-rhizomatous perennial found in *Metrosideros-Machaerina* montane wet bog or *Metrosideros-Rhynchospora-Oreobolus* mixed bog on Maui, Hawaii. This species is known from two populations of about 2,000 individuals, restricted to the bogs of west Maui, although it was formerly found on the island of Molokai as well. This species is currently threatened by pigs that degrade and destroy habitat and nonnative plants that outcompete and displace it. An ungulate enclosure fence has been constructed and another one is under construction to protect both populations of this species, and nonnative plants are being reduced in the fenced area. We retained a listing priority number of 2 for this species because the threats are ongoing in one of the two known populations and so are imminent and of a high magnitude.

Calliandra locoensis (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Calliandra locoensis* is a spiny, leguminous shrub currently known from only two localities within the Susúa Commonwealth Forest in the municipalities of Yauco and Sabana Grande, in southwestern Puerto Rico. Twenty-five native species of *Calliandra* have been reported for the Antilles; three are native to Puerto Rico, including *C. locoensis*. This species is endemic to Puerto Rico, and was discovered in 1991 during a study of the flora of the Susúa Commonwealth Forest. It was described by Garca and Kolterman in 1992.

Calliandra locoensis is found at two locations along one creek in semi-evergreen to deciduous forests on shallow, serpentine soils with low nutrients, high drainage, and low fertility. Much of the vegetation in the forest was cut for wood, cultivation, livestock grazing, and charcoal production, prior to its designation as a public forest. *Calliandra locoensis* exhibits low degree of self-compatibility in pollination tests. Seeds have short viability period, do not appear to have a biotic dispersal agent (dispersed by dehiscence), and require mesic conditions for germination, which may be factors in the species' limited distribution. The small number of individuals, restricted distribution (two localities), forest management practices (accidental trampling, brush clearing, trail maintenance), forest fires (natural or manmade), and catastrophic natural events (hurricanes, floods, mudslides), threaten this species. We assign a listing priority number of 5 to this species because the magnitude of threat to *C. locoensis* is high, due to its restricted distribution, apparent low dispersal capability, and population number (only two small populations relatively close to one another). The threats are nonimminent given that the populations are found within protected lands and there are no known projects or management activities planned that would destroy the known populations of *C. locoensis*.

Calochortus persistens (Siskiyou mariposa lily)—The following summary is based on information contained in our files and the petition received on September 10, 2001. The Siskiyou mariposa lily is a narrow endemic that is restricted to two disjunct ridge tops in the Klamath-Siskiyou Range on the California-Oregon border. In California, this species is currently found at nine separate sites on approximately 10 hectares (ha) (24.7 acres (ac)) of Klamath National Forest and privately owned lands that stretch for 6 kilometers (km) (3.7 miles (mi)) along the Gunsight-Humbug Ridge. In 1998, five Siskiyou mariposa lily plants were discovered on Bald Mountain, west of Ashland, Jackson County, Oregon.

Major threats include competition and shading by native and nonnative species fostered by suppression of wild fire; increased fuel loading and subsequent risk of wild fire; fragmentation by roads, fire breaks, tree plantations, and radio-tower facilities; maintenance and construction around radio towers and telephone relay stations located on Gunsight Peak and Mahogany Point; and soil disturbance and exotic weed and grass species introduction as a result of

heavy recreational use and construction of fire breaks. Dyer's woad (*Isatis tinctoria*), an invasive, nonnative plant that may prevent germination of Siskiyou mariposa lily seedlings, is now found throughout the California population, affecting 90 percent of the known lily habitat. Forest Service staff and the Klamath-Siskiyou Wildlands Center cite competition with dyer's woad as a significant and chronic threat to the survival of Siskiyou mariposa lily.

The combination of restricted range, extremely low numbers (five plants) in one of two disjunct populations, poor competitive ability, short seed dispersal distance, slow growth rates, low seed production, apparently poor survival rates in some years, and competition from exotic plants threaten the continued existence of this species. Because of the restricted range and low numbers, the magnitude of threats is high. While some of the threats are ongoing, others are not and overall, the threats are nonimminent. We assigned a listing priority number of 5 to this species.

Calyptanthes estremerae (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Calyptanthes estremerae* is a small tree from the subtropical moist forest of northwestern Puerto Rico, in the municipalities of Camuy, Utuado, and Arcibo. *Calyptanthes estremerae* was only known from several individuals found near the recreation area adjacent to the Camuy Caves, but specimens were later found within the Río Abajo Commonwealth Forest. Within the Río Abajo Forest area, *C. estremerae* was known to be located within the protected area of the Río Abajo Commonwealth Forest and at a site that was impacted by the construction of state road PR-10. In 1999, four small specimens of *C. estremerae* were affected by the road construction, and an additional specimen was transplanted to the Puerto Rico Department of Natural and Environmental Resources nursery in the Río Abajo Forest. Additional specimens of *C. estremerae*, later found during plant surveys that were part of the mitigation for the construction of PR-10, were successfully transplanted within the forest boundaries, to prevent their destruction during construction of the road. A minimum of 100 specimens of *C. estremerae* are estimated for the Río Abajo Commonwealth Forest. The magnitude of threat to *C. estremerae* is high, due to the small number of individuals in the two populations, the species' limited distribution, the species

vulnerability to catastrophic natural events, and the potential destruction of specimens from expansion of recreational facilities. However, these threats are not imminent because the largest known population of *C. estremerae* is found within protected lands, there are no known projects planned that would destroy the sites, and the species can be transplanted successfully. Therefore, we assign a listing priority number of 5 to this species.

Canavalia napaliensis (Awikiwiki)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a perennial climber found in open dry sites and coastal strand, diverse lowland dryland/mesic forest to mixed mesophytic forest on Kauai, Hawaii. *Canavalia napaliensis* is known from three populations totaling several hundred individuals in a small section of the Na Pali coast. This species is threatened by goats that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. There are no conservation measures underway to alleviate these ongoing, or imminent, threats to *C. napaliensis*. These threats are of a high magnitude because they are occurring throughout its limited range. Therefore, we retained a listing priority number of 2 for this species because the threats continue to be of a high magnitude and are imminent in all three populations.

Canavalia pubescens (Awikiwiki)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Awikiwiki is a perennial climber found in lowland dryland forest on Maui, Lanai, Kauai, and is possibly on the island of Niihau, Hawaii. This species is known from at least 10 populations totaling less than 200 individuals. This species is threatened by development (Maui), goats that degrade and destroy habitat (Kauai and Maui), and by nonnative plants that outcompete and displace native plants (all islands). Feral goats have been fenced out of three of the ten populations where *C. pubescens* currently occurs and nonnative plants have been reduced in two of the populations that are fenced. This species is represented in an *ex situ* collection. Because the threats are ongoing in more than half of the known populations they are of a high magnitude and imminent. Therefore, we retained a listing priority number of 2 for this species.

Castilleja christii (Christ's paintbrush)—See above in "Summary of

Listing Priority Changes in Candidates." The above summary is based on information contained in our files and the petition received on January 2, 2001.

Chamaecrista lineata var. *keyensis* (Big Pine partridge pea)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This pea is endemic to the lower Florida Keys. Historically, it was known from Big Pine, No Name, Ramrod, and Cudjoe Keys (Monroe County, Florida). In recent decades, its known distribution was restricted to Big Pine Key, until a population was found on Lower Sugarloaf Key in 2005. Roughly 90 percent of its current range is within the Service's National Key Deer Refuge. The Big Pine partridge pea is well distributed on Big Pine Key, with a population estimate of roughly 10,000 individuals. It is restricted to pine rockland communities and hardwood hammock edges. Pine rocklands encompass approximately 582 hectares (1,438 acres) of Big Pine Key. Pine rockland communities are maintained by relatively frequent fires. The most vigorous populations of this species are located in areas that have burned within a decade. In the absence of fire, woody encroachment ensues, and the pea is shaded out. Lack of fire poses the greatest threat to the pea. The Refuge has an active prescribed fire program, though with many constraints. We do not have new information on populations, and relevant recent research is pending publication. We are maintaining the previous assessment that a very narrow distribution, combined with sea level rise as well as fire management and exotic pest plant threats, makes for an overall high magnitude of threat. We maintain that the immediacy of threats is nonimminent, because a significant portion of the range is in conservation lands wherein threats are substantially controlled. Sea level rise remains uncontrolled, but is nonimminent regarding most of the habitat area or population on an annual basis. Accordingly, we assigned the Big Pine partridge pea a listing priority number of 6.

Chamaesyce deltoidea pinetorum (Pineland sandmat)—See above in "Summary of Listing Priority Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Chamaesyce deltoidea ssp. *serpyllum* (Wedge spurge)—The following summary is based on information in our files. No new information was provided

in the petition received on May 11, 2004. Wedge spurge is a small prostrate herb, forming patches among limestone rocks. It has always been restricted to Big Pine Key in Monroe County, Florida. Roughly 90 percent of the range falls within the National Key Deer Refuge. It is not widely and evenly distributed, occurring within 22 percent of 145 sample plots in pine rockland. The total population is on the order of 1,001 to 10,000 plants. It is restricted to pinelands on limestone rock (pine rockland), at sites with extensive exposed rock at the surface, low total understory cover and low hardwood density. Pine rocklands encompass approximately 582 hectares (1,438 acres) on Big Pine Key. These communities are maintained by relatively frequent fires, without fire tropical shrubs and trees encroach and the spurge is eventually shaded out. Fire restrictions pose the greatest short-term threat, although sea level rise is ultimately a threat of equal or greater magnitude. The National Key Deer Refuge has an active prescribed fire program, though with many constraints. We do not have new information on populations, although an abundance and distribution survey is under way. We maintain the previous assessment that a very narrow distribution composed of small sub-populations results in a high magnitude of threat. Specific threats include fire suppression, invasive exotic plants, sea level rise, and stochastic threats related to small population size, including hurricanes. The immediacy of threats is nonimminent because a significant portion of the range is on conservation lands wherein threats are substantially controlled. Sea level rise remains uncontrolled, but is nonimminent regarding most of the habitat area or population on an annual basis. Therefore, we retained a listing priority number of 6 for wedge spurge.

Chamaesyce eleanoriae (Akoko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a small shrub found in steep slopes and cliffs, in *Metrosideros-Diospyros* lowland mesic forest, and *Eragrostis variabilis* coastal dry cliffs on Kauai, Hawaii. This species has declined from 10 populations totaling 500 individuals in 1996 to three populations totaling less than 50 individuals, found only in and around Kalalau Valley rim, along the Na Pali Coast on the island of Kauai. *Chamaesyce eleanoriae* is threatened by goats that eat it, degrade and destroy

habitat, by nonnative plants that outcompete and displace it, and by stochastic extinction due to naturally occurring events. *Chamaesyce eleanoriae* is also potentially threatened by rats that eat it. All of the threats occur range-wide and no efforts to control goats, rats, and nonnative plants have been undertaken. The threats are of a high magnitude because of their severity and because they occur range-wide. The threats are ongoing and therefore imminent. We retained a listing priority number of 2 for this species.

Chamaesyce remyi var. *kauaiensis* (Akoko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This variety is a shrub found in wind-swept shrubland and adjacent forest patches dominated by *Metrosideros* (ohia) and *Syzygium* on Kauai, Hawaii. *Chamaesyce remyi* var. *kauaiensis* is known from 5 populations totaling 800 to 1,000 individuals. This variety is found only in the Blue Hole, Lumahai Valley, Wainiha, and Iliiliula areas on the island of Kauai. Threats to *C. remyi* var. *kauaiensis* include goats and pigs that degrade and destroy habitat, the two-spotted leafhopper that damages leaves and may spread plant viruses, and nonnative plants that outcompete and displace it. There are no conservation measures being taken to alleviate these threats to *C. remyi* var. *kauaiensis*. The threats are of a high magnitude because of their severity and because goats and pigs, the two-spotted leafhopper, and nonnative plants are found throughout the shrubland and forest areas *C. remyi* var. *kauaiensis* occurs in. The threats are ongoing and therefore imminent. We retained a listing priority number of 3 for this variety.

Chamaesyce remyi var. *remyi* (Akoko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This variety is a perennial shrub found in wet *Metrosideros polymorpha-Dicranopteris linearis* montane mesic forest on Kauai, Hawaii. *Chamaesyce remyi* var. *remyi* is known from at least 10 populations totaling 500 to 1,000 individuals. Hybrids of *C. remyi* and *C. sparsiflora* have been found near the margins of Wahiawa Bog, Kauai. This variety is threatened by goats and pigs that degrade and destroy habitat and potentially eat this plant, by the two-spotted leafhopper that causes leaf damage and may spread viruses, and by nonnative plants that outcompete and displace it. Feral pigs and goats have

been fenced out of two of the ten populations of *C. remyi* var. *remyi*, and nonnative plants have been reduced in the two fenced areas. Although two of the ten populations of this variety have been fenced and are undergoing weed control, there are no efforts to control the ongoing threats to the other eight populations. The threats are of a high magnitude because of their severity and are imminent because they are ongoing in eight of the ten known populations. We retained a listing priority number of 3 for this variety.

Charpentiera densiflora (Papala)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a tree found in *Diospyros sandwicensis* dominated lowland mesic forest extending into diverse mesic forest on Kauai, Hawaii. *Charpentiera densiflora* is known from 10 populations totaling approximately 200 individuals, restricted to an area of less than 10 square miles (26 square kilometers) in the Na Pali coast area on the island of Kauai. This species is threatened by goats that degrade and destroy habitat, flooding, and nonnative plants. Feral goats have been fenced out of one of the 10 populations where *C. densiflora* currently occurs, and nonnative plants are being controlled in the fenced area. This species is represented in an *ex situ* collection. The threat from flooding is of high magnitude and imminent because no flood control measures have been undertaken for any of the populations. The threats from goats and nonnative plants occur in nine of the ten known populations and are, therefore, imminent. The threats are also of a high magnitude because of their severity in the nine populations. Therefore, we retained a listing priority number of 2 for this species.

Chorizanthe parryi var. *fernandina* (San Fernando Valley spineflower)—The following summary is based on information contained in our files and the petition received on December 14, 1999. *Chorizanthe parryi* var. *fernandina* is a low growing herbaceous annual plant in the buckwheat family. Germination occurs following the onset of late-fall and winter rains and typically represents different cohorts from the seed bank. Flowering occurs in the spring, generally between April and June. *Chorizanthe parryi* var. *fernandina* grows up to 30 centimeters in height and 5 to 40 centimeters across.

The plant currently is known from two disjunct localities: The first is in the southeastern portion of Ventura County on a site formerly known as Ahmanson

Ranch, and the second is in an area of southwestern Los Angeles County known as Newhall Ranch. Investigations of historical locations and seemingly suitable habitat within the range of the species have not revealed any other occurrences.

The threats currently facing San Fernando Valley spineflower include threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade factors. The threats to *C. parryi* var. *fernandina* from habitat destruction or modification are less than they were two years ago. One of the two populations (Ahmanson Ranch) is in permanent, public ownership and is being managed by an agency that is working to conserve the plant. The other population (Newhall Ranch) is under threat of development; however, a Candidate Conservation Agreement with Assurances (CCAA) is being developed with the landowner, and it is possible that the remaining plants can also be conserved. Until such an agreement is finalized, the threat of development and the potential damage to the Newhall Ranch population still exists.

Chorizanthe parryi var. *fernandina* is particularly vulnerable to extinction due to its concentration in two isolated areas. The existence of only two areas of occurrence, and a relatively small range, makes the variety highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, erosion, or other events. We retained a listing priority number of 6 for *C. parryi* var. *fernandina* due to high magnitude of nonimminent threats.

Chromolaena frustrata (Cape Sable thoroughwort)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Chromolaena frustrata* is found most commonly in open sun to partial shade at the edges of rockland tropical hammock and in coastal rock barrens along the northern edges of Florida Bay in Everglades National Park, Monroe County, Florida. It is known from coastal berms along the northern edges of Florida Bay in Everglades National Park. It has not been observed in artificially disturbed areas, but is abundant in a tropical hammock that lost some of its tree canopy in a hurricane. Coastal rock barrens are composed of exposed Key Largo Limestone with a diverse assemblage of salt tolerant herbs. Due to extensive development, remaining areas of natural vegetation are limited. Land acquisition by the State has benefited this species, as has private land management.

However, only one large population of this species is known and its history suggests that it will decline as the forest canopy recovers. With so few populations in existence (seven), it is not likely that the species will persist. These factors, combined with the threat from invasive exotic pest plants, constitute a high magnitude of threat. We anticipate that land managers will address exotic pest plant threats as funding is available. The conservation situation on the privately-owned site with the largest known population is encouraging. Local extirpations of this species, due to exotics or other reasons, can possibly be reversed by reintroductions. However, we consider the threats to this narrowly endemic plant with no really large populations to be imminent because exotic pest plants are currently present. As a result, we assigned a listing priority number of 2 to this species.

Consolea corallicola (Florida semaphore cactus)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. The Florida semaphore cactus is endemic to the Florida Keys and was discovered on Big Pine Key in 1919 but has since been extirpated there as a result of road building and poaching. This cactus grows close to salt water on bare rock with a minimum of humus-soil cover in or along the edges of hammocks near sea level. The species is known to naturally occur only in two areas, Little Torch Key and Biscayne National Park. Outplanting has resulted in the reestablishment of a population in Dagny Johnson Key Largo Hammock Botanical State Park in North Key Largo as well as in some of the lower keys. Outplanting success has been low and more research is needed to determine the requirements of this cacti. Only 5 of the original 14 mature plants (as well as new recruits from fallen pads) remain in the population at The Nature Conservancy's Torchwood Hammock Preserve on Little Torch Key. Two sexual morphs (males and weak hermaphrodites) comprise the extant population on Little Torch Key. The female sex morph is absent from the population and sexual reproduction at this site is not possible without human intervention. Regeneration in this population is restricted to clonal propagation. At least 629 plants were discovered on a key in Biscayne National Park in November of 2001. A recent study found no genetic diversity within the two wild populations. The results were consistent with previous reproductive biology studies that

suggested that the cactus does not propagate sexually and that asexual reproduction is the main life-history strategy of this species. The causes for the population decline of this species include destruction or modification of habitat, predation from *Cactoblastis cactorum* moths, poaching, and hurricanes and other natural disasters. According to scientists, intervention will be required if the species is to survive the next 10 years. Because of low population numbers, reproductive problems, and numerous ongoing threats, we assigned this species a listing priority number of 2.

Cordia rupicola (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Cordia rupicola* is a small shrub that is found in the municipalities of Peñuelas and Guánica in southern Puerto Rico, Vieques Island, and Anegada in the British Virgin Islands. The status of the Anegada population is not known. *Cordia rupicola* is known only from dry forest communities on limestone substrates at low elevation. The currently known largest concentration of *C. rupicola* in Puerto Rico is found on privately-owned lands in Peñuelas where extensive land clearing for residential lots continues to take place. We assigned a listing priority number of 2 to *C. rupicola* because the magnitude of threat to this species is high due to its restricted distribution, low population number (not more than 25 known specimens), urban expansion, maintenance of electrical facilities, and catastrophic natural events that threaten the Puerto Rico population, and the threats to *C. rupicola* are imminent, since only a small fraction of the species' known population falls within protected lands, and the largest concentration is found in privately-owned land subjected to urban expansion.

Cyanea asplenifolia (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea asplenifolia* is a shrub found in *Acacia-Metrosideros* forest on Maui, Hawaii. Currently, this species is known from 4 populations totaling less than 200 individuals. *Cyanea asplenifolia* is threatened by pigs and goats that degrade and destroy habitat and by nonnative plants, such as Australian tree fern, that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals. Pig and goat exclusion fences protect two of

the four known populations of this species and nonnative plants have been reduced in the fenced areas. This species is represented in an *ex-situ* collection. The threats continue to be of a high magnitude and imminent because no conservation efforts are being taken to address them and they are ongoing in two of the four known populations. Therefore, we retained a listing priority number of 2 for this species because the threats are of a high magnitude and are imminent since they are ongoing.

Cyanea calycina (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is an unbranched shrub found in *Metrosideros-Dicranopteris* montane wet forest and wet gulches and streambanks on Oahu, Hawaii. *Cyanea calycina* is known from about 20 populations with a combined total of 200 or more individuals. This species is threatened by pigs and goats that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals. There are no conservation measures underway to alleviate these ongoing, or imminent, threats to *C. calycina*. These threats are of a high magnitude because they are occurring throughout its limited range. Therefore, we retained a listing priority number of 2 for this species because the threats continue to be of a high magnitude and are imminent in all populations.

Cyanea eleeleensis (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea eleeleensis* is a shrub found in wet forest on Kauai, Hawaii. This species was discovered in 1977, and only ever known from one population totaling less than ten individuals in Wainiha Valley on Kauai. In 2005, we received information that there are no extant wild individuals and there is no material in genetic storage. This species was likely highly threatened by pigs that degrade and destroy habitat, by rats and slugs that may have consumed it, and by nonnative plants that likely outcompeted and displaced it. We are considering removing this species from candidate status since it appears to be extinct. However, we are seeking any new information that indicates this species is still extant and will re-evaluate the status of this species in the coming year.

Cyanea kuhlhewa (Haha)—The following summary is based on

information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea kuhlhewa* is a shrub found in *Metrosideros polymorpha-Dicranopteris linearis* (ohia-uluhe) lowland wet forest on Kauai, Hawaii. This species was only ever known from one population totaling six individuals in Limahuli Valley on Kauai. In 2003, the last known individual in the wild died, but prior to that time, seeds were collected for genetic storage and the species is still found in cultivation. Currently, *C. kuhlhewa* is represented only in an *ex-situ* collection. This species is threatened by pigs that degrade and destroy habitat, by rats and slugs that may directly prey upon and defoliate it, and by nonnative plants that outcompete and displace it. The only known location for this species has been protected by fences and nonnative plants have been reduced in the fenced area. Currently, no individuals have been reintroduced into this site. In addition, no control measures have been implemented in this site to address the threats from rats and slugs. Because of these factors, we retained a listing priority number of 2 for this species.

Cyanea kunthiana (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea kunthiana* is a shrub found in closed *Metrosideros polymorpha* montane wet forest on Maui, Hawaii. The historic range of *C. kunthiana* was wet forest on the island of Maui. Currently, *C. kunthiana* is declining throughout its range and is known from approximately 20 populations with a combined total of several hundred individuals. This species is threatened by pigs that directly prey upon the plants and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals. Feral pigs have been fenced out of three of the 20 populations of *C. kunthiana* and removal of feral pigs from fenced areas is on-going. Control of nonnative plants in the three fenced areas is underway. Although three of the 20 populations of *C. kunthiana* have been fenced and are undergoing weed control, there are no efforts to control the ongoing and imminent threats to the other 17 populations. Therefore, the threats continue to be of a high magnitude to *C. kunthiana*. Because the threats continue to be of a high magnitude and are imminent for 17 of the 20

populations, we retained a listing priority number of 2 for this species.

Cyanea lanceolata (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea lanceolata* is a shrub found in *Acacia koa*-*Metrosideros polymorpha* (koa-ohia) lowland mesic forest on Oahu, Hawaii. This species is known from 20 populations totaling less than 300 individuals. *Cyanea lanceolata* is threatened by pigs, that eat plants and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals. There are no conservation measures underway to alleviate these ongoing, or imminent, threats to *C. lanceolata*. These threats are of a high magnitude because they are occurring throughout its limited range and are imminent in all populations. Therefore, we retained a listing priority number of 2 for this species.

Cyanea obtusa (Haha)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyanea obtusa* is a shrub found in *Metrosideros polymorpha* (ohia) mixed mesic forest on Maui, Hawaii. This species is known from six populations with a combined total of approximately 30 individuals. *Cyanea obtusa* is threatened by feral goats, pigs, and cattle that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Potential threats include rats and slugs that may directly prey upon and defoliate individuals of *C. obtusa*. Feral ungulates have been fenced out of one of the six populations of this species, and another fence is under construction to protect a second population. Nonnative plant control is underway in the fenced population and will be initiated in the second fenced population once the fence is completed. Although one of the six populations of *C. obtusa* has been fenced and is undergoing weed control, and fencing of a second population is underway, there are no efforts to control the ongoing and imminent threats to the other four populations. Therefore, the threats continue to be of a high magnitude for *C. obtusa*. Because the threats continue to be of a high magnitude and are imminent for four of the six known populations, we retained a listing priority number of 2 for this species.

Cyanea tritomantha (Aku)—The following summary is based on

information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyanea tritomantha is a palm-like tree found in closed *Metrosideros-Cibotium* montane wet forest on the island of Hawaii, Hawaii. This species is known from four to five populations with a total of 100 to 500 individuals in Olaa and Kau on the island of Hawaii. *Cyanea tritomantha* is threatened by pigs that degrade and destroy habitat, and nonnative plants that outcompete and displace it. Potential threats to this species include rats and slugs that may directly prey upon and defoliate individuals, and human trampling of individuals located near trails. Feral pigs have been fenced out of two populations of *C. tritomantha* and nonnative plants have been reduced in the fenced areas. Although two populations of *C. tritomantha* have been fenced and weeds are being controlled in these fenced areas, there are no efforts to control the ongoing and imminent threats to the other populations. Therefore, the threats continue to be of a high magnitude to *C. tritomantha*. Because the threats continue to be of a high magnitude and are imminent for the unmanaged populations, we retained a listing priority number of 2 for this species.

Cyrtandra filipes (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Haiwale is a shrub found in lowland wet and mesic forest on Maui and Molokai, Hawaii. Historically rare, *C. filipes* was found in southeastern Molokai and west Maui. Currently, this species is known from three populations, one on Molokai and two on Maui, totaling approximately 2,200 individuals. There is some question as to the true identity of the Maui populations, which do not fit the description of the species precisely. If, upon further taxonomic study, the Maui populations are determined not to be this species, then it is even rarer, with only the Molokai population of a few individuals remaining. *Cyrtandra filipes* is threatened by pigs and deer that degrade and destroy habitat, by nonnative plants that outcompete and displace it and potentially by rats that directly prey on it. Feral pigs have been fenced out of one of the three populations of *C. filipes* but deer are able to jump over most pig exclusion fences so they are still considered a threat. Nonnative plants are being reduced in the population that is fenced but all populations are potentially

threatened by rats. The threat from deer is of a high magnitude and imminent because no deer control measures have been undertaken for any of the populations. The threats from pigs and nonnative plants occur in two of the three known populations and are, therefore, of a high magnitude because of their severity. In addition, these threats are imminent because they are ongoing. Therefore, we retained a listing priority number of 2 for this species.

Cyrtandra kaulantha (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyrtandra kaulantha* is a shrub found in moist wooded gulches in dense shade on Oahu, Hawaii. This species is known from seven populations with a total of 23 individuals along the Waiahole Ditch Trail. *Cyrtandra kaulantha* is threatened by pigs that degrade and destroy habitat, by nonnative plants that outcompete and displace it, genetic bottlenecks, random demographic fluctuations, and stochastic environmental events such as tree falls and hurricanes. Direct predation by slugs is a potential threat. None of the populations are protected by fences. Nonnative plants have been reduced in only one of the seven known populations. There are no other conservation measures being taken to alleviate these ongoing and imminent threats to *C. kaulantha*. These threats are of a high magnitude because of their severity and they are occurring throughout its limited range. Therefore, we retained a listing priority number of 2 for this species because the threats continue to be of a high magnitude and are imminent in all populations.

Cyrtandra oenobarba (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Cyrtandra oenobarba is a low, decumbent, fleshy, subshrub found in *Metrosideros polymorpha-Dicranopteris linearis* (ohia-uluhe) lowland wet forest on Kauai, Hawaii. The historic range of this species was throughout the island of Kauai. Recent surveys show that the species is now limited to 10 or more populations totaling 200 to 500 individuals in only three small areas on the island of Kauai. *Cyrtandra oenobarba* is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. There are no conservation measures being taken to alleviate these threats to *C. oenobarba*. Pigs and nonnative plants are found throughout the lowland wet forest habitat of this species, and, therefore, are ongoing and

imminent. In addition, the threats are of a high magnitude because of their severity and because they occur throughout the limited range of this species. Because the threats are of a high magnitude and are imminent in all known populations, we retained a listing priority number of 2 for this species.

Cyrtandra oxybapha (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyrtandra oxybapha* is a shrub found in *Metrosideros polymorpha-Cheirodendron trigynum* (ohia-olapa) montane wet forest to mesic *Acacia-Metrosideros* (koa-ohia) forest on Maui, Hawaii. Currently, this species is known only from one population totaling 250 to 300 individuals in the Kahikinui area of east Maui and one additional population of 25 individuals on west Maui. This species is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of the smaller of the two populations of *C. oxybapha*, and nonnative plants have been reduced in the fenced population. However, the threats are not controlled and are ongoing in the remaining, larger unfenced population. Therefore, the threats from pigs and nonnative plants are of a high magnitude and imminent for *C. oxybapha* and we retained a listing priority number of 2 for this species.

Cyrtandra sessilis (Haiwale)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Cyrtandra sessilis* is a shrub found in wet gulch bottoms and slopes of mesic valleys and wet forests on Oahu, Hawaii. This species is known from two populations totaling approximately 50 individuals in the Waikane area of the Koolau Mountains. *Cyrtandra sessilis* is threatened by pigs that degrade and or destroy habitat, and by nonnative plants that outcompete and displace it. No on-the-ground conservation efforts have been initiated but this species is represented in an *ex-situ* collection. Pigs and nonnative plants are found throughout the mesic and wet forest habitat in which *C. sessilis* occurs making these threats ongoing and imminent. These threats are of high magnitude because of their severity and because they are occurring throughout its limited range. We retained a listing priority number of 2 for this species.

Dalea carthagenensis floridana (Florida prairie-clover)—The following

summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This plant has recently been found in Big Cypress National Preserve in Monroe and Collier Counties, Florida. It is also known from five small populations in Miami-Dade County, two on small tracts of conservation lands. The populations in Miami-Dade County are vulnerable to invasion by exotic pest plants and to lack of prescribed fire. The populations in Big Cypress National Preserve do not appear to be large, and thus may be vulnerable to random events, as well as exotic pest plant invasions, with Old World climbing fern being the chief threat. The threats from invasive species are being controlled to some extent. Prescribed burns are being conducted on Miami-Dade conservation lands and biological control agents are being developed for Old World climbing fern, so the overall magnitude of threats is moderate. Threats to the three of the five Florida prairie-clover populations in Miami-Dade County are imminent. Threats from lack of fire and invasive species are ongoing, and conducting prescribed fires in urban areas is difficult, as is controlling exotic pest plants. The urban conservation lands where this plant occurs require regular maintenance. Threats from exotic pest plants to the two populations in Big Cypress National Preserve may be nonimminent because Old World climbing fern has not yet arrived. Overall, we consider threats to be imminent, so assigned a listing priority number of 9 to this subspecies.

Dichantheium hirstii (Hirsts' panic grass)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Dichantheium hirstii*, a perennial grass, produces erect leafy flowering stems from May to October. *Dichantheium hirstii* occurs in coastal plain intermittent ponds, usually in wet savanna or pine barren habitats and is found at only two sites in New Jersey, one site in Delaware, and two sites in North Carolina. While all five extant *D. hirstii* populations are located on public land or privately owned conservation lands, natural threats to the species from encroaching vegetation and fluctuations in climatic conditions remain of concern and may be exacerbated by anthropomorphic factors occurring adjacent to the species' wetland habitat. Given the low numbers of plants found at each site, even minor changes in the species' habitat could result in local extirpation. Loss of any known sites

could result in a serious contraction of the species range. However, the most immediate and severe of the threats to this species (*i.e.*, ditching of the Labounsky Pond site, and encroachment of aggressive vegetative competitors) have been curtailed or are being actively managed by The Nature Conservancy at the one New Jersey site, the Delaware Division of Fish and Wildlife, and Delaware Natural Heritage Program at the Assawoman Pond site, and the Marine Corps at the Camp Lejeune site in North Carolina. Based on continued threats of a high magnitude but low imminence, we retained a listing priority number of 5 for this species.

Digitaria pauciflora (Florida pineland crabgrass)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This grass occurs at the edges of marl prairies within pine rocklands of the Long Pine Key area of Everglades National Park, an area of about 8,000 hectares (31 square miles). Because this plant has a narrow distribution and habitat requirements and only occurs within the Long Pine Key area, threats from exotic pest plants or other habitat management problems are significant. The National Park Service has controlled exotic pest plants and maintains an appropriate fire regime, but threats remain, particularly from Old World climbing fern, which is rapidly spreading into southern Florida and cannot easily be controlled. Therefore the magnitude of threats is high. Because the Old World climbing fern and perhaps other new exotic pest plants are not in the immediate vicinity of *D. pauciflora* but are expected to arrive within the next decade, the threats are nonimminent and the listing priority number is 5.

Dubautia imbricata ssp. *imbricata* (Naenae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This subspecies is a shrub found in wet forest and bogs on Kauai, Hawaii. *Dubautia imbricata* ssp. *imbricata* is known from three populations totaling 1,000 or more individuals in the Wahiawa Mountains. This subspecies is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Nonnative plants have been reduced in a portion of the species' range. No other conservation measures for *D. imbricata* ssp. *imbricata* have been undertaken. Pigs are found throughout the wet forest and bog habitat of this subspecies. Therefore, the threat from pigs is ongoing and imminent. In addition, the threat from feral pigs is of a high

magnitude because the severity of this threat and because pigs occur throughout the limited range of this subspecies. Nonnative plants also remain a high magnitude threat to *D. imbricata* ssp. *imbricata* because of the severity of the threat and because they occur throughout its limited range. Competition by nonnative plants is an ongoing and imminent threat to most of the individuals of *D. imbricata* ssp. *imbricata*, although weed control has been undertaken in a portion of its range. We retained a listing priority number of 3 for this subspecies.

Dubautia plantaginea ssp. *magnifolia* (Naenae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Dubautia plantaginea* ssp. *magnifolia* is a shrub found in bogs and wet forest on Kauai, Hawaii. This subspecies is known from two populations totaling 100 individuals near the summit of Waialeale on the island of Kauai. *Dubautia plantaginea* ssp. *magnifolia* is threatened by pigs that degrade and destroy habitat, nonnative plants that outcompete and displace it, and by stochastic extinction due to naturally occurring events. Feral pigs have been fenced out of one of the two populations of *D. plantaginea* ssp. *magnifolia*, and nonnative plants have been reduced in the fenced population. Because of the severity of the threats and because they are ongoing in one of the two known populations they are of a high magnitude and imminent. We retained a listing priority number of 3 for this subspecies.

Dubautia waialealae (Naenae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Dubautia waialealae* is a shrub found in bogs and diverse mesic to wet forest on Kauai, Hawaii. This species is known from one population totaling less than 800 individuals near the summit of Waialeale and one individual at the opposite end of the Alakai Plateau. *Dubautia waialealae* is threatened by pigs that prey on it and degrade and destroy habitat, by nonnative plants that outcompete and displace it, and by stochastic extinction due to naturally occurring events. Pigs have been fenced out of the bog where the one individual of *D. waialealae* currently occurs. In addition, fences protect half of the larger population, and nonnative plants are being controlled around these individuals. However, the threats are not controlled and are ongoing in half of the larger population. The threats from pigs and nonnative plants are of a

high magnitude and imminent for *D. waialealae*, thus, we retained a listing priority number of 2 for this species.

Echinomastus erectocentrus var. *acunensis* (Acuna cactus)—The following summary is based on information contained in our files and the petition received on October 30, 2002. The Acuna cactus is known from six sites on well-drained gravel ridges and knolls on granite soils in Sonoran Desert scrub association at 1300–2000 feet elevation. Habitat destruction has been a threat in the past and is a potential future threat to this species. New roads and illegal activities have not yet directly affected the cactus populations at Organ Pipe Cactus National Monument, but areas in close proximity to these known populations have been altered. Cactus populations located in the Florence area have not been monitored and these populations may be in danger of habitat loss due to recent urban growth in the area. Urban development near Ajo, Arizona, as well as that near Sonoyta, Mexico, is a significant threat to the Acuna cactus. Populations of the Acuna cactus within the Organ Pipe Cactus National Monument have shown a 50 percent mortality rate in recent years. The reason(s) for the mortality are not known, but continuing drought conditions are thought to play a role. The Arizona Plant Law and the Convention on International Trade in Endangered Species of Wild Fauna and Flora provide some protection for the Acuna cactus. However, illegal collection is a primary threat to this cactus variety and has been documented on the Organ Pipe Cactus National Monument in the past. While the threats continue to be of a high magnitude, they are currently nonimminent. Thus, we retained a listing priority number of 6 for this cactus variety.

Erigeron lemmonii (Lemmon fleabane)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files and the petition received in July 1975.

Erigeron basalticus (Basalt daisy)—*Erigeron basalticus* is a perennial, herbaceous plant with a taproot and one to several sprawling stems 10 to 15 centimeters (cm) (4 to 6 inches (in)) long. *Erigeron basalticus* grows in crevices in basalt cliffs on canyon walls, at elevations from 380 to 460 meters (1,250 to 1,500 feet), along the Yakima River Canyon and Selah Creek, a tributary of the Yakima River. It is found in microsites that are largely devoid of other vegetation and undergoing primary succession. As of the most recent survey in 2000, an estimated over

12,000 *E. basalticus* plants exist, with the population distributed among the same eight, potentially interbreeding subpopulations that occupy about 67 hectares (ha) (165 acres (ac)) within the known distribution of approximately 52 km² (20 mi²). The overall population size, both in number of individuals and total area occupied, remained relatively stable between 1988 and 1998. However, the numbers of individuals in the four smallest subpopulations decreased substantially between those survey periods. The cause of the decline is unknown, yet the threats facing this species include habitat modification, overutilization from recreational use in the areas, and randomly occurring environmental affects. Surveys undertaken in 2000 by Washington Department of Natural Resources staff report the numbers for all eight subpopulations returning to similar levels as those reported in 1988. Monitoring by the University of Washington in 2006 will provide data on the species current status which will be available for our next CNOR. Based on nonimminent threats of moderate magnitude, we assigned a listing priority number of 11 to this species.

Eriogonum codium (Umtanum Desert buckwheat)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. This is a long-lived woody perennial plant in the Polygonaceae (buckwheat) family that forms low mats. Individual plants may exceed 100 years of age. The only known population of the species occurs exclusively on exposed basalt from the Lolo Flow of the Wanapum Basalt Formation in Benton County, Washington. The population has a discontinuous distribution along a narrow, 1.0 mi (1.6 km) long mountain ridge top. It is unknown if the historical distribution of Umtanum desert buckwheat was different from the species' current distribution. There are a number of ongoing threats to Umtanum desert buckwheat. The species is not well adapted to fire, and negative impacts to the species from past fires have been significant. In addition, Umtanum desert buckwheat plants are easily damaged by trampling or crushing by off-road vehicles. Digging activities and soil disturbance as a result of prospecting and collecting of petrified rock may also threaten Umtanum desert buckwheat as a result of. Finally, the species appears to have a very low reproductive rate. The factors responsible for the lower-than-expected number of seedlings in the population are unknown but may include low seed

production, low seed or pollen viability, low seedling vigor and survival, impacts to plant pollinators or dispersal mechanisms, and insect predation of seeds. The only known population of Umtanum desert buckwheat is small and limited to a single site. Based on the available information, the magnitude of threat to Umtanum desert buckwheat is high and the identified threats are imminent. Thus, we retained a listing priority of 2 for Umtanum desert buckwheat.

Eriogonum kelloggii (Red Mountain buckwheat)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Red Mountain buckwheat is a perennial herb endemic to serpentine habitat of lower montane forests found between 1,900 and 4,100 feet. Its distribution is limited to the Red Mountain and Little Red Mountain areas of Mendocino County, California, where it occupies 50 acres and 900 square feet, respectively. Occupied habitat at Red Mountain is scattered over 4 square miles. The total population size is estimated at between 20,000 and 30,000 plants, which occur in 44 polygons. Intensive monitoring of permanent plots on three study sites in Red Mountain suggests considerable annual variation in plant density and reproduction, but no discernable population trend was evident in two of three study sites. One study site showed a 65 percent decline in plant density over 11 years.

The primary threat to this species is the potential for surface mining for chromium and nickel. Virtually the entire distribution of Red Mountain buckwheat is either owned by mining interests, or is covered by existing mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed threatened by tree and shrub encroachment into its habitat, in absence of fire. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and its taxonomy (species), we assigned a listing priority number of 5 to this species.

Festuca hawaiiensis (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a caespitose (growing in dense, low tufts) annual found in dry forest on the islands of Hawaii and Maui, Hawaii. *Festuca hawaiiensis* is known from more than 20 populations totaling approximately 1,000 individuals in and around the

Pohakuloa Training Area on the island of Hawaii. Historically, this species was also found on Hualalai and Puu Huluhulu on Hawaii and possibly Ulupalakua on Maui, but it no longer occurs at these sites. *Festuca hawaiiensis* is threatened by pigs, goats, and sheep that degrade and destroy habitat, by nonnative plants that outcompete and displace it, and by fire. Feral pigs, goats, and sheep have been fenced out of a portion of the populations of *F. hawaiiensis*, and nonnative plants have been reduced in the fenced areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations. In addition, the threat from fire is of a high magnitude and imminent because of the severity of this threat, it occurs throughout the range of the species, and no fire control measures have been undertaken for any of the populations of *F. hawaiiensis*. Since the threats are of a high magnitude and are imminent for *F. hawaiiensis*, we retained a listing priority number of 2 for this species.

Festuca ligulata (Guadalupe fescue)—The following summary is based on information from our files and in the petition received in 1975. Guadalupe fescue is a member of the Poaceae (Grass family). This species is currently only known from higher elevations in the Chisos Mountains area in the Big Bend Area of Texas and adjacent Coahuila, Mexico. The population in Big Bend National Park is bisected by a trail and subject to occasional trampling by horses and hikers. The magnitude of threats for Guadalupe fescue is moderate to low because of population monitoring, fire management, and trail operation by the National Park Service. Threats to the overall population are nonimminent because of monitoring and other conservation actions that address threats to the species. Thus, we assign a listing priority number of 11 to this species.

Gardenia remyi (Nanu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Nanu is a tree found in mesic to wet forest on islands of Kauai, Molokai, Maui, and Hawaii, Hawaii. *Gardenia remyi* is known from several populations totaling a few hundred individuals throughout its range. This species is threatened by pigs and goats that eat this plant and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. This species is represented in an *ex situ* collection. Feral pigs have been fenced out of the west Maui populations of *G. remyi*, and nonnative plants have been

reduced in those areas. However, these threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, of a high magnitude and imminent. In addition, the threat from goats is of a high magnitude, and ongoing and imminent, because no goat control measures have been undertaken for any of the populations of *G. remyi*. Therefore, we retained a listing priority number of 2 for this species.

Geranium hanaense (Nohoanu)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Geranium hillebrandii (Nohoanu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Geranium hillebrandii* is a decumbent subshrub found in bogs on Maui, Hawaii. Previously known from two populations totaling approximately 500 individuals, it is currently known, as a result of more thorough surveys, from over 2,000 individuals. *Geranium hillebrandii* is moderately threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of some of the populations of *G. hillebrandii*, and nonnative plants have been reduced in those areas. The threats from feral pigs and nonnative plants are, therefore, of a moderate magnitude to this species because they affect only about half of its populations. In addition, these threats are imminent because they are ongoing in half of the populations. Therefore, we retained a listing priority number of 8 for this species.

Geranium kauaiense (Nohoanu)—See above in “Summary of Listing Priority Changes in Candidates.” No new information was provided in the petition received on May 11, 2004.

Gonocalyx concolor (no common name)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. *Gonocalyx concolor* is a small evergreen epiphytic shrub found within the dwarf or elfin forest type near Cerro La Santa in the Carite Commonwealth Forest on the border of the municipalities of Cayey and San Lorenzo of southeastern Puerto Rico. The population previously reported from the Caribbean national Forest in Luquillo is apparently no longer extant. Approximately 172 plants have been located at the Carite site. *Gonocalyx concolor* appears to be

predominantly outcrossed, and pollinated by hummingbirds. Successful propagation at the University of Turabo, Turabo, Puerto Rico has been achieved. We assign a listing priority number of 5 to *G. concolor*, because the magnitude of threat is high, due to its limited distribution and population numbers, prior habitat destruction from construction of roads and telecommunication towers, certain forest management practices, availability of specific pollinators, and potential for catastrophic natural events; the threats to *G. concolor* are nonimminent, because the known population is found within protected lands, initial efforts at propagation have been successful, and there are no known projects or management activities planned that would destroy the known population.

Hazardia orcuttii (Orcutt's hazardia)—The following summary is based on information contained in our files and the petition received on March 8, 2001. *Hazardia orcuttii* is an evergreen shrubby species in the Asteraceae (sunflower family). The resinous shrubs are 50–100 centimeters (20–40 inches (in)) high and the relatively few branches are erect. This species flowers between August and October. The only known extant native occurrence of this species in the U.S. is in coastal San Diego County, California at the Manchester Conservation Area, previously known as the Manchester Mitigation Bank, now managed by The Center for Natural Lands Management (CNLM). The area is about 50 hectares (ha) (123 acres (ac)) and includes Diegan coastal sage scrub, southern maritime chaparral, and willow scrub. Within the conservation area, the natural population of *H. orcuttii* occupies only 2 ha (5 ac). The Manchester Conservation Area also supports populations of federally listed California gnatcatcher (*Polioptila californica californica*), *Arctostaphylos glandulosa* ssp. *crassifolia* (Del Mar manzanita), and *Acanthomintha ilicifolia* (San Diego thornmint). The general substrate for the *H. orcuttii* is sandstone.

The majority of the native occurrence has experienced more or less continuous impacts from people in the adjacent housing area who use the open space as a recreation area. Impacts can include pedestrian trampling and creation of bicycle trails near *H. orcuttii* plants. There are several other existing and potential threats to this species in the U.S. Introduced invasive exotic plants may pose a threat to the reproductive potential of this species. Translocations can pose a threat by removal of plants from viable habitat.

Removed plants would no longer be a portion of the extant *in-situ* population, thereby affecting the plants genetic and demographic potential. The loss of about 147 of the 200 plants translocated to the Manchester site from an adjacent native unprotected site represents a loss of about 29 percent of the known native plants in the area. This likely represents a depletion of the genetic diversity of the species. This species is likely threatened by low numbers, possibly low seed set, and seed viability. We are aware of no reports of seedlings at the native occurrence. This could be of considerable consequence and represent lack of pollinator services and/or limitations on genetic diversity of an already small population. We retained a listing priority number of 5 for *H. orcuttii* due to overall nonimminent threats of high magnitude.

Hedyotis fluviatilis (Kamapuaa)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Kamapuaa is a scandent shrub found in mesic to wet forest on Oahu and Kauai, Hawaii. This species is known from six populations totaling 500 to 1,000 individuals throughout its range. *Hedyotis fluviatilis* is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 because the severity of the threats is high and are ongoing so are imminent.

Helianthus verticillatus (Whorled sunflower)—The following information is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. The whorled sunflower is found in moist, prairie-like openings in woodlands and along adjacent creeks. Despite extensive surveys throughout its range, only six sites are known for this species. There are two sites documented for Cherokee County, Alabama; three in Floyd County, Georgia; and a single site in Madison County, Tennessee. This species appears to have restricted ecological requirements and is dependent upon the maintenance of prairie-like openings for its survival. Active management of habitat is needed to keep competition and shading under control. Much of its habitat has been degraded or destroyed for agricultural, silvicultural, and residential purposes. The majority of the Georgia populations are protected as they are located within a conservation easement area donated to The Nature Conservancy by Temple-

Inland Corporation. We assigned a listing priority number of 11 to this species as the magnitude of threats is moderate since the largest site is under permanent protection and the threats are nonimminent since the whorled sunflower appears to withstand some disturbance and there are no known immediate threats to the sites.

Hibiscus dasycalyx (Neches River rose-mallow)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Neches River rose-mallow is a perennial woody herb growing 3–7 feet tall with one or more stems per clump and white flowers 3–6 inches wide, consisting of five 2–4 inch long white petals with deep red or purple at the base. The Neches River rose-mallow appears to be restricted to wetlands, or those portions of wetlands that are exposed to open sun and normally hold standing water early in the growing season, with water levels dropping during late summer and fall. This species appears to have community dominance within that narrow band between high and low water levels in wetlands exposed to open sun. However, historical habitat has been affected by drainage or filling of floodplain depressions and oxbows, stream channelization, road construction, timber harvesting, agricultural activities (primarily mowing and grazing), and herbicide use. Threats that continue to potentially affect the species include wetland alteration, herbicide use, grazing, and mowing during the species' growing and flowering period.

A 1995 status survey of 10 counties resulted in confirmation or discovery of the species in only three sites, but in three separate counties and three different watersheds, suggesting a relatively wide historical range. These three populations, Ponta site in Cherokee County; Lovelady in Houston County; and Highway 94 in Trinity County, are within highway rights-of-way and are somewhat protected by a management agreement between Texas Parks and Wildlife Department and Texas Department of Transportation. Because these sites are still vulnerable to herbicides and adjacent agricultural activities, they support relatively low population numbers: Ponta (Highway 204) has ranged from 5 to 0 plants this year; Lovelady (Highway 230), 3–14 plants; and Highway 94, 15–49 plants. Continued surveys for *H. dasycalyx* have resulted in new populations. About 300 plants were found on land owned by the Temple-Inland Corporation in east Trinity County. A Candidate Conservation Agreement now

covers this site, but smaller numbers have been seen in recent years, possibly due to changes in the wetland's hydrology. Another site discovered on land previously owned by Champion International Corporation (near White Rock Creek in west Trinity County) once supported 300–400 plants. However, the status of this population is currently unknown due to a recent change in ownership.

In west Houston County, a population of 300 to 400 plants discovered on private land has been purchased by the Natural Area Preservation Association, a land trust organization, in order to protect this land in perpetuity. In east Houston County, a population was discovered in Compartment 55 in Davy Crockett National Forest at the south end of Forest Road 503. This population is large (at least 400), but has not yet been fully surveyed. Davy Crockett National Forest represents the only public land within the range of *H. dasycalyx*. In 2000, nearly 800 plants were introduced into Compartments 16 and 20 of the forest as part of a reintroduction effort. One population has retained high numbers (about 200), but the second has been affected by a change in hydrology. In 2004, another 200 plants were placed in a third location, in Compartment 11 of Davy Crockett National Forest. This site will be monitored for success in 2006. Two more sites in Davy Crockett National Forest have been identified as potential sites for reintroduction efforts and will be investigated.

Some populations of this species are at risk of genetic swamping by other *Hibiscus* species. Hybridization has occurred at both the Ponta and Highway 94 sites. Stephen F. Austin State University has completed a genetic analysis of *H. dasycalyx*, confirming it as a separate species. Stephen F. Austin State University is continuing a habitat study of *H. dasycalyx* and is developing a high number of plants for reintroduction purposes. The threats to the species continue to be of a high magnitude because of their severity, but overall are nonimminent. Thus, we retained a listing priority number of 5 for the Neches River rose-mallow.

Indigofera mucronata keyensis (Florida indigo)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This is a rare plant, inherently vulnerable to extinction because of its limited numbers. Of the eight populations that exist, the largest known population is on private land and comprises up to 1,000 individuals. Seven much smaller

populations are on conservation lands in the Florida Keys, Monroe County. The species' habitat of coastal rock barrens, coastal berms, and edges of tropical hammocks is being invaded by exotic pest plants. On public conservation lands, invasive exotic species are being controlled in some areas and populations of this species, although small, have appeared stable in recent years. Populations on both private and public lands are subject to hurricanes, with their subsequent storm surges. Overall, the threats to this plant are moderate in magnitude. Because exotic pest plants, particularly Brazilian pepper and latherleaf are a chronic problem, with Brazilian pepper occupying coastal areas that are not regularly managed and latherleaf possibly still increasing, and because existing populations of this plant are small, especially on conservation lands, this species is highly vulnerable to lapses in habitat management. Therefore, threats are imminent and the listing priority number is 9.

Ivesia webberi (Webber ivesia)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Ivesia webberi* is a low, spreading, perennial herb that occurs very infrequently in Lassen, Plumas, and Sierra counties in California, and in Douglas and Washoe counties, Nevada. The species is restricted to sites with sparse vegetation and shallow, rocky soils composed of volcanic ash or derived from andesitic rock. Occupied sites generally occur on mid-elevation flats, benches, or terraces on mountain slopes above large valleys along the transition zone between the eastern edge of the northern Sierra Nevada and the northwestern edge of the Great Basin Desert. Currently, the global population is estimated at approximately 4.8 million individuals at 15 known sites. The Nevada sites support nearly 98 percent of the total number of individuals (4.7 million) on about 30 acres of occupied habitat. The California sites are larger in area, totaling about 156 acres, but support fewer individuals (approximately 115,000).

The primary threats to Webber ivesia include urban development, authorized and unauthorized roads, off-road vehicle activities and other dispersed recreation, livestock grazing and trampling, fire and fire suppression activities including fuels reduction and prescribed fires, and displacement by noxious weeds. Despite the high numbers of individuals, observations in 2002 and 2004 confirmed that direct and indirect impacts to the species and

its habitat, specifically from urban development and off-highway vehicle activity remain high and are likely to increase. However, the U.S. Forest Service has committed to develop a conservation strategy and monitoring program to protect this species on National Forest lands, and the State of Nevada has listed the species as critically endangered, which provides a mechanism to track future impacts on private lands. In addition, both the Forest Service and State of Nevada have agreed to coordinate closely on all activities that may affect this species. For these reasons, we have determined that the threats to Webber ivesia are nonimminent and maintained a LPN of 5.

Joinvillea ascendens ssp. *ascendens* (Ohe)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Ohe is an erect herb found in wet *Metrosideros polymorpha* forest on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii, Hawaii. *Joinvillea ascendens* ssp. *ascendens* is known from 50 to 100 populations totaling 100 to 200 individuals throughout its range. Plants are typically found as only one or two individuals, with miles between populations. This subspecies is threatened by pigs that degrade and destroy habitat, by an unknown fungus, and by nonnative plants that outcompete and displace native plants. Feral pigs have been fenced out of some of the populations of *J. ascendens* ssp. *ascendens*, and nonnative plants have been reduced in a few populations that are fenced. However, these threats are not controlled and are ongoing in the remaining, unfenced populations. In addition, an unknown fungus attacks the seedlings of this subspecies, limiting regeneration. Most known plants do not appear healthy. There is no effectively known control method for this fungus and no efforts to alleviate its effects are being implemented for any of the populations of *J. ascendens* ssp. *ascendens*. The threats to this species are of high magnitude and are on-going, and thus are imminent. Therefore, we retained a listing priority number of 3 for this subspecies.

Keyseria erici (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a short, rhizomatous perennial herb found in montane bogs on Kauai, Hawaii. *Keyseria erici* is known from several populations in bogs within the Alakai swamp region of Kauai, totaling approximately 1,000

individuals. This species is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of three of the bogs where *K. erici* currently occurs and nonnative plants have been greatly reduced in all three fenced bogs. However, these on-going conservation efforts benefit only a few of the populations of *K. erici*. The majority of the populations of *K. erici* are in unfenced areas and have no protection from the impacts of pigs and nonnative plants. Even the three fenced populations are not secure, due to funding limitations to support fence maintenance and weeding that is needed to prevent incursions of pigs and nonnative plants. Thus the threats to this species occur throughout its range and are particularly significant in the unfenced areas where a majority of the populations are located, and are expected to continue or increase without control or eradication. Because the threats are of high magnitude and ongoing, and therefore imminent, we retained a listing priority number of 2 for this species.

Keysseria helenae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a rhizomatous perennial herb found in montane bogs on Kauai, Hawaii. *Keysseria helenae* is known from three or four populations in bogs within the Alakai swamp region of Kauai, totaling approximately 300 individuals. This species is threatened by pigs that degrade and destroy habitat, and by nonnative plants that outcompete and displace it. Feral pigs have been fenced out of three of the four bogs where *K. helenae* currently occurs, and nonnative plants have been greatly reduced in all three fenced bogs. However, without continued monitoring and maintenance of the fences, pigs from surrounding areas can easily access fenced areas. Funding limitations restrict the extent of such monitoring and maintenance, and as a result the fenced populations continue to face threats. In addition, the threats from feral pigs and nonnative plants are ongoing in the unfenced bog. In light of the low number of individuals of this species, the threats are of high magnitude. The threats also are ongoing, and therefore imminent. For these reasons, we have retained a listing number of 2 for this species.

Korthalsella degeneri (Hulumoa)—The following summary is based on information contained in our files. No new information was provided in the

petition received on May 11, 2004. Hulumoa is a parasitic subshrub found on two species of native trees, *Sapindus oahuensis* and *Nestegis sandwicensis*, only in diverse mesic forests on Oahu, Hawaii. Recent surveys indicate that the species is known only from one population of 1,000 individuals in Makua Valley. *Korthalsella degeneri* is threatened by goats that eat this plant and degrade and destroy habitat, fire, and nonnative plants that outcompete and displace native plants. Goats have been partially fenced out of the area in Makua Valley where *K. degeneri* currently occurs but some goats are still present. Fires resulting from military activities have been minimized but not completely eliminated. Threats continue to be of a high magnitude and imminent because they are ongoing and because of the potential for the elimination of the only known population by a single fire event. Therefore, we retained a listing priority number of 2 for this species.

Labordia helleri (Kamakahala)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Labordia helleri* is a shrub found in diverse mesic forest and mesic valleys on Kauai, Hawaii. This species is known from eight or more populations totaling 500 individuals from Makaha to Honopu. *Labordia helleri* is threatened by goats and deer that eat it and degrade and destroy habitat, and by nonnative plants that outcompete and displace it. No efforts have been taken to control the threats to *L. helleri* from goats, deer, and nonnative plants. The threats are of a high magnitude and imminent, and therefore, we retained a listing priority number of 2 for this species.

Labordia pumila (Kamakahala)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Labordia pumila* is a sparingly branched shrub found in hummocks in bogs and in bog margins on Kauai, Hawaii. This species is known from three populations totaling 500 to 700 individuals in the Alakai and Waialeale areas. *Labordia pumila* is threatened by pigs that eat it and degrade and destroy habitat, nonnative plants that outcompete and displace it, and by stochastic extinction due to naturally occurring events such as hurricanes. Feral pigs have been fenced out of two of the three bogs where *L. pumila* occurs. Nonnative plants have been greatly reduced in the two fenced bogs, and are not found in the immediate vicinity of any *L. pumila* individuals in the fenced areas. Reproduction has not been observed

over nine years of monitoring, even within the fenced areas. Also, with only three known populations, reduced reproductive vigor and threats from hurricanes and other stochastic events, the threats to this species are of a high magnitude, and are ongoing and therefore imminent. Consequently, we retained a listing priority number of 2 for this species.

Leavenworthia crassa (Gladeless)—The following information is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species of gladeless is a component of glade flora, occurring in association with limestone outcroppings. *Leavenworthia crassa* is endemic to a 13-mile radius area in north central Alabama in Lawrence and Morgan Counties, Alabama where only six populations of this species are documented. Glade habitats today have been reduced to remnants fragmented by agriculture and development. Populations of this species are now located in glade-like areas exhibiting various degrees of disturbance including pastureland, roadside rights-of-way, and cultivated or plowed fields. The most vigorous populations of this species are located in areas which receive full, or near full sunlight with limited herbaceous competition. The magnitude of threat is high for this species, with the limited number of populations, and the immediacy of threat is nonimminent since there are no known projects planned that would destroy any sites and the species is able to withstand some disturbance. Thus, we assigned a listing priority number of 5 to this species.

Leavenworthia texana (Texas golden gladeless)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Texas golden gladeless is a small annual member of the mustard family, with deep, yellow petals only 7–10 millimeters long; flowering is February through March. The gladeless occurs only on the Weches outcrops of east Texas in San Augustine and Sabine counties. The Weches geologic formation consists of a layer of calcareous sediment that sits above a layer of glauconite clay. These layers were deposited up to 50 million years ago and erosion of the fossil-rich complex has produced a rugged topography of steep, flat-topped hills and escarpments along Highway 21 through north San Augustine and Sabine Counties. It has also created the unique ecology of Weches glades: Islands of thin, loamy, seepy, alkaline

soils that support open-sun, herbaceous, and highly diverse and specialized plant communities.

More than 100 species representing at least 39 plant families, including the federally endangered white bladderpod (*Lesquerella pallida*), have been documented on Weches glades. One of those species is the Texas golden gladecress which was historically recorded at eight sites, all in a narrow line along north San Augustine and Sabine counties, following the Weches formation. All sites are on private land. Habitat of the species at two of these locations has since been eliminated due to glauconite mining. Two more sites are currently closed to visitors, and the status of the gladecress at these sites is unknown. However, a large glauconite mine was created adjacent to these sites 6 years ago, and may have altered the area's hydrology. One historic site in Sabine County was rediscovered in 1998 and found to support over 300 plants. Only two known populations remain in San Augustine County. The Tiger Creek (Chapel Hill) site is less than 0.1 hectares (less than 0.25 acres) in size and supports population numbers of 40–100. The Kardell site is less than 9 square meters (100 square feet) in size and supports 96–490 plants. An introduced population in Nacogdoches County has numbered about 300 within an area of about 18 square meters (200 square feet).

Historic gladecress habitat has been affected by highway construction, residential development, conversion to pasture and cropland, widespread use of herbicide, overgrazing, and glauconite mining. However, the primary threat to existing gladecress populations is the invasion of nonnative and weedy shrubs and vines (primarily Macartney rose (*Rosa bracteata*) and Japanese honeysuckle (*Lonicera japonica*)). All known sites are undergoing severe degradation by the incursion of nonnative shrubs and vines, which restrict both growth and reproduction of the gladecress. Special funding allowed brush clearing to be carried out in 1995 at several white bladderpod sites (where gladecress is also located). The project resulted in large increases in white bladderpod numbers, and also resulted in the reappearance of gladecress after a 10-year absence at one historic site, and a possible discovery at a second site. However, nonnative shrubs have again invaded these areas. More effective control measures, such as burning and selective herbicide use, need to be tested and monitored.

The small number of known sites also makes the gladecress vulnerable to extreme natural disturbance events. A

severe drought in 1999 and 2000 had a pronounced adverse effect on gladecress reproduction. Prelisting efforts for the gladecress include: The collection of seeds and placement in three State horticultural labs for possible reintroduction efforts, a Cooperative Agreement (now final and in effect) with The Nature Conservancy of Texas, and development of a "Conservation Area Plan for the San Augustine Glades," which identifies the size and configuration of conservation units that will restore and maintain longterm viability of Weches communities. The next step is to secure adequate funding to initiate protection measures. Landowners of the Tiger Creek and Kardell sites are aware of the gladecress and are maintaining current land-use conditions. Efforts to find additional sites, and management of known sites, should be the focus for this species. Due to the continuing overall high magnitude and immediacy of the threats, we retained a listing priority number of 2 for the Texas golden gladecress.

Lesquerella globosa (Desvaux) Watson (Short's bladderpod)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Lesquerella globosa* is a perennial member of the mustard family that occurs in Indiana (1 location), Kentucky (6 locations), and Tennessee (18 locations). It grows on steep, rocky, wooded slopes, talus areas, along cliff tops and bases, and on cliff ledges. It is usually associated with south to west facing calcareous outcrops adjacent to rivers or streams. Road construction and road maintenance have played a significant role in the decline of *L. globosa*. Specific activities that have impacted the species in the past and continue to threaten it include bank stabilization, herbicide use, mowing during the growing season, grading of road shoulders, and road widening or repaving. Sediment deposition during road maintenance or from other activities also potentially threatens the species. Interruption of natural processes that maintained habitat suitability and competition from invasive nonnative vegetation necessitates active habitat management at many locations. Because the threats would be fatal for populations of this species, the magnitude of threats is high. However, based upon the number of populations and the anticipation that most of these threats will not be realized in the several years, the threats are nonimminent and, therefore, we

assigned a listing priority number of 5 to this species.

Linum arenicola (Sand flax)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This herb inhabits seven pine rockland sites on limestone in Miami-Dade County and two in the lower Florida Keys (at National Key Deer Refuge and a Nature Conservancy preserve on Big Pine Key). During the twentieth century, most of this plant's geographic range was converted to farmland or was urbanized. As a result, remaining populations have suffered from fragmentation and small population size; only small populations of this plant remain. Those on relatively small tracts of conservation land in urban Miami-Dade County are vulnerable to invasion by exotic pest plants and lack of prescribed fire and such threats could severely affect those populations. A further problem in Miami-Dade is that one population is located in an artificial environment, which makes its management difficult. Therefore, the magnitude of threats is high. The two sites in the Keys seem less vulnerable to rapid invasions by exotic pest plants and may require less frequent prescribed fire because vegetation grows more slowly there. Therefore, the threats to the 4 very small populations are of slightly lesser magnitude, but they are present. Threats to four of the seven sand flax populations in Miami-Dade County are imminent because they are ongoing. For the remaining populations, the threats are less imminent. Overall, the threats are imminent, and we assigned a listing priority number of 2 to this species.

Linum carteri var. *carteri* (Carter's small-flowered flax)—The following summary is based on information in our files. No new information was provided in the petition received on May 11, 2004. This plant occupies open, sunny sites in pinelands of Miami-Dade County, Florida. Populations with probably fewer than 100 total individuals are located on three County-owned preserves. A population with more than 100 plants is on a non-conservation site owned by the U.S. government. The existing populations are small and vulnerable to exotic pest plant invasions, hot wildfires, and in some cases, to development. This species exists in such small numbers at so few sites, that it may be difficult to develop viable populations on the available conservation lands. Although no population viability analysis has been conducted for this plant, indications are that existing populations are at best marginal, and none are truly

viable. As a result, the magnitude of threats is high. Because no viable populations of this plant exist, the imminence of threats is imminent, so we assigned a listing priority number of 3 to this plant variety.

Lysimachia daphnoides (Lehua makano)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is known from nine populations totaling 180 to 300 individuals in the Alakai area.

Lysimachia daphnoides is threatened by feral pigs that degrade and destroy habitat, by hikers that may trample individuals, and by nonnative plants that outcompete and displace it. In addition, regeneration is not occurring due to an unknown invertebrate that eats most, if not all, of the seeds in the fruit and for which no control is currently known. Feral pigs have been fenced out of three of the nine populations of *L. daphnoides* and nonnative plants have been reduced in the three populations that are fenced. However, these on-going conservation efforts benefit only three of the nine known populations. In addition, no viable seeds have been observed in recent years due to damage to fruits from a boring insect. This insect has not yet been identified. In monitoring of populations of *L. daphnoides* in the three fenced bogs over the last four years, no recruitment has been observed. The threats continue to be of a high magnitude to the species as a whole and they are on-going, and therefore imminent. Therefore, we retained a listing priority number of 2 for this species.

Melicope christophersenii (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope christophersenii* is a long-lived perennial shrub or tree found in wet forest in the Waianae Mountains on Oahu, Hawaii. Currently, this species is known from several populations totaling less than 300 individuals. *Melicope christophersenii* is threatened by feral pigs and goats that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The black twig borer may pose a threat to *M. christophersenii* because it is known to infest other species of *Melicope* on Oahu and it occurs throughout the Waianae Mountains. The threats to *M. christophersenii* from feral pigs, goats, nonnative plants, and the black twig borer are imminent and of a high magnitude because of their severity, they occur range-wide, they are ongoing,

and no efforts for their control have been undertaken. Therefore, we retained a listing priority number of 2 for this species.

Melicope degeneri (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope degeneri* is a small, long-lived perennial shrub found in mesic to wet forest on Kauai, Hawaii. Currently this species is known from three populations with a total of 15 individuals. *Melicope degeneri* is threatened by feral goats that directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. The black twig borer may pose a threat to *M. degeneri* because it is known to infest other species of *Melicope* and it occurs on the island of Kauai. No known conservation measures have been taken to date to address these threats. These threats are of a high magnitude because of their severity and are occurring throughout the limited range of this species. The threats are imminent because they are ongoing in all three populations. Therefore, we retained a listing priority number of 2 for *M. degeneri*.

Melicope hiiakae (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope hiiakae* is a small tree found in mesic to wet forest and shrubland on Oahu, Hawaii. Currently, *M. hiiakae* is known from four or five populations of about 20 individuals in the Koolau Mountains. This species is threatened by feral pigs that directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and stochastic extinction due to naturally occurring events. The black twig borer may pose a threat to *M. hiiakae* because it is known to infest other species of *Melicope* on Oahu and it occurs throughout the Koolau Mountains. The threats are high in magnitude and imminent because of their severity, they all occurring range-wide, and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 for this species.

Melicope makahae (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope makahae* is a shrub or shrubby tree found in mesic forest in the Waianae Mountains on Oahu, Hawaii.

Currently *M. makahae* is known from three populations on three discrete ridges, totaling approximately 200 individuals. This species is threatened by goats that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The black twig borer may pose a threat to *M. makahae* because it is known to infest other species of *Melicope* on Oahu and it occurs throughout the Waianae Mountains. The threats to *M. makahae* from goats, nonnative plants, and the black twig borer are of a high magnitude because of their severity, they are occurring range-wide, and no efforts for their control have been undertaken. The threats are imminent since they are ongoing. Therefore, we retained a listing priority number of 2 for this species.

Melicope paniculata (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope paniculata* is a small tree found in wet forest dominated by *Metrosideros polymorpha* (ohia) on Kauai, Hawaii. *Melicope paniculata* is currently known from four populations totaling 110 individuals. This species is threatened by feral pigs that directly prey upon it, degrade and/or destroy habitat, and nonnative plants that compete for light and nutrients. The black twig borer may pose a threat to *M. paniculata* because it is known to infest other species of *Melicope* and it occurs on Kauai. All of the threats are occurring range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 due to imminent threats of a high magnitude.

Melicope puberula (Alani)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Melicope puberula* is a shrub or small tree found in mesic and wet forest on Kauai, Hawaii. This species is known from 1,000 individuals in the Kalalau area to Wainiha Pali on the island of Kauai. *Melicope puberula* is threatened by feral pigs and goats that degrade and/or destroy habitat, nonnative plants that compete for light and nutrients, and stochastic extinction due to naturally occurring events such as hurricanes. The black twig borer may pose a threat to *M. puberula* because it is known to infest other species of *Melicope* and it occurs on Kauai. These threats are of a high magnitude because of their severity and they are occurring throughout its limited range. The threats are imminent because they are ongoing. Therefore, we

retained a listing priority number of 2 for this species.

Myrsine fosbergii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Myrsine fosbergii* is a branched shrub or small tree found in cloud swept ridges and wet forest on Kauai and Oahu, Hawaii. This species is known from at least five populations totaling 150 to 175 individuals from Kauai and the southeastern end of Castle Trail on Oahu. *Myrsine fosbergii* is threatened by feral pigs that directly prey upon it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. There are no conservation measures being taken to alleviate these threats for this species. Feral pigs are found throughout the known range of *M. fosbergii* making this threat ongoing and imminent. The threats from feral pigs and nonnative plants are of high magnitude because of their severity and they are occurring throughout its limited range. The threats are on-going and therefore are imminent. We retained a listing priority number of 2 for this species.

Myrsine mezii (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Myrsine mezii* is a small many-branched tree found in mesic forest on Kauai, Hawaii. This species is known from two populations of only five individuals in Koaie Canyon. *Myrsine mezii* is threatened by feral pigs that degrade and destroy habitat, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. No known conservation measures have been taken to date for these threats. The threats are of a high magnitude and imminent because of their severity, they are occurring throughout the limited range of *M. mezii*, and are ongoing. Thus, we retained a listing priority number of 2 for this species.

Myrsine vaccinioides (Kolea)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Myrsine vaccinioides* is a small branched shrub found in shrubby bogs on Maui, Hawaii. This species is found scattered throughout the bogs of west Maui, totaling approximately 500 individuals. *Myrsine vaccinioides* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Pig exclusion fences protect

some individuals of this species, and nonnative plants have been reduced around some individuals that are fenced. However, these on-going conservation efforts benefit only a small number of the known individuals. Further, nonnative plants will probably never be completely eradicated because new propagules are constantly being dispersed into the fenced areas from surrounding, unmanaged lands. The species as a whole is impacted by threats of high magnitude that are ongoing, and thus imminent. Therefore, we retained a listing priority number of 2 for this species.

Narthecium americanum (Bog asphodel)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Bog asphodel is a perennial herb that is found in savannah areas, usually with water moving through the substrate, as well as in sandy bogs along streams and rivers. The historic range of bog asphodel included New York, New Jersey, Delaware, North Carolina, and South Carolina, but is now only found within the Pine Barrens region of New Jersey.

As an obligate wetland species, *N. americanum* is threatened by changes in hydrology, loss of habitat due to filling or draining of wetlands, flooding as a result of reservoir construction, and conversion of natural wetlands to commercial cranberry bogs. This species occurs in the Pine Barrens region, and the Pinelands Commission issues the State-assumed Clean Water Act Section 404 permits. The Pinelands Commission grants wetland exemptions to cranberry production and other agricultural uses. In some instances, illegal wetland filling is occurring. For example, a cranberry producer recently expanded its operation without a State permit. In addition, activities not needing State or federal permits are occurring in uplands that are indirectly affecting the wetlands. Natural succession of vegetation in wetlands that support bog asphodel from emergent (herbaceous) to forested wetlands may also be contributing to the species' decline. Suppression of natural wildfires that would retard succession or create open wetland savannahs may be a factor in the decline of the species.

Other factors adversely affecting *N. americanum* include trampling, erosion, and siltation caused by recreationists on foot or using off-road vehicles. Approximately 70 percent of known extant populations occur on State-owned lands. We are working with the New Jersey Department of Environmental Protection to abate

known threats at these sites from recreational use and erosion, thus the severity of these threats has been reduced on State-owned land. Approximately 30 percent of the known extant sites are on privately owned lands, many of which are threatened by habitat degradation from on-site or adjacent residential or commercial development. Overall, based on these imminent, moderate threats, we retained a listing priority number of 8 for this species.

Nothoecium latifolium (Aiea)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Aiea is a small tree found in dry to mesic forest and diverse mesic forests on Kauai, Oahu, Maui, Molokai, and Lanai, Hawaii. *Nothoecium latifolium* is known from approximately a dozen populations totaling less than 300 individuals. This species is threatened by feral pigs, goats and cattle that may eat it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and the loss of pollinators that negatively affect the reproductive viability of the species. Ungulates have been fenced out of some areas where *N. latifolium* currently occurs, and nonnative plants have been reduced in some populations that are fenced. However, these on-going conservation efforts for this species benefit only a few of the known populations. The threats are not controlled and are ongoing in the remaining unfenced populations. In addition, little regeneration is observed in this species. Therefore, the threats are of a high magnitude and imminent and we retained a listing priority number of 2 for this species.

Ochrosia haleakalae (Holei)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Holei is a tree found often on lava in dry to mesic forest on the islands of Hawaii and Maui, Hawaii. This species is currently known from three populations totaling 500 individuals on east Maui and the island of Hawaii. *Ochrosia haleakalae* is threatened by feral pigs and goats that may directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and fire. Feral pigs and goats have been fenced out of the Maui population of *O. haleakalae*, and fences protect the reintroduction site in Hawaii Volcanoes National Park on the island of Hawaii. Nonnative plants have been reduced in the fenced area on Maui. No known conservation measures have been taken to date for the other

populations on the island of Hawaii. The threat from fire is of a high magnitude and imminent because no control measures have been undertaken to address this threat to all of the populations. The threats from feral pigs and goats are of a high magnitude and ongoing to the unfenced populations of *O. haleakalae*. The threat from nonnative plants is ongoing and imminent, and of a high magnitude to the wild populations on the island of Hawaii. Therefore, we retained a listing priority number of 2 for this species.

Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus)—See above in “Summary of Listing Priority Changes in Candidates.” The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Penstemon debilis (Parachute beardtongue)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Parachute beardtongue is an extremely rare plant endemic to oil shale outcrops on the Roan Plateau escarpment in Garfield County, Colorado. The estimated number of plants is 1130 to 1730. Approximately 53 to 69 percent of the plants are on private land owned by an oil and gas company. Most of the remaining 31 to 47 percent occur in one population on Bureau of Land Management land that will soon be open to leasing under a new Resource Management Plan. Pressure to develop energy reserves in this area is intense. Threats include habitat destruction caused by heavy equipment as it traverses access roads through plant populations. These threats are high magnitude because of the high number of populations affected by these threats and the severity of the impact. Therefore, we retained a listing priority number of 2 for this species based on the high magnitude of the threats and the increase in the intensity of energy exploration and development in the last three years along the Roan Plateau escarpment.

Penstemon scariosus var. *albifluvis* (White River beardtongue)—The following summary is based on information contained in our files and the petition received on October 27, 1983. The White River beardtongue is restricted to calcareous soils derived from oil shale barrens of the Green River Formation in the Uinta Basin of northeastern Utah and adjacent Colorado. There are 14 occurrences known in Utah and one in Colorado. Most of the occupied habitat of the White River beardtongue is within

developed and expanding oil and gas fields. The location of the species’ habitat exposes it to destruction from road, pipeline, and well-site construction in connection with oil and gas development. Recreational off-road vehicle use, heavy grazing by livestock and wildlife and livestock trampling are additional threats. Current information indicates that threats are nonimminent since that are not ongoing at this time but of a high magnitude because of their potential to affect the majority of the populations. Therefore, we retained a listing priority number of 6 for this plant variety.

Peperomia subpetiolata (Ala ala wai nui)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Ala ala wai nui is a short-lived perennial herb found in mesic forest on Maui, Hawaii. This species is known from a few scattered, declining, populations on windward east Maui, totaling 100 individuals. Further study of the population indicates that the 100 individuals may actually represent clones of only 6 genetically distinct individuals. *Peperomia subpetiolata* is threatened by feral pigs that may eat this plant and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 because the threats are of a high magnitude and are ongoing so are imminent.

Phacelia submutica (DeBeque phacelia)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. DeBeque phacelia is an annual flowering plant endemic to clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation in Mesa and Garfield Counties, Colorado. There are approximately 40 populations, all less than five acres. The number of plants varies from none to thousands each year, depending on precipitation. The habitat coincides with high quality oil and gas reserves of the Piceance Basin, mostly on federal lands. The primary threats are gas field development and associated construction and transportation activities, as well as increased access for all-terrain vehicles. Substantial surface disturbance alters the unique soil structure that supports this plant, and also destroys seed banks that are critical to the survival of this species. The threats are of a high magnitude because they have the

potential to affect the majority of the populations and because the populations cover such small areas of land. The threats are nonimminent since they are not expected to affect this species in the next few years. Based on nonimminent threats of a high magnitude, we retained a listing priority number of 8 for this species.

Phyllostegia bracteata (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Phyllostegia bracteata* is a scandent perennial herb. Currently this species is known from three populations totaling no more than 100 individuals in wet forest habitat of east Maui.

Phyllostegia bracteata is threatened by feral pigs that may directly prey upon it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The threats to *P. bracteata* from pigs and nonnative plants are of a high magnitude and imminent because of their severity, they are occurring range-wide, are ongoing, and no efforts for their control have been undertaken. Therefore, we retained a listing priority number of 2 for this species.

Phyllostegia floribunda (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is an erect subshrub found in mesic to wet forest on the island of Hawaii, Hawaii. This species is known from 13 locations totaling fewer than 100 individuals on State, private, and Federal lands (Hawaii Volcanoes National Park). Only one individual is reported at each of approximately half of the locations. *Phyllostegia floribunda* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Fences protect approximately five populations on private and Park Service lands. Nonnative plants have been reduced in these fenced areas. However, no conservation efforts have been implemented for the unfenced populations. For the species as a whole, the threats are ongoing and imminent, and of a high magnitude. Consequently, we retained a listing priority number of 2 for this species.

Phyllostegia hispida (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a loosely spreading many-branched vine found in wet forest on Molokai, Hawaii. The historic range

of this species was eastern Molokai. Currently, *P. hispida* is known from only one plant in the State of Hawaii's Puu Alii Natural Area Reserve. This species is threatened by the lack of regeneration, feral pigs that eat this plant and degrade and/or destroy habitat, erosion, reduced reproductive vigor and stochastic extinction due to naturally occurring events. No efforts for the control of feral pigs have been undertaken in the habitat occupied by this species. *Phyllostegia hispida* is represented in an *ex-situ* collection (micropropagation) and it is unknown whether the material will transfer to the nursery for normal propagation methods needed for reintroduction. The threats are of a high magnitude and imminent because of their severity, and they are currently occurring throughout the limited range of *P. hispida*. Thus, we retained a listing priority number of 2 for this species.

Physaria tuplashensis, (White Bluffs bladder-pod)—See above in "Other Taxonomic Changes in Candidates." The above summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004.

Pittosporum napaliense (Hoawa)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Hoawa species is a small tree found in *Pandanus* forest and mesic valleys on Kauai, Hawaii. This species is known from about six populations totaling several hundred individuals on the eastern portion of the Na Pali coast. *Pittosporum napaliense* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. The threats to *P. napaliense* from pigs and nonnative plants are of a high magnitude and imminent because of their severity, they currently occur range-wide, and no efforts for their control have been undertaken. Therefore, we retained a listing priority number of 2 for this species.

Platanthera integrilabia (Correll) Leur (White fringeless orchid) "The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Platanthera integrilabia* is a perennial herb that grows in partially, but not fully, shaded, wet, boggy areas at the head of streams and on seepage slopes in Alabama, Georgia, Kentucky and Tennessee. Historically, there were at least 90 populations of *P. integrilabia*.

Currently there are only 53 extant sites supporting the species. Several

populations have been lost to road, residential and commercial construction, and to projects that altered soil and site hydrology, and reduced site suitability for the species. Several of the known populations are in or adjacent to powerline rights-of-way. Mechanical clearing of these areas may benefit the species by maintaining adequate light levels; however, the use of herbicides could pose a significant threat to the species. All-terrain vehicles have damaged several sites and pose a threat to most sites. Most of the known sites for the species occur in areas that are managed specifically for timber production. Timber management is not necessarily incompatible with the protection and management of the species. However, care must be taken during timber management to ensure that the hydrology of the bogs that support the species is not altered. Natural succession can result in decreased light levels. Because of the species dependence upon moderate to high light levels, some type of active management to prevent complete canopy closure is required at most locations. Collecting for commercial and other purposes is a threat. Herbivory (primarily deer) threatens the species at several sites. Protection and recovery of this species is dependent upon active management rather than just preservation of its habitat. Invasive, nonnative plants such as Japanese honeysuckle and kudzu threaten several sites. Given the current threats to this species, the magnitude of threat is high. Based upon the number of populations and the anticipation that most of these threats will not be realized in the next several years, the threats are nonimminent and, therefore, we have assigned a listing priority number of 5 to this species.

Platydesma cornuta var. *cornuta* (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This variety is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from three to four populations with a combined total of approximately 100 individuals in the Koolau Mountains on the island of Oahu. Limited monitoring has shown that this population is declining. The threats to *P. cornuta* var. *cornuta* include feral pigs that directly prey upon it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. All of the threats occur range-wide and no efforts for their control or eradication are being

undertaken. We retained a listing priority number of 3 for this variety because of the high magnitude of threats and because they are ongoing, so are imminent.

Platydesma cornuta var. *decurrens* (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This variety is an erect palmoid shrub found in mesic forest on Oahu, Hawaii. This variety is known from a few populations totaling a few hundred individuals in the Waianae Mountains. *Platydesma cornuta* var. *decurrens* is threatened by feral pigs and goats that directly prey upon it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 3 for this variety because the threats are high in magnitude and are ongoing, so are imminent.

Platydesma remyi (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Platydesma remyi* is a shrub or shrubby tree found scattered in wet, low stature forest on the island of Hawaii, Hawaii. This species is known from two populations (one each in the Kohala Mountains and Hamakua) totaling less than 100 individuals. *Platydesma remyi* is threatened by feral pigs and cattle that degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. There are no conservation efforts being implemented to alleviate the threats to *P. remyi*. These threats are ongoing and therefore, imminent, and of a high magnitude because of their severity and because they are occurring throughout its limited range. Therefore, we retained a listing priority number of 2 for this species.

Platydesma rostrata (Pilo kea lau lii)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Pilo kea lau lii is an erect palmoid shrub found in diverse mesic forest and valleys on Kauai, Hawaii. This species is known from about 20 populations totaling several hundred individuals in Kokee and Kuia. *Platydesma rostrata* is threatened by feral goats that degrade and destroy habitat, and nonnative plants that compete for light and

nutrients. Feral goats have been fenced out of 1 of the 20 populations of *P. rostrata*, and nonnative plants have been reduced in the population that is fenced. However, these on-going conservation efforts benefit only 1 of the 20 known populations and, therefore, continue to be of a high magnitude to this species. In addition, threats to *P. rostrata* are imminent because they are ongoing in 19 of the 20 populations. Therefore, we retained a listing priority number of 2 for this species.

Pleomele forbesii (Hala pepe)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pleomele forbesii* is a tree found in diverse mesic and dry forests on Oahu, Hawaii. This species is currently known from 16 populations totaling 500 individuals. *Pleomele forbesii* is threatened by predation by rats, habitat degradation and destruction by feral pigs and goats, fire, and nonnative plants that compete for light and nutrients. There are no conservation efforts being implemented to alleviate these threats to *P. forbesii*. The threats are of a high magnitude because of their severity and they are occurring throughout the range of this plant in all 16 populations. The threats are ongoing and therefore, imminent. Thus, we retained a listing priority number of 2 for this species.

Potentilla basaltica (Soldier Meadow cinquefoil or basalt cinquefoil)—See above in “Summary of Listing Priority Changes in Candidates.” No new information was provided in the petition received on May 11, 2004.

Pritchardia hardyi (Loulu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pritchardia hardyi* is a medium-sized palm tree found in open wet forest on Kauai, Hawaii. This species is known from three populations with a combined total of 300 individuals in the Power Line Road area. *Pritchardia hardyi* is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Other potential threats include direct predation of fruit by rats, and human collection and vandalism. No conservation efforts have been initiated to date to alleviate these threats to *P. hardyi*. The threats are of a high magnitude because of their severity and they are occurring throughout the range of this plant in all three populations. The threats are ongoing and therefore, imminent. Thus, we retained a listing priority number of 2 for this species.

Pseudognaphalium (*Gnaphalium*) *sandwicensium* var. *molokaiense* (Enaena)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pseudognaphalium sandwicensium* var. *molokaiense* is a perennial herb found in strand vegetation in dry consolidated dunes on Molokai, Hawaii. This variety is known from two populations totaling a few hundred individuals in the Moomomi area and 25 individuals at Puu Kahulianapa on west Maui. *Pseudognaphalium sandwicensium* var. *molokaiense* is threatened by axis deer (Maui and Molokai) and feral cattle (Molokai) that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Potential threats include collection for lei and off-road vehicles that directly damage plants and degrade habitat. While ungulate exclusion fences protect one population of *P. sandwicensium* var. *molokaiense* on Molokai and nonnative plant control has been implemented in this population, no conservation efforts have been initiated to date for the other individuals on Molokai and Maui. The threats from axis deer, goats, nonnative plants, collection, and off-road vehicles are of a high magnitude, ongoing and imminent, because no control measures have been undertaken for four of the five Molokai populations or for the two Maui populations. Therefore, we retained a listing priority number of 3 for this variety.

Psychotria grandiflora (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Psychotria grandiflora* is a small tree or shrub found in mesic to sometimes wet forest on Kauai, Hawaii. This species is found only in the Kokee area on the island of Kauai. Recent surveys determined that the species is now limited to four populations with a total of 18 individuals. *Psychotria grandiflora* is threatened by feral pigs and goats that directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. The threats to *P. grandiflora* are of a high magnitude because of their severity, they are occurring throughout the plant's limited range in all four populations, and there are no conservation efforts being implemented to alleviate the threats. The threats are also ongoing and therefore, imminent.

Therefore, we retained a listing priority number of 2 for this species.

Psychotria hexandra ssp. *oahuensis* var. *oahuensis* (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Psychotria hexandra* ssp. *oahuensis* var. *oahuensis* is a tree or shrub found in mesic and wet forests on Oahu, Hawaii. This variety is known from three populations of less than 20 individuals. The other varieties of this subspecies, *hosakana* and *rockii*, are extinct. *Psychotria hexandra* ssp. *oahuensis* var. *oahuensis* is threatened by feral pigs and rats that consume this plant and degrade and destroy habitat, rats that consume its fruit, and nonnative plants that compete for light and nutrients. All of the threats occur range-wide, and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 3 because the threats are of a high magnitude and are ongoing, so are imminent.

Psychotria hobdyi (Kopiko)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Psychotria hobdyi* is a tree found in mesic forest habitat on Kauai, Hawaii. This species is known from three populations totaling approximately 85 individuals. *Psychotria hobdyi* is threatened by feral goats that degrade and destroy habitat, nonnative plants that compete for light and nutrients, and reduced reproductive vigor and stochastic extinction due to naturally occurring events. There are no conservation measures being taken to alleviate these threats to this species. The threats to *P. hobdyi* from goats and nonnative plants are of a high magnitude because of their severity and they are occurring range-wide. The threats are imminent because they are ongoing. Therefore, we retained a listing priority number of 2 for this species.

Pteralyxia macrocarpa (Kaulu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Pteralyxia macrocarpa* is a tree found in valleys and slopes in diverse mesic forest on Oahu, Hawaii. This species is known from 20 populations totaling less than 500 individuals. *Pteralyxia macrocarpa* is threatened by feral pigs, rats, and the two-spotted leafhopper that consume this plant; by feral pigs that degrade and destroy habitat; and, nonnative plants that compete for light and nutrients. These threats are of a high magnitude because of their severity, they are

occurring throughout its limited range, and no efforts for their control or eradication have been implemented. The threats are also imminent because they are ongoing. We retained a listing priority number of 2 for this species.

Ranunculus hawaiiensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Ranunculus hawaiiensis* is an erect or ascending perennial herb found in mesic to wet forest dominated by *Metrosideros polymorpha* and *Acacia koa* with scree substrate on Maui and the island of Hawaii, Hawaii. Populations formerly within Haleakala National Park have been extirpated. This species is known from less than 300 individuals in five populations. However, the majority of these individuals are seedlings, less than 1 inch (2.5 centimeters) tall, and the rate of survival is expected to be very low. *Ranunculus hawaiiensis* is threatened by direct predation by slugs, by feral pigs, goats, cattle, and sheep that consume this plant and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of some of the populations of *R. hawaiiensis*, and nonnative plants have been reduced in some of the fenced areas. However, feral ungulates and nonnative plants are not controlled in the remaining, unfenced populations. In addition, the threat from slugs is of a high magnitude because slugs occur throughout the limited range of this species and no effective measures have been undertaken for their control. Therefore, the threats from pigs, goats, cattle, sheep, slugs, and nonnative plants are of a high magnitude and ongoing and imminent for *R. hawaiiensis*. We retained a listing priority number of 2 for this species.

Ranunculus mauianensis (Makou)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Ranunculus mauianensis* is an erect to weakly ascending perennial herb found in open sites in mesic to wet forest and along streams on Maui and Kauai, Hawaii. This species is currently known from less than 30 individuals on Maui and 30 individuals on Kauai. *Ranunculus mauianensis* is threatened by feral pigs and slugs that consume it, by habitat degradation and destruction by feral pigs, and by nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of the Maui populations of *R. mauianensis*, and nonnative plants have been reduced in

the fenced areas. However, these ongoing conservation efforts benefit only the Maui individuals and, therefore, the threats continue to be of a high magnitude to this species on Kauai. Threats to the species overall are also of a high magnitude since half of the individuals are found on Kauai and this represents a significant portion of the range of *R. mauianensis*. In addition, threats to *R. mauianensis* are imminent because they are ongoing in the Kauai populations. Therefore, we retained a listing priority number of 2 for this species.

Rorippa subumbellata (Tahoe yellow cress)—The following summary is based on information contained in our files and the petition received on December 27, 2000. Tahoe yellow cress is a small perennial herb known only from the shores of Lake Tahoe in California and Nevada. Data collected over the last 25 years suggest a relationship between lake level and site occupancy by Tahoe yellow cress. The data generally indicate that species occurrence fluctuates yearly as a function of both lake level and the amount of exposed habitat. Records kept since 1900 indicate preponderance of years with high lake levels that would isolate and reduce Tahoe yellow cress occurrences at higher beach elevations. From the standpoint of the species, less favorable peak years have occurred almost twice as often as more favorable low-level years. In addition, there has been widespread and intensive use of the shorezone since European settlement. Today, shorezone conditions are influenced by heavy recreational use, boating, construction of piers and boat launches, and dam operations that control lake elevation. Annual surveys are conducted to determine population numbers, site occupancy, and general disturbance regime. During the 2003 and 2004 annual survey period, the lake level was approximately 6,224 feet (1,898 meters). 2003 was the third consecutive year of low water. The survey located Tahoe yellow cress at 45 of the 72 sites surveyed (65 percent occupied), up from 15 sites (19 percent occupied) in 2000 when the lake level was high at 6,228 feet. Approximately 25,200 stems were counted or estimated in 2003, whereas during the 2000 annual survey, the estimated number of stems was 4,590. A methodology change in 2004 resulted in fewer numbers; the new methodology proved unworkable and was abandoned in 2005. Lake levels were higher in 2005, and less habitat was available; a summary of survey results is not yet available, but total numbers of sites and individuals are

expected to be lower than in the period 2001–2003.

Many Tahoe yellow cress sites are intensively used for commercial and public purposes, and are subject to various activities such as erosion control, marina developments, pier construction, and recreation. The U.S. Forest Service, California Tahoe Conservancy, and California Department of Parks and Recreation protect Tahoe yellow cress with management programs that include monitoring, fenced enclosures, and transplanting efforts when funds and staff are available. Public agencies (including the Service), private landowners, and environmental groups collaborated to develop a conservation strategy coupled with a Memorandum of Understanding/Conservation Agreement. The conservation strategy, which was completed in 2003 and contains goals and objectives for recovery and survival, a research and monitoring agenda, and will serve as the foundation for an adaptive management program. Because of the continued commitments to conservation demonstrated by regulatory and land management agencies participating in the conservation strategy, we have determined the threats to Tahoe yellow cress from various land uses have been reduced to a moderate magnitude. In high lake level years such as 2005, however, recreational use is concentrated within Tahoe yellow cress habitat, and we consider this threat in particular to be ongoing and imminent. Therefore, we are maintaining an LPN of 8 for this species.

Schiedea attenuata (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Schiedea attenuata* is an erect, sparingly branched shrub found on cliffs in diverse mesic forest habitat on Kauai, Hawaii. This species is known from one population of less than 20 individuals on the cliffs of Kalalau Valley. *Schiedea attenuata* is threatened by feral goats that directly prey upon it and degrade and destroy habitat, and nonnative plants that compete for light and nutrients. These threats are of a high magnitude because they are occurring throughout its limited range. Threats continue to be imminent because they are ongoing and because of the potential for the elimination of the only known population by a single stochastic or naturally occurring event. Therefore, we retained a listing priority number of 2 for this species.

Schiedea pubescens (Maolioli)—The following summary is based on

information contained in our files. No new information was provided in the petition received on May 11, 2004.

Schiedea pubescens is a reclining or weakly climbing vine found in diverse mesic to wet forest on Maui and Molokai, Hawaii. Currently, this species is known from six populations totaling approximately 100 individuals on Maui and Molokai. *Schiedea pubescens* is threatened by feral goats that consume it and degrade and destroy habitat, and by nonnative plants that compete for light and nutrients. Feral ungulates have been fenced out of the population of *S. pubescens* on Hawaii and feral goats have been fenced out of a few of the west Maui populations of *S. pubescens*. Nonnative plants have been reduced in the populations that are fenced on Maui. However, the threats are not controlled and are ongoing in the remaining unfenced populations on Maui and the three populations on Molokai. In light of the extremely low number of individuals of this species, the threats from goats and nonnative plants are of a high magnitude and imminent for *S. pubescens* and we retained a listing priority number of 2 for this species.

Schiedea salicaria (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Schiedea salicaria* is an erect subshrub or shrub found on ridges and steep slopes in dry shrubland on Maui, Hawaii. Currently, this species is declining throughout its range, and is known from several populations totaling 100 to 300 individuals, typically of 25 individuals per population. This species is threatened by cattle that may directly prey upon it and degrade and destroy habitat, fire, and nonnative plants that compete for light and nutrients. This species is represented in an *ex-situ* collection. All of the threats occur range-wide, and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 because the threats are of a high magnitude because of their severity and are ongoing, so are imminent.

Sedum eastwoodiae (Red Mountain stonecrop)—The following summary is based on information contained in our files and information provided by the California Department of Fish and Game. No new information was provided in the petition received on May 11, 2004. Red Mountain stonecrop is a perennial succulent which occupies relatively barren, rocky openings and cliffs in lower montane coniferous forests, between 1,900 and 4,000 feet elevation. Its distribution is limited to

Red Mountain, Mendocino County, California, where it occupies 30 acres scattered over 4 square miles. Total population size is estimated at between 5,300 and 23,000 plants, contained within 27 habitat polygons. Intensive monitoring suggests considerable annual variation in plant seedling success and inflorescence production; stonecrop density varied from year-to-year.

The primary threat to the species is the potential for surface mining for chromium and nickel. The entire distribution Red Mountain stonecrop is either owned by mining interests, or is covered by mining claims, none of which are currently active. Surface mining would destroy habitat suitability for this species. The species is also believed to be threatened by tree and shrub encroachment into its habitat, in absence of fire. Given the magnitude (high) and immediacy (nonimminent) of the threat to the small, scattered populations, and its taxonomy (species), we assigned a listing priority number of 5 to this species.

Sicyos macrophyllus (Anunu)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Sicyos macrophyllus* is a perennial vine found in wet *Metrosideros polymorpha* (ohia) forest and subalpine *Sophora chrysophylla-Myoporum sandwicense* (mamane-naio) on the island of Hawaii, Hawaii. This species is known from several populations with a combined total of a few hundred individuals in the Kohala and Mauna Kea areas and in Hawaii Volcanoes National Park (Puna area) on the island of Hawaii. It appears that a naturally occurring population at Kipuka Ki in Hawaii Volcanoes National Park is reproducing on its own by seeds, but seeds have not been successfully germinated under nursery conditions. This species is threatened by feral pigs and sheep that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. Feral pigs have been fenced out of some of the areas where *S. macrophyllus* currently occurs, but the fences do not exclude sheep. Nonnative plants have been reduced in the populations that are fenced. However, the threats are not controlled and are ongoing in the remaining, unfenced populations, and are, therefore, of a high magnitude and are imminent. In addition, the threat from sheep is of a high magnitude, and ongoing and imminent, in all populations because the current fences do not exclude sheep. Therefore, we retained a listing priority number of 2 for this species.

Solanum nelsonii (Popolo)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Solanum nelsonii* is a sprawling or trailing shrub found in coral rubble or sand in coastal sites on the islands of Hawaii, Molokai, Maui, Niihau, Nihoa, and Pearl and Hermes, Hawaii. This species is known from ten populations totaling fewer than 300 individuals, and is declining rapidly on all islands. On Maui and the island of Hawaii, *S. nelsonii* is threatened by development, off-road vehicles, and trampling that degrades and/or destroys habitat, and nonnative plants that compete for light and nutrients. On Molokai, the major threats to *S. nelsonii* are wild cattle and axis deer that adversely modify habitat, and nonnative plants. On Nihoa, and Pearl and Hermes Atoll this species is threatened by nonnative plants. Threats to this species on Niihau are unknown. There are no conservation measures being taken to alleviate the threats to *S. nelsonii* on Maui and the island of Hawaii. On Molokai, conservation measures for this species include ungulate exclusion fences and weed control. On the island of Nihoa, and Pearl and Hermes Atoll, there is no public or recreational use allowed as these islands are within the Hawaiian Islands National Wildlife Refuge (Refuge). Limited nonnative plant control is conducted in the refuge. *Solanum nelsonii* is represented in *ex-situ* collections and in seed storage. Currently, conservation measures have been implemented to the benefit of the individuals on Molokai and within the Refuge. However, there are no efforts to control the ongoing threats to this species on the islands of Hawaii and Maui. Therefore, the threats continue to be of a high magnitude to *S. nelsonii*, and we retained a listing priority number of 2 for this species because the threats are of a high magnitude and are imminent.

Stenogyne cranwelliae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Stenogyne cranwelliae* is a creeping vine found in wet forest dominated by *Metrosideros polymorpha* on the island of Hawaii, Hawaii. *Stenogyne cranwelliae* is known from six populations with a total of 100 individuals. This species is threatened by feral pigs that degrade and destroy habitat, and nonnative plants that compete for light and nutrients. In addition, this species is potentially

threatened by rats that may directly prey upon it. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 because the threats are of a high magnitude and are ongoing, so are imminent.

Stenogyne kealiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Stenogyne kealiae* is a trailing or scandent vine found in wet forest habitat on Kauai, Hawaii. This species is known from five populations totaling 100 to 200 individuals in the northwestern section of the island of Kauai. *Stenogyne kealiae* is threatened by feral pigs and goats, and deer that degrade and destroy habitat and may directly prey upon it, and by nonnative plants that compete for light and nutrients. The threats to *S. kealiae* from pigs, goats, deer, and nonnative plants are of a high magnitude because of their severity, they are occurring range-wide, and no efforts for their control have been undertaken. The threats are also imminent because they are ongoing. Therefore, we retained a listing priority number of 2 for this species.

Symphyotrichum georgianum (Georgia aster)—The following summary is based on information from our files. No new information was provided in the petition received on May 11, 2004. Historically, 97 populations of Georgia aster were known to exist; 34 of these have apparently been destroyed. The species appears to have been eliminated from one of the five states in which it originally occurred. In most cases the exact cause of extirpation was not documented, but herbicides, highway construction, fire suppression, and residential and industrial development have all altered the historic landscape in which Georgia aster once flourished. Georgia aster has apparently been eliminated from 4 counties in Alabama, 1 county in Florida, 11 counties in Georgia, 1 county in North Carolina, and 5 counties in South Carolina; it remains in 31 counties in 4 states (NC, SC, AL, & GA). Most remaining populations of this species survive adjacent to roads, railroads, utility rights-of-way and other openings where land management occasionally mimics natural disturbance regimes, but where they are vulnerable to accidental destruction from herbicide application, road shoulder grading, and other maintenance activities. Many populations are now threatened also by development (several are within planned residential subdivisions), highway expansion/improvement, and

by woody succession due to fire suppression. The severity of threats faced by this species is high and the threats are operating throughout its range. We are not aware of ongoing efforts to abate these threats or otherwise protect existing populations. Therefore, the magnitude of threats is assessed to be high, but because the species appears to tolerate some level of disturbance, we regard the threats as nonimminent and thus, we retained a listing priority of 5 for this species.

Zanthoxylum oahuense (Ae)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Zanthoxylum oahuense* is small tree found in mesic to wet forest habitat on Oahu, Hawaii. Currently this species is known from several populations totaling approximately 500 individuals on Oahu. *Zanthoxylum oahuense* is threatened by feral pigs that directly prey upon it and degrade and destroy habitat, nonnative plants that compete for light and nutrients, and the black twig borer. All of the threats occur range-wide and no efforts for their control or eradication are being undertaken. We retained a listing priority number of 2 for this species because the threats are rangewide and, therefore, of a high magnitude and are ongoing, so are imminent.

Ferns and Allies

Botrychium lineare (Slender moonwort)—The following summary is based on information contained in our files and the petition received on July 28, 1999. See also the 12-month petition finding published on June 6, 2002 (67 FR 39035). Fourteen populations are currently known to exist: One in Alaska (Wrangell County), two in Colorado (El Paso County), four in Montana (Glacier County), three in Oregon (Wallowa County), one in Washington (Ferry County), one in Wyoming (Crook County), one in Alberta, Canada, and one in the Yukon Territory, Canada. Collectively, these 14 sites occur over a large area of western North America. Three additional populations, two in Nevada and one in Idaho, were discovered in surveys conducted in 2001; however, genetic analysis indicated that the plants contain *B. lineare* alleles but they are not pure *B. lineare* individuals. No extant populations are known east of the Rocky Mountains. Most sites occupied by *B. lineare* are generally small, with most less than 465 square meters (5,000 square feet) in area. *Botrychium lineare* populations range in size from 2 to 162 plants, with 6 populations supporting

more than 15 individuals. The total number of individuals observed at the 14 extant population sites varies, with observations ranging from 2 to 100 individuals. Eleven of the 12 *B. lineare* populations in the U.S. occur on Federal or Tribal land.

Most *B. lineare* sites are impacted by disturbances including grazing by native and nonnative animals, trampling from hikers, avalanches, and impacts from vehicles. The effects of these various disturbances and their relative level of impact in maintaining or eliminating habitat have not been investigated for the species. Six of the *Botrychium lineare* sites, one in Alaska, four in Montana, and one in Wyoming, are located adjacent to disturbed roadsides or all-terrain vehicle trails and may be affected by roadside traffic or by road maintenance activities, such as herbicide spraying or mowing. The largest known site of *B. lineare* located along a roadside was sprayed in 2000, although impacts on the population are unknown. Toadflax, an aggressive, difficult-to-control, nonnative plant, was introduced from the Pikes Peak roadway into two *B. lineare* sites in Colorado. Other nonnative plants are associated with *B. lineare* sites throughout the species' range and should be regarded as potential threats to the species. Grazing by livestock or wildlife is a potential threat if it occurs prior to the maturation and release of spores thus compromising the capacity for sexual reproduction of affected plants. Regulatory mechanisms may be inadequate to protect this species in Forest Service Regions 1 and 4, which include sites found in Montana, Nevada, Utah, and Idaho, because in those Regions *B. lineare* is not included on their regional sensitive species lists. *Botrychium lineare* is not on Canada's list of threatened or vulnerable species, so there is no special protection for this species in Canada.

The generally small size of most existing *B. lineare* populations (less than 465 square meters (5,000 square feet)) makes this species not only difficult to locate, but also vulnerable to extirpation due to random naturally occurring events. A single random environmental event could extirpate a portion or all of the individuals at a given site. Conversely, the disjunct nature of existing population sites over a wide geographic range covering at least six western states and two Canadian provinces indicates a high likelihood that additional, undetected *B. lineare* population sites exist. This is especially true of the more northern latitudes where the species was until last year, not previously located.

Because the plant is distributed over a wide range and because the species is more difficult to locate than most other plant species, we expect that more populations will continue to be discovered in the future. Because the species is adapted to some level of disturbance and seems to persist in disturbed environments, the threats are not high in magnitude. In addition, since most populations (10 of 14) occur on Federal lands and are afforded some level of protection, threats are currently nonimminent. For these reasons, we assigned a listing priority number of 11 to this species.

Christella boydiae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. This species is a small to medium sized fern found in mesic to wet forest along streambanks on Oahu and Maui, Hawaii. Historically, this species was also found on the island of Hawaii; however, the species has been extirpated from that island. Currently, this species is known from three populations with a combined total of 362 to 422 individuals. The three populations are found in Kipahulu Valley and Waihoi Valley on Maui, and the Koolau Mountains of Oahu. Current populations survive only at the extreme upper elevations of streambanks.

This species is threatened by feral pigs and goats that degrade and/or destroy habitat and that may eat this plant, nonnative plants that compete for light and nutrients, man-made stream diversion, and erosion. Feral pigs and goats have been fenced out of one of the three populations of *C. boydiae* and nonnative plants have been reduced in the fenced area. Although one of the three populations of this species has been fenced and weeds are being controlled in the fenced area, no conservation efforts are underway to alleviate these threats to the other two populations. In addition, no conservation measures have been taken to address the threats from stream diversions and erosion throughout the range of *C. boydiae*. The threats to *C. boydiae* are imminent and of a high magnitude because they are ongoing in two of only three known populations. Therefore, we retained a listing priority number of 2 for this species.

Doryopteris takeuchii (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. *Doryopteris takeuchii* is a small fern found in dry shrubland and grassland on Oahu, Hawaii. This newly

described species is found only on the island of Oahu on the slopes of Diamond Head Crater in one population totaling hundreds of individuals. This species is threatened by fire that degrades and/or destroys habitat, and nonnative plants that compete for light and nutrients. Potential threats to *D. takeuchii* include human trampling and erosion of its steep hillside habitat. The magnitude of threats continues to be high because no conservation measures have been taken to address them. Threats continue to be imminent because they are ongoing and because of the potential for the elimination of the only known population by a single stochastic or naturally occurring event. We retained a listing priority number of 2 for this species.

Huperzia stemmermanniae (no common name)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Waewaeiole is found in mesic *Metrosideros polymorpha*-*Acacia koa* (ohia-koa) forests on the islands of Maui and Hawaii, Hawaii. Only four populations are known, totaling less than 20 individuals on Hawaii and Maui. *Huperzia stemmermanniae* is threatened by feral pigs, goats, and cattle that degrade and/or destroy habitat, fire, and nonnative plants that compete for light, space, and nutrients. The threats to *H. stemmermanniae* from pigs, goats, cattle, fire, and nonnative plants are of a high magnitude and imminent because of their severity, they are occurring range-wide, no efforts for their control have been undertaken, and they are ongoing. Therefore, we retained a listing priority number of 2 for this species.

Microlepia strigosa var. *mauiensis* (Palapalai)—The following summary is based on information contained in our files. No new information was provided in the petition received on May 11, 2004. Palapalai is a fern found in mesic to wet forests. It is currently found only on the island of Maui, where it is known from three populations totaling 100 to 200 individuals. *Microlepia strigosa* var. *mauiensis* is threatened by feral pigs that degrade and destroy habitat, nonnative plants that compete for light and nutrients, reduced reproductive vigor, and stochastic extinction due to naturally occurring events. Feral pigs have been fenced out of at least one area on Maui where *M. strigosa* var. *mauiensis* currently occurs, and nonnative plants have been reduced in the fenced area. However, the threats are not controlled and are ongoing in the remaining unfenced populations on

Maui and all three of the populations on the island of Hawaii. Therefore, the threats from feral pigs and nonnative plants are of a high magnitude and imminent and we retained a listing priority number of 3 for *M. strigosa* var. *mauiensis*.

Petitions To Reclassify Species Already Listed

We previously made warranted-but-precluded findings on five petitions seeking to reclassify threatened species to endangered status. Because these species are already listed, they are not technically candidates for listing and are not included in Table 1. However, this notice and associated species assessment forms also constitute the resubmitted petition findings for these species. We find that reclassification to endangered status for the five species (which are listed below) is currently warranted but precluded by work identified above (see "Petition Findings for Candidate Species" above). One of the primary reasons that the work identified above is higher priority is that these species are currently listed as threatened under the Act, and therefore they already receive certain protections under the Act. The Service promulgated regulations extending take prohibitions for endangered species under section 9 to threatened species (50 CFR 17.31). Prohibited actions under section 9 include, but are not limited to, take (*i.e.*, harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such activity). Other protections include those under section 7(a)(2) of the Act whereby Federal agencies must insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species.

(1) North Cascades ecosystem population of the grizzly bear (*Ursus arctos horribilis*) (Region 6) (also see 63 FR 30453, June 4, 1998, and the species assessment form (see ADDRESSES) for additional information on why reclassification to endangered is warranted-but-precluded)—Current grizzly bear distribution has been reduced to 5 areas in the western U.S., including the North Cascades in north central Washington. Populations are estimated to be fewer than 20 animals within the 9,500-square-mile (sq-mi) (25,000-square-kilometer (sq-km)) North Cascades recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures (motorized access management) and small population size and population fragmentation that produce genetic isolation. We assigned a listing priority

number of 3 for uplisting to this population because of very low population numbers as evidenced by continuing lack of credible sightings and little success identifying animals through hair snagging and genetic analysis. Information indicating isolation of the population in British Columbia and the U.S. limits the chance of natural recovery given the small population size. Population augmentation may be the only way to recover this population.

(2) Cabinet-Yaak population of the grizzly bear (Region 6) (*see also* 64 FR 26725, May 17, 1999, and the species assessment form (*see ADDRESSES*) for additional information on why reclassification to endangered is warranted-but-precluded) “ Current grizzly bear distribution has been reduced to 5 areas in the western U.S., including the Cabinet-Yaak in northern Idaho and northwest Montana. Populations are estimated to be 30–40 animals within the 2,600-sq-mi (6,700-sq-km) Cabinet-Yaak recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures in the form of motorized access management, overutilization by human-caused mortality, and small population size and population fragmentation that produce genetic isolation. We assigned a listing priority number of 3 for uplisting to this population due to continuing high levels of human-caused mortality, new threats to habitat in the form of large-scale mine development proposals in the Cabinet Mountains, and the high potential for further fragmentation of populations within the recovery zone.

(3) Selkirk grizzly population of the grizzly bear (Region 6) (*see also* 64 FR 26725, May 17, 1999, and the species assessment form (*see ADDRESSES*) for additional information on why reclassification is warranted-but-precluded) “ Current grizzly bear distribution has been reduced to 5 areas in the western U.S., including the Selkirk Mountains in northern Idaho, northeast Washington, and Southeast British Columbia. Populations are estimated to be 40–50 animals within the 2,200 square mile (5,700 square kilometer) Selkirk Mountains recovery zone. Threats to the species in this recovery zone include incomplete habitat protection measures in the form of motorized access management, overutilization in the form of human-caused mortality, and small population size and population fragmentation that produce genetic isolation. We assigned a listing priority number of 3 for uplisting to this population because of continuing high levels of human-caused

mortality in British Columbia and new genetic information indicating the population is isolated and has declined in genetic diversity relative to both adjacent populations.

(4) Spikedace (*Meda fulgida*) (Region 2) (*see* 59 FR 35303, July 11, 1994, and the species assessment form (*see ADDRESSES*) for additional information on why reclassification to endangered is warranted-but-precluded) “ The spikedace, a small fish species in a monotypic genus, is found in moderate-to-large perennial waters, where it inhabits shallow riffles with sand, gravel, and rubble substrates, and moderate-to-swift currents and swift pools over sand or gravel substrates. Specific habitat for this species consists of shear zones where rapid flow borders slower flow; areas of sheet flow at the upper ends of mid-channel sand/gravel bars; and eddies at downstream riffle edges. Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of spikedace and in helping maintain a competitive edge over invading nonnative aquatic species.

The spikedace was once common throughout much of the Gila River basin, but it is now restricted to approximately 466 kilometers (289 miles) of stream in portions of the upper Gila River (Grant, Catron, and Hidalgo Counties, New Mexico); middle Gila River (Pinal County, Arizona); lower San Pedro River (Pinal County, Arizona); Aravaipa Creek (Graham and Pinal Counties, Arizona); Eagle Creek (Graham and Greenlee Counties, Arizona); and the Verde River (Yavapai County, Arizona). Its present range is only about 10 to 15 percent of the historic range, and the status of the species within occupied areas ranges from common to very rare. The species is now common only in Aravaipa Creek in Arizona and some parts of the upper Gila River in New Mexico. The reduction in the historical distribution of spikedace is largely attributable to the continued modification of its habitat and continued interactions with nonnative species. These threats occur over the majority of their range, to varying degrees. Each of the individual spikedace complexes may face unique threats as well. For example, the San Pedro River area is experiencing groundwater depletion which is affecting surface flows within the river channel, whereas Tonto Creek faces continued grazing pressure, recreational use, and dewatering due to diversions. Proposals have been made for water exchanges affecting the Verde River in order to provide water for growing urban areas. Currently, threats are

exacerbated by the ongoing drought. While some areas are subjected to fewer disturbances or pressures, there are no known habitat areas that are completely free of disturbance. Effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Federal agencies have reduced grazing pressures by removing cattle from the mainstem of most rivers; however, grazing in the uplands continues to affect watershed condition. Groundwater withdrawals or exchanges that affect streamflow are not reversible. The threats are high in magnitude because effects from nonnative species introductions are permanent, unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives and groundwater withdrawals or exchanges that affect streamflow are not reversible. Because these high magnitude threats have gone on for many years in the past, and are ongoing, the threats are imminent. Therefore, we assigned this species a listing priority of 1 for uplisting to endangered. Note on December 20, 2005, we published a proposed critical habitat rule (70 FR 75545) for this species.

(5) Loach minnow (*Tiaroga cobitis*) (Region 2) (*see* 59 FR 35303, July 11, 1994, and the species assessment form (*see ADDRESSES*) for additional information on why reclassification to endangered is warranted-but-precluded)—This small fish, the only species within the genus, is found in small-to-large perennial streams and uses shallow, turbulent riffles with primarily cobble substrate and swift currents. The loach minnow uses the spaces between, and in the lee of, larger substrate for resting and spawning. It is rare or absent from habitats where fine sediments fill the interstitial spaces. Recurrent flooding and a natural hydrograph are very important in maintaining the habitat of loach minnow and in helping the species maintain a competitive edge over invading nonnative aquatic species.

The loach minnow was once locally common throughout much of the Gila River basin, including the mainstem Gila River upstream of Phoenix, and the Verde, Salt, San Pedro, and San Francisco subbasins. The present range is only 15 to 20 percent of its historic range, and the status of the species within occupied areas ranges from common to rare. The species is now common only in Aravaipa Creek and the Blue River in Arizona, and limited portions of the San Francisco, upper Gila, and Tularosa rivers in New

Mexico. The reduction in the historical distribution of loach minnow is largely attributable to the continued modification of its habitat and continued interactions with nonnative species. These threats occur over the majority of the range, to varying degrees. Each of the individual loach minnow complexes may face unique threats as well. For example, the San Pedro River area is experiencing groundwater depletion which is affecting surface flows within the river channel, whereas Tonto Creek faces continued grazing pressure, recreational use, and dewatering due to diversions. Proposals have been made for water exchanges affecting the Verde River in order to provide water for growing urban areas. Currently, threats are exacerbated by the ongoing drought. While some areas are subjected to fewer disturbances or pressures, there are no known habitat areas that are completely free of disturbance. Effects from nonnative species introductions are permanent unless streams are actively renovated and/or barriers installed to preclude further recolonization by nonnatives. Federal agencies have reduced grazing pressures by removing cattle from the mainstem of most rivers; however, grazing in the uplands continues to affect watershed condition. Groundwater withdrawals or exchanges that affect streamflow are not reversible. Most of these high-magnitude threats to the loach minnow are already ongoing, in particular grazing, water withdrawals, nonnative stocking programs, recreational use, and drought. Because threats have gone on for many years in the past, are associated with irreversible commitments (e.g., water exchanges), or are not easily reversed (e.g., nonnative stocking and impacts from grazing), the threats are high in magnitude and imminent. Therefore, we assigned this species a listing priority number of 1 for uplisting to endangered. Note on December 20, 2005, we published a proposed critical habitat rule (70 FR 75545) for this species.

Current Notice of Review

We gather data on plants and animals native to the U.S. that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those species that we currently regard as candidates for addition to the Lists. These candidates include species and subspecies of fish, wildlife, or plants and DPSs of vertebrate animals. This compilation relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other

State and Federal agencies, knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 list animals arranged alphabetically by common names under the major group headings and list plants alphabetically by names of genera, species, and relevant subspecies and varieties. Animals are grouped by class or order. Plants are subdivided into two groups: (1) Flowering plants and (2) ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses with the synonyms preceded by an "equals" sign. Several species that have not yet been formally described in the scientific literature are included; such species are identified by a generic or specific name (in italics), followed by "sp." or "ssp." We incorporate standardized common names in these notices as they become available. We sorted plants by scientific name due to the inconsistencies in common names, the inclusion of vernacular and composite subspecific names, and the fact that many plants still lack a standardized common name.

Table 1 lists all candidate species and all species proposed for listing under the Act. We emphasize that we are not proposing these candidate species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these species in the future. We encourage State agencies, other Federal agencies, and other parties to give consideration to these species in environmental planning.

In Table 1, the "category" column on the left side of the table identifies the status of each species according to the following codes:

PE—Species proposed for listing as endangered. Proposed species are those species for which we have published a proposed rule to list as endangered or threatened in the **Federal Register**. This category does not include species for which we have withdrawn or finalized the proposed rule.

PT—Species proposed for listing as threatened.

PSAT—Species proposed for listing as threatened due to similarity of appearance.

C—Candidates: Species for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. Issuance of proposed rules for these species is precluded at present by other higher-priority listing actions. This category includes species for which we made a 12-month warranted-but-precluded finding on a petition to list. We made

new findings on all petitions for which we previously made "warranted-but-precluded" findings. We identify the species for which we made a continued warranted-but-precluded finding on a resubmitted petition by the code "C*" in the category column (see "Findings on Resubmitted Petitions" section for additional information).

The "Priority" column indicates the listing priority number (LPN) for each candidate species which we use to determine the most appropriate use of our available resources. The lowest numbers have the highest priority. We assign LPNs based on the immediacy and magnitude of threats as well as on taxonomic status. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

The third column, "Lead Region," identifies the Regional Office to which you should direct comments or questions (see addresses at the end of the **SUPPLEMENTARY INFORMATION** section).

Following the scientific name (fourth column) and the family designation (fifth column) is the common name (sixth column). The seventh column provides the known historical range for the species or vertebrate population (for vertebrate populations, this is the historical range for the entire species or subspecies and not just the historical range for the distinct population segment), indicated by postal code abbreviations for States and U.S. territories. Many species no longer occur in all of the areas listed.

Species in Table 2 of this notice are species we included either as proposed species or as candidates in the previous CNOR (published May 11, 2005) that are no longer proposed species or candidates for listing. Since May 11, 2005, we added 19 of these species to the Lists of Endangered and Threatened Wildlife and Plants and removed 14 species from candidate status for the reasons indicated by the codes. The first column indicates the present status of the species, using the following codes (not all of these codes may have been used in this CNOR):

E—Species we listed as endangered.

T—Species we listed as threatened.

Rc—Species we removed from the candidate list because currently available information does not support a proposed listing.

Rp—Species we removed from the candidate list because we have withdrawn the proposed listing.

The second column indicates why we no longer regard the species as a candidate or proposed species using the

following codes (not all of these codes may have been used in this CNOR):

A—Species that are more abundant or widespread than previously believed and species that are not subject to the degree of threats sufficient to warrant continuing candidate status, or issuing a proposed or final listing.

F—Species whose range no longer includes a U.S. territory.

I—Species for which we have insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Species we added to the Lists of Endangered and Threatened Wildlife and Plants.

M—Species we mistakenly included as candidates or proposed species in the last notice of review.

N—Species that are not listable entities based on the Act's definition of "species" and current taxonomic understanding.

U—Species not subject to the degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status due, in part or totally, to conservation efforts that remove or reduce the threats to the species.

X—Species we believe to be extinct.

The columns describing lead region, scientific name, family, common name, and historical range include information as previously described for Table 1.

Request for Information

We request you submit any further information on the species named in this notice as soon as possible or whenever it becomes available. We are particularly interested in any information:

(1) Indicating that we should add a species to the list of candidate species;

(2) indicating that we should remove a species from candidate status;

(3) recommending areas that we should designate as critical habitat for a species, or indicating that designation of critical habitat would not be prudent for a species;

(4) documenting threats to any of the included species;

(5) describing the immediacy or magnitude of threats facing candidate species;

(6) pointing out taxonomic or nomenclature changes for any of the species;

(7) suggesting appropriate common names; and

(8) noting any mistakes, such as errors in the indicated historical ranges.

Submit your comments regarding a particular species to the Regional Director of the Region identified as having the lead responsibility for that species. The regional addresses follow:

Region 1. Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands. Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232-4181 (503/231-6158).

California/Nevada Operations Office (CNO). California and Nevada. Regional Director (TE), U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W2606, Sacramento, California 95825.

Region 2. Arizona, New Mexico, Oklahoma, and Texas. Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87102 (505/248-6920).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Director (TE), U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056 (612/713-5334).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands. Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (404/679-4156).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589 (413/253-8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional

Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486 (303/236-7400).

Region 7. Alaska. Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503-6199 (907/786-3505).

We provided comments received in response to the previous CNOR to the Region having lead responsibility for each candidate species mentioned in the comment. We will likewise consider all information provided in response to this CNOR in deciding whether to propose species for listing and when to undertake necessary listing actions (including whether emergency listing pursuant to section 4(b)(7) of the Act is appropriate). Comments we receive will become part of the administrative record for the species, which we maintain at the appropriate Regional Office.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 23, 2006.

Marshall Jones,

Director, Fish and Wildlife Service.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
MAMMALS						
C*	3	R1	<i>Emballonura semicaudata rotensis</i> .	Emballonuridae ...	Bat, Pacific sheath-tailed (Mariana Islands subspecies).	U.S.A. (GU, CNMI).
C*	3	R1	<i>Emballonura semicaudata semicaudata</i> .	Emballonuridae ...	Bat, Pacific sheath-tailed (American Samoa DPS).	U.S.A. (AS), Fiji, Independent Samoa, Tonga, Vanuatu.
C*	2	R5	<i>Sylvilagus transitionalis</i>	Leporidae	Cottontail, New England ..	U.S.A. (CT, MA, ME, NH, NY, RI, VT).
C*	6	CNO	<i>Martes pennanti</i>	Mustelidae	Fisher (west coast DPS) ..	U.S.A. (CA, CT, IA, ID, IL, IN, KY, MA, MD, ME, MI, MN, MT, ND, NH, NJ, NY, OH, OR, PA, RI, TN, UT, VA, VT, WA, WI, WV, WY), Canada.
C*	3	R1	<i>Thomomys mazama couchi</i> .	Geomyidae	Pocket gopher, Mazama (Shelton).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama glacialis</i> .	Geomyidae	Pocket gopher, Mazama (Roy Prairie).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama louiei</i>	Geomyidae	Pocket gopher, Mazama (Cathlamet).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama melanops</i> .	Geomyidae	Pocket gopher, Mazama (Olympic).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama pugetensis</i> .	Geomyidae	Pocket gopher, Mazama (Olympia).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama tacomensis</i> .	Geomyidae	Pocket gopher, Mazama (Tacoma).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama tumuli</i> .	Geomyidae	Pocket gopher, Mazama (Tenino).	U.S.A. (WA).
C*	3	R1	<i>Thomomys mazama yelmensis</i> .	Geomyidae	Pocket gopher, Mazama (Yelm).	U.S.A. (WA).
C*	3	CNO	<i>Spermophilus tereticaudus chlorus</i> .	Sciuridae	Squirrel, Palm Springs (= Coachella Valley) round-tailed ground.	U.S.A. (CA).
C*	9	R1	<i>Spermophilus brunneus endemicus</i> .	Sciuridae	Squirrel, Southern Idaho ground.	U.S.A. (ID).
C*	5	R1	<i>Spermophilus washingtoni</i>	Sciuridae	Squirrel, Washington ground.	U.S.A. (WA, OR).
BIRDS						
C*	3	R1	<i>Porzana tabuensis</i>	Rallidae	Crake, spotless (American Samoa DPS).	U.S.A. (AS), Australia, Fiji, Independent Samoa, Marquesas, Philippines, Society Islands, Tonga.
C*	2	R1	<i>Oreomystis bairdi</i>	Fringillidae	Creeper, Kauai	U.S.A. (HI).
C*	3	CNO	<i>Coccyzus americanus</i>	Cuculidae	Cuckoo, yellow-billed (Western U.S. DPS).	U.S.A. (Lower 48 States), Canada, Mexico, Central and South America.
C*	6	R1	<i>Gallicolumba stairi</i>	Columbidae	Ground-dove, friendly (American Samoa DPS).	U.S.A. (AS), Independent Samoa.
C*	3	R1	<i>Eremophila alpestris strigata</i> .	Alaudidae	Horned lark, streaked	U.S.A. (OR, WA), Canada (BC).
C*	6	R5	<i>Calidris canutus rufa</i>	Scolopacidae	Knot, red	U.S.A. (Atlantic coast), Canada, South America.
C*	5	R7	<i>Brachyramphus brevirostris</i> .	Alcidae	Murrelet, Kittlitz's	U.S.A. (AK), Russia.
C*	2	CNO	<i>Synthliboramphus hypoleucus</i> .	Alcidae	Murrelet, Xantus's	U.S.A. (CA), Mexico.
C*	8	R2	<i>Tympanuchus pallidicinctus</i> .	Phasianidae	Prairie-chicken, lesser	U.S.A. (CO, KA, NM, OK, TX).
C*	6	R1	<i>Centrocercus urophasianus</i> .	Phasianidae	Sage-grouse, greater (Columbia Basin DPS).	U.S.A. (AZ, CA, CO, ID, MT, ND, NE, NV, OR, SD, UT, WA, WY), Canada (AB, BC, SK).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	3	R1	<i>Oceanodroma castro</i>	Hydrobatidae	Storm-petrel, band-rumped (Hawaii DPS).	U.S.A. (HI), Atlantic Ocean, Ecuador (Galapagos Islands), Japan.
C*	5	R4	<i>Dendroica angelae</i>	Emberizidae	Warbler, elfin woods	U.S.A. (PR).
REPTILES						
C*	2	R2	<i>Sceloporus arenicolus</i>	Iguanidae	Lizard, sand dune	U.S.A. (TX, NM).
C*	9	R3	<i>Sistrurus catenatus catenatus</i>	Viperidae	Massasauga (=rattlesnake), eastern.	U.S.A. (IA, IL, IN, MI, MO, MN, NY, OH, PA, WI), Canada.
C*	3	R4	<i>Pituophis melanoleucus lodingi</i>	Colubridae	Snake, black pine	U.S.A. (AL, LA, MS).
C*	8	R4	<i>Pituophis ruthveni</i>	Colubridae	Snake, Louisiana pine	U.S.A. (LA, TX).
C*	3	R2	<i>Kinosternon sonoriense longifemorale</i>	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico.
AMPHIBIANS						
C*	3	CNO	<i>Rana luteiventris</i>	Ranidae	Frog, Columbia spotted (Great Basin DPS).	U.S.A. (AK, ID, MT, NV, OR, UT, WA, WY), Canada (BC).
C*	3	CNO	<i>Rana muscosa</i>	Ranidae	Frog, mountain yellow-legged (Sierra Nevada DPS).	U.S.A. (CA, NV).
C*	2	R1	<i>Rana pretiosa</i>	Ranidae	Frog, Oregon spotted	U.S.A. (CA, OR, WA), Canada (BC).
C*	11	CNO	<i>Rana onca</i>	Ranidae	Frog, relict leopard	U.S.A. (AZ, NV, UT).
C*	3	R3	<i>Cryptobranchus alleganiensis bishopi</i>	Cryptobranchidae	Hellbender, Ozark	U.S.A. (AR, MO).
C*	2	R2	<i>Eurycea waterlooensis</i>	Plethodontidae	Salamander, Austin blind	U.S.A. (TX).
C*	2	R2	<i>Eurycea naufragia</i>	Plethodontidae	Salamander, Georgetown	U.S.A. (TX).
C*	2	R2	<i>Eurycea chisholmensis</i>	Plethodontidae	Salamander, Salado	U.S.A. (TX).
C*	11	CNO	<i>Bufo canorus</i>	Bufoidea	Toad, Yosemite	U.S.A. (CA).
C*	2	R4	<i>Necturus alabamensis</i>	Proteidae	Waterdog, black warrior (=Sipsey Fork).	U.S.A. (AL).
FISHES						
PE	3	CNO	<i>Gila bicolor vaccaiceps</i>	Cyprinidae	Chub, Cowhead Lake tui	U.S.A. (CA).
C*	2	R2	<i>Gila nigra</i>	Cyprinidae	Chub, headwater	U.S.A. (AZ, NM).
C*	11	R6	<i>Etheostoma cragini</i>	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK).
C*	5	R4	<i>Etheostoma susanae</i>	Percidae	Darter, Cumberland	U.S.A. (KY, TN).
C*	5	R4	<i>Percina aurora</i>	Percidae	Darter, Pearl	U.S.A. (LA, MS).
C*	2	R4	<i>Etheostoma phytophilum</i>	Percidae	Darter, rush	U.S.A. (AL).
C*	2	R4	<i>Etheostoma moorei</i>	Percidae	Darter, yellowcheek	U.S.A. (AR).
C*	3	R6	<i>Thymallus arcticus</i>	Salmonidae	Grayling, Fluvial arctic (upper Missouri River DPS).	U.S.A. (MT, WY).
C*	2	R4	<i>Noturus crypticus</i>	Ictaluridae	Madtom, chunky	U.S.A. (TN).
C	5	R4	<i>Moxostoma</i> sp.	Catostomidae	Redhorse, sicklefin	U.S.A. (GA, NC, TN).
C*	2	R3	<i>Cottus</i> sp.	Cottidae	Sculpin, grotto	U.S.A. (MO).
C*	5	R2	<i>Notropis oxyrhynchus</i>	Cyprinidae	Shiner, sharpnose	U.S.A. (TX).
C*	5	R2	<i>Notropis buccula</i>	Cyprinidae	Shiner, smalleye	U.S.A. (TX).
C*	3	R2	<i>Catostomus discobolus yarrowi</i>	Catostomidae	Sucker, Zuni bluehead	U.S.A. (AZ, NM).
PSAT	N/A	R1	<i>Salvelinus malma</i>	Salmonidae	Trout, Dolly Varden	U.S.A. (AK, WA), Canada, East Asia.
CLAMS						
C*	5	R4	<i>Villosa choctawensis</i>	Unionidae	Bean, Choctaw	U.S.A. (AL, FL).
C	2	R3	<i>Villosa fabalis</i>	Unionidae	Bean, rayed	U.S.A. (IL, IN, KY, MI, NY, OH, TN, PA, VA, WV), Canada (ON).
C	2	R4	<i>Fusconaia (=Obovaria) rotulata</i>	Unionidae	Ebonyshe, round	U.S.A. (AL, FL).
C*	2	R2	<i>Popenaias popei</i>	Unionidae	Hornshell, Texas	U.S.A. (NM, TX), Mexico.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	5	R4	<i>Ptychobranchnus subtentum</i>	Unionidae	Kidneyshell, fluted	U.S.A. (AL, KY, TN, VA).
C	2	R4	<i>Ptychobranchnus jonesi</i>	Unionidae	Kidneyshell, southern	U.S.A. (AL, FL).
C*	5	R4	<i>Lampsilis rafinesqueana</i>	Unionidae	Mucket, Neosho	U.S.A. (AR, KS, MO, OK).
C	2	R3	<i>Plethobasus cyphyus</i>	Unionidae	Mussel, sheepnose	U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).
C*	2	R4	<i>Margaritifera marrianae</i>	Margaritiferidae	Pearlshell, Alabama	U.S.A. (AL).
C*	5	R4	<i>Lexingtonia dolabelloides</i>	Unionidae	Pearlymussel, slabside	U.S.A. (AL, KY, TN, VA).
C	5	R4	<i>Pleurobema strodeanum</i>	Unionidae	Pigtoe, fuzzy	U.S.A. (AL, FL).
C*	2	R4	<i>Pleurobema hanleyanum</i>	Unionidae	Pigtoe, Georgia	U.S.A. (AL, GA, TN).
C	5	R4	<i>Fusconaia escambia</i>	Unionidae	Pigtoe, narrow	U.S.A. (AL, FL).
C	11	R4	<i>Quincuncina burkei</i>	Unionidae	Pigtoe, tapered	U.S.A. (AL, FL).
C	5	R4	<i>Hamiota (=Lampsilis) australis</i>	Unionidae	Sandshell, southern	U.S.A. (AL, FL).
C	4	R3	<i>Cumberlandia monodonta</i>	Margaritiferidae	Spectaclecase	U.S.A. (AL, AR, IA, IN, IL, KS, KY, MO, MN, NE, OH, TN, VA, WI, WV).
C*	2	R4	<i>Elliptio spinosa</i>	Unionidae	Spinymussel, Altamaha	U.S.A. (GA).

SNAILS

C	2	R4	<i>Pleurocera foremani</i>	Pleuroceridae	Hornsnail, rough	U.S.A. (AL).
C	2	R4	<i>Elimia melanoides</i>	Pleuroceridae	Mudalia, black	U.S.A. (AL).
C*	9	R6	<i>Oreohelix peripherica wasatchensis</i>	Oreohelicidae	Mountainsnail, Ogden	U.S.A. (UT).
C*	8	R6	<i>Stagnicola bonnevillensis</i>	Lymnaeidae	Pondsnail, Bonneville	U.S.A. (UT).
C*	2	R4	<i>Leptoxis foremani (=downei)</i>	Pleuroceridae	Rocksnail, Interrupted (=Georgia)	U.S.A. (GA, AL).
C*	2	R1	<i>Ostodes strigatus</i>	Potariidae	Sisi snail	U.S.A. (AS).
C*	2	R2	<i>Pseudotryonia adamantina</i>	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX).
C*	2	R1	<i>Samoana fragilis</i>	Partulidae	Snail, fragile tree	U.S.A. (GU, MP).
C*	2	R1	<i>Partula radiolata</i>	Partulidae	Snail, Guam tree	U.S.A. (GU).
C*	2	R1	<i>Partula gibba</i>	Partulidae	Snail, Humped tree	U.S.A. (GU, MP).
C*	2	R1	<i>Partulina semicarinata</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	<i>Partulina variabilis</i>	Achatinellidae	Snail, Lanai tree	U.S.A. (HI).
C*	2	R1	<i>Partula langfordi</i>	Partulidae	Snail, Langford's tree	U.S.A. (MP).
C*	2	R2	<i>Cochliopa texana</i>	Hydrobiidae	Snail, Phantom cave	U.S.A. (TX).
C*	2	R1	<i>Eua zebrina</i>	Partulidae	Snail, Tutuila tree	U.S.A. (AS).
C*	2	R2	<i>Pyrgulopsis chupadera</i>	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM).
C*	2	CNO	<i>Pyrgulopsis notidicola</i>	Hydrobiidae	Springsnail, elongate mud meadows.	U.S.A. (NV).
C*	11	R2	<i>Pyrgulopsis gilae</i>	Hydrobiidae	Springsnail, Gila	U.S.A. (NM).
C*	2	R2	<i>Tryonia circumstriata (=stocktonensis)</i>	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX).
C*	5	R2	<i>Pyrgulopsis thompsoni</i>	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico.
C*	11	R2	<i>Pyrgulopsis thermalis</i>	Hydrobiidae	Springsnail, New Mexico	U.S.A. (NM).
C*	5	R2	<i>Pyrgulopsis morrisoni</i>	Hydrobiidae	Springsnail, Page	U.S.A. (AZ).
C*	2	R2	<i>Tryonia cheatumi</i>	Hydrobiidae	Springsnail (=Tryonia), Phantom.	U.S.A. (TX).
C*	2	R2	<i>Pyrgulopsis trivialis</i>	Hydrobiidae	Springsnail, Three Forks	U.S.A. (AZ).
C*	2	R1	<i>Newcombia cumingi</i>	Achatinellidae	Tree snail, Newcomb's	U.S.A. (HI).

INSECTS

C*	11	R6	<i>Zaitzevia thermae</i>	Elmidae	Beetle, Warm Springs Zaitzevian riffle.	U.S.A. (MT).
C*	8	R1	<i>Nysius wekiuicola</i>	Lygaeidae	Bug, Wekiu	U.S.A. (HI).
C	3	R4	<i>Anaea troglodyta floralis</i>	Nymphalidae	Butterfly, Florida leafwing	U.S.A. (FL).
C*	3	R1	<i>Hypolimnias octucula mariannensis</i>	Nymphalidae	Butterfly, Mariana eight-spot.	U.S.A. (GU, MP).
C*	2	R1	<i>Vagrans egestina</i>	Nymphalidae	Butterfly, Mariana wandering.	U.S.A. (GU, MP).
C*	6	R4	<i>Cyclargus thomasi bethunebakeri</i>	Lycaenidae	Butterfly, Miami blue	U.S.A. (FL), Bahamas.
C*	5	R4	<i>Glyphopsyche sequatchie</i>	Limnephilidae	Caddisfly, Sequatchie	U.S.A. (TN).
C	5	R4	<i>Pseudanophthalmus insularis</i>	Carabidae	Cave beetle, Baker Station (=insular).	U.S.A. (TN).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued
 [Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	5	R4	<i>Pseudanophthalmus major</i>	Carabidae	Cave beetle, beaver	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus caecus</i>	Carabidae	Cave beetle, Clifton	U.S.A. (KY).
C	11	R4	<i>Pseudanophthalmus colemanensis</i>	Carabidae	Cave beetle, Coleman	U.S.A. (TN).
C	5	R4	<i>Pseudanophthalmus fowlerae</i>	Carabidae	Cave beetle, Fowler's	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus frigidus</i>	Carabidae	Cave beetle, icebox	U.S.A. (KY).
C	5	R4	<i>Pseudanophthalmus tiresias</i>	Carabidae	Cave beetle, Indian Grave Point (=Soothsayer)	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus inquisitor</i>	Carabidae	Cave beetle, inquirer	U.S.A. (TN).
C*	5	R4	<i>Pseudanophthalmus troglodytes</i>	Carabidae	Cave beetle, Louisville	U.S.A. (KY).
C	5	R4	<i>Pseudanophthalmus paulus</i>	Carabidae	Cave beetle, Noblett's	U.S.A. (TN).
C*	11	R4	<i>Pseudanophthalmus inexpectatus</i>	Carabidae	Cave beetle, surprising	U.S.A. (KY).
C*	5	R4	<i>Pseudanophthalmus parvus</i>	Carabidae	Cave beetle, Tatum	U.S.A. (KY).
C*	3	R1	<i>Euphydryas editha taylori</i>	Nymphalidae	Checkerspot, Taylor's (=Whulge)	U.S.A. (OR, WA), Canada (BC).
C*	9	R1	<i>Megalagrion nigrohamatum nigrolineatum</i>	Coenagrionidae	Damselfly, blackline Hawaiian	U.S.A. (HI).
C*	2	R1	<i>Megalagrion leptodemas</i>	Coenagrionidae	Damselfly, crimson Hawaiian	U.S.A. (HI).
C*	2	R1	<i>Megalagrion nesiotis</i>	Coenagrionidae	Damselfly, flying earwig Hawaiian	U.S.A. (HI).
C*	2	R1	<i>Megalagrion oceanicum</i>	Coenagrionidae	Damselfly, oceanic Hawaiian	U.S.A. (HI).
C*	8	R1	<i>Megalagrion xanthomelas</i>	Coenagrionidae	Damselfly, orangeblack Hawaiian	U.S.A. (HI).
C*	2	R1	<i>Megalagrion pacificum</i>	Coenagrionidae	Damselfly, Pacific Hawaiian	U.S.A. (HI).
C	3	R4	<i>Strymon acis bartrami</i>	Lycaenidae	Hairstreak, Bartram's	U.S.A. (FL).
C	5	CNO	<i>Ambrysus funebris</i>	Naucoridae	Naucorid bug (=Furnace Creek), Nevares Spring	U.S.A. (CA).
C*	2	R1	<i>Drosophila attigua</i>	Drosophilidae	fly, Picture-wing	U.S.A. (HI).
C*	2	R1	<i>Drosophila digressa</i>	Drosophilidae	fly, Picture-wing [unnamed]	U.S.A. (HI).
C*	5	R2	<i>Heterelmis stephani</i>	Elmidae	Riffle beetle, Stephan's	U.S.A. (AZ).
C*	11	R3	<i>Hesperia dacotae</i>	Hesperiidae	Skipper, Dakota	U.S.A. (MN, IA, SD, ND, IL), Canada.
C*	5	R1	<i>Polites mardon</i>	Hesperiidae	Skipper, Mardon	U.S.A. (CA, OR, WA).
C*	9	R6	<i>Cicindela limbata albissima</i>	Cicindelidae	Tiger beetle, Coral Pink Sand Dunes	U.S.A. (UT).
C*	5	R4	<i>Cicindela highlandensis</i>	Cicindelidae	Tiger beetle, highlands	U.S.A. (FL).
ARACHNIDS						
C*	2	R2	<i>Cicurina wartoni</i>	Dictynidae	Meshweaver, Warton's cave	U.S.A. (TX).
CRUSTACEANS						
C	2	R2	<i>Gammarus hyalleloides</i>	Gammaridae	Amphipod, diminutive	U.S.A. (TX).
C*	5	R1	<i>Metabetaeus lohena</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	<i>Palaemonella burnsi</i>	Palaemonidae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R1	<i>Procaris hawaiiiana</i>	Procarididae	Shrimp, anchialine pool	U.S.A. (HI).
C*	4	R1	<i>Vetericaris chaceorum</i>	Procaridae	Shrimp, anchialine pool	U.S.A. (HI).
C*	5	R4	<i>Typhlatya monae</i>	Atyidae	Shrimp, troglobitic groundwater	U.S.A. (PR), Barbuda, Dominican Republic.

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
FLOWERING PLANTS						
C*	8	CNO	<i>Abronia alpina</i>	Nyctaginaceae	Sand-verbena, Ramshaw Meadows.	U.S.A. (CA).
C*	8	R4	<i>Arabis georgiana</i>	Brassicaceae	Rockcress, Georgia	U.S.A. (AL, GA).
C*	11	R4	<i>Argythamnia blodgettii</i>	Euphorbiaceae	Silverbush, Blodgett's	U.S.A. (FL).
C*	3	R1	<i>Artemisia campestris</i> var. <i>wormskioldii</i> .	Asteraceae	Wormwood, northern	U.S.A. (OR, WA).
C*	2	R1	<i>Astelia waialealae</i>	Liliaceae	Pa'iniu	U.S.A. (HI).
C*	11	R6	<i>Astragalus tortipes</i>	Fabaceae	Milk-vetch, Sleeping Ute	U.S.A. (CO).
C*	2	R1	<i>Bidens amplexens</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	<i>Bidens campylotheca pentamera</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	6	R1	<i>Bidens campylotheca waihoiensis</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R1	<i>Bidens conjuncta</i>	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	3	R1	<i>Bidens micrantha ctenophylla</i> .	Asteraceae	Ko'oko'olau	U.S.A. (HI).
C*	8	R4	<i>Brickellia mosieri</i>	Asteraceae	Brickell-bush, Florida	U.S.A. (FL).
C*	2	R1	<i>Calamagrostis expansa</i>	Poaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Calamagrostis hillebrandii</i>	Poaceae	No common name	U.S.A. (HI).
C*	5	R4	<i>Calliandra locoensis</i>	Mimosaceae	No common name	U.S.A. (PR).
C*	5	CNO	<i>Calochortus persistens</i>	Liliaceae	Mariposa lily, Siskiyou	U.S.A. (CA, OR).
C*	5	R4	<i>Calyptanthes estremerae</i>	Myrtaceae	No common name	U.S.A. (PR).
C*	2	R1	<i>Canavalia napaliensis</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	2	R1	<i>Canavalia pubescens</i>	Fabaceae	'Awikiwiki	U.S.A. (HI).
C*	8	R1	<i>Castilleja christii</i>	Scrophulariaceae	Paintbrush, Christ's	U.S.A. (ID).
C*	6	R4	<i>Chamaecrista lineata</i> var. <i>keyensis</i> .	Fabaceae	Pea, Big Pine partridge	U.S.A. (FL).
C*	12	R4	<i>Chamaesyce deltoidea pinetorum</i> .	Euphorbiaceae	Sandmat, pineland	U.S.A. (FL).
C*	6	R4	<i>Chamaesyce deltoidea serpyllum</i> .	Euphorbiaceae	Spurge, wedge	U.S.A. (FL).
C*	2	R1	<i>Chamaesyce eleanoriae</i>	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	3	R1	<i>Chamaesyce remyi</i> var. <i>kauaiensis</i> .	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	3	R1	<i>Chamaesyce remyi</i> var. <i>remyi</i> .	Euphorbiaceae	'Akoko	U.S.A. (HI).
C*	2	R1	<i>Charpentiera densiflora</i>	Amaranthaceae	Papala	U.S.A. (HI).
C*	6	CNO	<i>Chorizanthe parryi</i> var. <i>fernandina</i> .	Polygonaceae	Spineflower, San Fernando Valley.	U.S.A. (CA).
C*	2	R4	<i>Chromolaena frustrata</i>	Asteraceae	Thoroughwort, Cape Sable.	U.S.A. (FL).
C*	2	R4	<i>Consolea corallicola</i>	Cactaceae	Cactus, Florida semaphore.	U.S.A. (FL).
C*	2	R4	<i>Cordia rupicola</i>	Boraginaceae	No common name	U.S.A. (PR), Anegada.
C*	2	R1	<i>Cyanea asplenifolia</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea calycina</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea eleeleensis</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea kuhihewa</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea kunthiana</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea lanceolata</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea obtusa</i>	Campanulaceae	Haha	U.S.A. (HI).
C*	2	R1	<i>Cyanea tritomantha</i>	Campanulaceae	Aku	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra filipes</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra kaulantha</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra oenobarba</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra oxybapha</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	2	R1	<i>Cyrtandra sessilis</i>	Gesneriaceae	Ha'iwale	U.S.A. (HI).
C*	9	R4	<i>Dalea carthagensis floridana</i> .	Fabaceae	Prairie-clover, Florida	U.S.A. (FL).
C*	5	R5	<i>Dichanthelium hirstii</i>	Poaceae	Panic grass, Hirsts'	U.S.A. (DE, GA, NC, NJ).
C*	5	R4	<i>Digitaria pauciflora</i>	Poaceae	Crabgrass, Florida pineland.	U.S.A. (FL).
C*	3	R1	<i>Dubautia imbricata imbricata</i> .	Asteraceae	Na'ena'e	U.S.A. (HI).
C*	3	R1	<i>Dubautia plantaginea magnifolia</i> .	Asteraceae	Na'ena'e	U.S.A. (HI).
C*	2	R1	<i>Dubautia waialealae</i>	Asteraceae	Na'ena'e	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	6	R2	<i>Echinomastus erectocentrus</i> var. <i>acunensis</i> .	Cactaceae	Cactus, Acuna	U.S.A. (AZ), Mexico.
C*	8	R2	<i>Erigeron lemmonii</i>	Asteraceae	Fleabane, Lemmon	U.S.A. (AZ).
C*	11	R1	<i>Erigeron basalticus</i>	Asteraceae	Daisy, basalt	U.S.A. (WA).
C*	2	R1	<i>Eriogonum codium</i>	Polygonaceae	Buckwheat, Umtanum Desert.	U.S.A. (WA).
C	2	CNO	<i>Eriogonum diatomaceum</i>	Polygonaceae	Buckwheat, Churchill Narrows.	U.S.A (NV).
C*	5	CNO	<i>Eriogonum kelloggii</i>	Polygonaceae	Buckwheat, Red Mountain	U.S.A. (CA).
C*	2	R1	<i>Festuca hawaiiensis</i>	Poaceae	No common name	U.S.A. (HI).
C*	11	R2	<i>Festuca ligulata</i>	Poaceae	Guadalupe fescue	U.S.A. (TX), Mexico.
C*	2	R1	<i>Gardenia remyi</i>	Rubiaceae	Nanu	U.S.A. (HI).
C*	5	R1	<i>Geranium hanaense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	8	R1	<i>Geranium hillebrandii</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R1	<i>Geranium kauaiense</i>	Geraniaceae	Nohoanu	U.S.A. (HI).
C*	5	R4	<i>Gonocalyx concolor</i>	Ericaceae	No common name	U.S.A. (PR).
C	5	R4	<i>Harrisia aboriginum</i>	Cactaceae	Pricklyapple, aboriginal (shell mound applecactus).	U.S.A. (FL)
C*	5	CNO	<i>Hazardia orcuttii</i>	Asteraceae	Orcutt's hazardia	U.S.A. (CA), Mexico.
C*	2	R1	<i>Hedyotis fluviatilis</i>	Rubiaceae	Kampua'a	U.S.A. (HI).
C*	11	R4	<i>Helianthus verticillatus</i>	Asteraceae	Sunflower, whorled	U.S.A. (AL, GA, TN).
C*	5	R2	<i>Hibiscus dasycalyx</i>	Malvaceae	Rose-mallow, Neches River.	U.S.A. (TX).
C*	9	R4	<i>Indigofera mucronata keyensis</i> .	Fabaceae	Indigo, Florida	U.S.A. (FL).
C	2	R6	<i>Ipomopsis polyantha</i>	Polemoniaceae	Skyrocket, Pagosa	U.S.A. (CO).
C*	5	CNO	<i>Ivesia webberi</i>	Rosaceae	Ivesia, Webber	U.S.A. (CA, NV).
C*	3	R1	<i>Joinvillea ascendens ascendens</i> .	Joinvilleaceae	'Ohe	U.S.A. (HI).
C*	2	R1	<i>Keysseria (=Lagenifera) erici</i> .	Asteraceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Keysseria (=Lagenifera) helenae</i> .	Asteraceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Korthalsella degeneri</i>	Viscaceae	Hulumoa	U.S.A. (HI).
C*	2	R1	<i>Labordia helleri</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	2	R1	<i>Labordia pumila</i>	Loganiaceae	Kamakahala	U.S.A. (HI).
C*	5	R4	<i>Leavenworthia crassa</i>	Brassicaceae	Gladecress, unnamed	U.S.A. (AL).
C*	2	R2	<i>Leavenworthia texana</i>	Brassicaceae	Gladecress, Texas golden	U.S.A. (TX).
C*	5	R4	<i>Lesquerella globosa</i>	Brassicaceae	Bladderpod, Short's	U.S.A. (IN, KY, TN).
C*	2	R4	<i>Linum arenicola</i>	Linaceae	Flax, sand	U.S.A. (FL).
C*	3	R4	<i>Linum carteri</i> var. <i>carteri</i>	Linaceae	Flax, Carter's small-flowered.	U.S.A. (FL).
C*	2	R1	<i>Lysimachia daphnoides</i>	Primulaceae	Lehua makanoe	U.S.A. (HI).
C*	2	R1	<i>Melicope christophersenii</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope degeneri</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope hiiakae</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope makahae</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope paniculata</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Melicope puberula</i>	Rutaceae	Alani	U.S.A. (HI).
C*	2	R1	<i>Myrsine fosbergii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	<i>Myrsine mezii</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	2	R1	<i>Myrsine vaccinioides</i>	Myrsinaceae	Kolea	U.S.A. (HI).
C*	8	R5	<i>Narthecium americanum</i>	Liliaceae	Asphodel, bog	U.S.A. (DE, NC, NJ, NY, SC).
C*	2	R1	<i>Nothoestrum latifolium</i>	Solanaceae	'Aiea	U.S.A. (HI).
C*	2	R1	<i>Ochrosia haleakalae</i>	Apocynaceae	Holei	U.S.A. (HI).
C*	3	R2	<i>Pediocactus peeblesianus fickeiseniae</i> .	Cactaceae	Cactus, Fickeisen plains	U.S.A. (AZ).
C*	2	R6	<i>Penstemon debilis</i>	Scrophulariaceae	Beardtongue, Parachute	U.S.A. (CO).
PT	2	R6	<i>Penstemon grahamii</i>	Scrophulariaceae	Beardtongue, Graham	U.S.A. (CO, UT).
C*	6	R6	<i>Penstemon scariosus</i> var. <i>albifluvis</i> .	Scrophulariaceae	Beardtongue, White River	U.S.A. (CO, UT).
C*	2	R1	<i>Peperomia subpetiolata</i>	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI).
C	2	CNO	<i>Phacelia stellaris</i>	Hydrophyllaceae	Brand's phacelia	U.S.A. (CA), Mexico.
C*	8	R6	<i>Phacelia submutica</i>	Hydrophyllaceae	Phacelia, DeBeque	U.S.A. (CO).
C*	2	R1	<i>Phyllostegia bracteata</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Phyllostegia floribunda</i>	Lamiaceae	No common name	U.S.A. (HI).

TABLE 1.—CANDIDATE NOTICE OF REVIEW (ANIMALS AND PLANTS)—Continued

[Note: See end of SUPPLEMENTARY INFORMATION for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C*	2	R1	<i>Phyllostegia hispida</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	5	R1	<i>Physaria</i> (= <i>Lesquerella</i>) <i>tuplashensis</i> .	Brassicaceae	Bladderpod, White Bluffs	U.S.A. (WA).
C*	2	R1	<i>Pittosporum napaliense</i>	Pittosporaceae	Ho'awa	U.S.A. (HI).
C*	5	R4	<i>Platanthera integrilabia</i>	Orchidaceae	Orchid, white fringeless	U.S.A. (AL, GA, KY, MS, NC, SC, TN, VA).
C*	3	R1	<i>Platydesma cornuta</i> var. <i>cornuta</i> .	Rutaceae	No common name	U.S.A. (HI).
C*	3	R1	<i>Platydesma cornuta</i> var. <i>decurrens</i> .	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Platydesma remyi</i>	Rutaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Platydesma rostrata</i>	Rutaceae	Pilo kea lau li'i	U.S.A. (HI).
C	2	R1	<i>Pleomele fernaldii</i>	Agavaceae	Hala pepe	U.S.A. (HI).
C*	2	R1	<i>Pleomele forbesii</i>	Agavaceae	Hala pepe	U.S.A. (HI).
C*	11	CNO	<i>Potentilla basaltica</i>	Rosaceae	Cinquefoil, Soldier Meadow.	U.S.A. (NV).
C*	2	R1	<i>Pritchardia hardyi</i>	Asteraceae	Lo'ulu	U.S.A. (HI).
C*	3	R1	<i>Pseudognaphalium</i> (= <i>Gnaphalium</i>) <i>sandwicensium</i> var. <i>molokaiense</i> .	Asteraceae	'Ena'ena	U.S.A. (HI).
C*	2	R1	<i>Psychotria grandiflora</i>	Rubiaceae	Kopiko	U.S.A. (HI).
C*	3	R1	<i>Psychotria hexandra</i> ssp. <i>oahuensis</i> var. <i>oahuensis</i> .	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	<i>Psychotria hobdyi</i>	Rubiaceae	Kopiko	U.S.A. (HI).
C*	2	R1	<i>Pteralyxia macrocarpa</i>	Apocynaceae	Kaulu	U.S.A. (HI).
C*	2	R1	<i>Ranunculus hawaiiensis</i>	Ranunculaceae	Makou	U.S.A. (HI).
C*	2	R1	<i>Ranunculus mauiensis</i>	Ranunculaceae	Makou	U.S.A. (HI).
C*	8	CNO	<i>Rorippa subumbellata</i>	Brassicaceae	Cress, Tahoe yellow	U.S.A. (CA, NV).
C*	2	R1	<i>Schiedea attenuata</i>	Caryophyllaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Schiedea pubescens</i>	Caryophyllaceae	Ma'oli'oli	U.S.A. (HI).
C*	2	R1	<i>Schiedea salicaria</i>	Caryophyllaceae	No common name	U.S.A. (HI).
C*	5	CNO	<i>Sedum eastwoodiae</i>	Crassulaceae	Stonecrop, Red Mountain	U.S.A. (CA).
C*	2	R1	<i>Sicyos macrophyllus</i>	Cucurbitaceae	'Anunu	U.S.A. (HI).
C	9	R4	<i>Sideroxylon reclinatum</i> ssp. <i>austrofloridense</i> .	Sapotaceae	Bully, Everglades	U.S.A. (FL).
C*	2	R1	<i>Solanum nelsonii</i>	Solanaceae	Popolo	U.S.A. (HI).
C	8	R4	<i>Solidago plumosa</i>	Asteraceae	Goldenrod, Yadkin River	U.S.A. (NC).
C*	2	R1	<i>Stenogyne cranwelliae</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Stenogyne kealiae</i>	Lamiaceae	No common name	U.S.A. (HI).
C*	5	R4	<i>Symphyotrichum georgianum</i> .	Asteraceae	Aster, Georgia	U.S.A. (AL, FL, GA, NC, SC).
C*	2	R1	<i>Zanthoxylum oahuense</i>	Rutaceae	A'e	U.S.A. (HI).

FERNS AND ALLIES

C*	11	R1	<i>Botrychium lineare</i>	Ophioglossaceae	Moonwort, slender	U.S.A. (CA, CO, ID, MT, OR, WA), Canada (AB, BC, NB, QC).
C*	2	R1	<i>Christella boydiae</i> (= <i>Cyclosorus boydiae</i> var. <i>boydiae</i> + <i>Cyclosorus boydiae kiphuluensis</i>).	Thelypteridaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Doryopteris takeuchii</i>	Pteridaceae	No common name	U.S.A. (HI).
C*	2	R1	<i>Huperzia</i> (= <i>Phlegmariurus stemmermanniae</i>).	Lycopodiaceae	Wawae'iole	U.S.A. (HI).
C*	3	R1	<i>Microlepia strigosa</i> var. <i>mauiensis</i> (= <i>Microlepia mauiensis</i>).	Dennstaedtiaceae	Palapali	U.S.A. (HI).

TABLE 2.—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING

[Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
MAMMALS						
T	L	R7	<i>Enhydra lutris kenyoni</i>	Mustelidae	Otter, Northern Sea (south-west Alaska DPS).	U.S.A. (AK, WA).
BIRDS						
Rc	A	R6	<i>Centrocercus minimus</i>	Phasianidae	Sage-grouse, Gunnison	U.S.A. (AZ, CO, KS, OK, NM, UT).
Rc	A	R1	<i>Ptilinopus perousii perousii</i>	Columbidae	Fruit-dove, many-colored	U.S.A. (AS), Independent Samoa.
REPTILES						
Rc	A	R2	<i>Graptemys caglei</i>	Emydidae	Turtle, Cagle's map	U.S.A. (TX).
AMPHIBIANS						
Rc	N	R6	<i>Bufo boreas boreas</i>	Bufo	Toad, boreal (Southern Rocky Mountains DPS).	U.S.A. (AK, CA, CO, ID, MT, NM, OR, UT, WA, WY), Canada (BC).
FISHES						
E	L	R2	<i>Gila intermedia</i>	Cyprinidae	Chub, Gila	U.S.A. (AZ, NM), Mexico.
SNAILS						
E	L	R2	<i>Tryonia kosteri</i>	Hydrobiidae	Snail, Koster's tryonia	U.S.A. (NM).
E	L	R2	<i>Assimineia pecos</i>	Assimineidae	Snail, Pecos assimineia	U.S.A. (NM, TX), Mexico.
E	L	R2	<i>Pyrgulopsis roswellensis</i>	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM).
INSECTS						
Rc	U	R4	<i>Pseudanophthalmus pholete</i>	Carabidae	Cave beetle, greater Adams.	U.S.A. (KY).
Rc	U	R4	<i>Pseudanophthalmus cataryctos</i>	Carabidae	Cave beetle, lesser Adams	U.S.A. (KY).
Rc	I	R1	<i>Phaeogramma sp.</i>	Tephritidae	Gall fly, Po'olanui	U.S.A. (HI).
E	L	R1	<i>Drosophila aglaia</i>	Drosophilidae	fly, Picture	U.S.A. (HI). wing [unnamed]
E	L	R1	<i>Drosophila differens</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila hemipeza</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila heteroneura</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila montgomeryi</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
T	L	R1	<i>Drosophila mulli</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila musaphila</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila neoclavisetae</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila obatai</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila ochrobasis</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila substenoptera</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R1	<i>Drosophila tarphytrichia</i>	Drosophilidae	fly, Picture wing [unnamed]	U.S.A. (HI).
E	L	R6	<i>Cicindela nevadica lincolniiana</i>	Cicindelidae	Tiger beetle, Salt Creek	U.S.A. (NE).
CRUSTACEANS						
E	L	R2	<i>Gammarus desperatus</i>	Gammaridae	Amphipod, Noel's	U.S.A. (NM).
Rc	I	R1	<i>Antecaridina lauensis</i>	Atyidae	Shrimp, anchialine pool	U.S.A. (HI), Mozambique, Saudi Arabia, Japan.
Rc	I	R1	<i>Calliasmata pholidota</i>	Alpheidae	Shrimp, anchialine pool	U.S.A. (HI), Funafuti Atoll, Saudi Arabia, Sinai Peninsula, Tuvalu.
FLOWERING PLANTS						
Rc	A	R6	<i>Aliciella cespitosa</i>	Polemoniaceae	Alice-flower, wonderland	U.S.A. (UT).
Rc	A	R6	<i>Astragalus equisolensis</i>	Fabaceae	Milk-vetch, horseshoe	U.S.A. (UT).

TABLE 2.—ANIMALS AND PLANTS FORMERLY CANDIDATES OR FORMERLY PROPOSED FOR LISTING—Continued
 [Note: See end of **SUPPLEMENTARY INFORMATION** for an explanation of symbols used in this table.]

Status		Lead region	Scientific name	Family	Common name	Historical range
Code	Expl.					
Rc	A	R6	<i>Castilleja aquariensis</i>	Scrophulariaceae.	Paintbrush, Aquarius	U.S.A. (UT).
Rc	I	R2	<i>Paronychia congesta</i>	Caryophyllaceae.	Whitlow-wort, bushy	U.S.A. (TX).
Rc	A	CNO	<i>Sidalcea hickmanii parishii</i>	Malvaceae ...	Checkerbloom, Parish's	U.S.A. (CA).

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Federal Register

**Tuesday,
September 12, 2006**

Part III

**Department of the
Interior**

Fish and Wildlife Service

**50 CFR Part 17
Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
the Marbled Murrelet; Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Marbled Murrelet**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California, under the Endangered Species Act of 1973, as amended (Act). We originally designated critical habitat for the marbled murrelet in Washington, Oregon, and California on May 24, 1996 (61 FR 26256). Since that time, we completed a 5-year status review of the marbled murrelet (USFWS 2004). This proposed rule is in response to a settlement agreement reached on January 13, 2003.

In our proposal to revise the current designation of critical habitat for the marbled murrelet, we are proposing 3,590,642 acres (ac) (1,453,000 hectares (ha)) as critical habitat. We are further considering excluding 3,368,950 ac (1,363,300 ha) of these lands under section 4(b)(2) of the Act from the final designation. This action, if adopted in its entirety, would result in a final revised designation of approximately 221,692 ac (89,700 ha) of land being designated as critical habitat for the marbled murrelet, a reduction of approximately 3,666,108 ac (1,483,640 ha) from currently designated critical habitat.

In this rule, we are further proposing to revise the entry in 50 CFR 17.11 concerning the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus* to reflect recent taxonomic information.

DATES: We will accept comments from all interested parties until November 13, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by October 27, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Ken Berg, Field

Supervisor, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 101, Lacey, WA 98503-1273.

2. You may hand-deliver written comments to our Western Washington Fish and Wildlife Office, at the above address.

3. You may send comments by electronic mail (e-mail) to MurreletCH@fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to 360/753-9405.

5. You may use the Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, at the address given above; the Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; or the Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Western Washington Fish and Wildlife Office (see **ADDRESSES**) (telephone 360-753-9440); Kemper McMaster, Field Supervisor, Oregon Fish and Wildlife Office (see **ADDRESSES**) (telephone 503-231-6179); or Michael Long, Field Supervisor, Arcata Fish and Wildlife Office (see **ADDRESSES**) (telephone 707-822-7201). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether it is prudent to revise currently designated critical habitat and whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of marbled murrelet habitat, and what areas that were occupied at the time of listing that contain the features that are essential for the conservation of the species should be included in our revised designation, and why and what areas that were not occupied at the time of listing are essential to the conservation of the species;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation, and in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns;

(6) Specific information from the public on marbled murrelet and its habitat, and which habitat or habitat components (i.e., physical and biological features) are essential to the conservation of this species, and why; and

(7) Specific information from the public regarding whether specific exclusions from this proposal may be appropriate for consideration.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit e-mail comments to MurreletCH@fws.gov in ASCII file format. Please also include "Attn: Marbled Murrelet" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Western Washington Fish and Wildlife Office at phone number 360-753-9440. Please note that the e-mail address MurreletCH@fws.gov will be closed at the end of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments, and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office (see **ADDRESSES**).

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, 475 species, or 36 percent of the 1,310 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. We believe that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed as our revised designation of critical habitat, we evaluated the benefits of designation in light of *Gifford Pinchot*. In that case, the Ninth Circuit invalidated our regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposal does not use the invalidated regulation in our consideration of the benefits of including areas in a final revised designation. We will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be

resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. The administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, we believe that additional agency discretion would allow our focus to return to actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left us with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated

with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge the designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designations result in legal expenses, and costs related to preparation and publication of the designation, analysis of the economic effects, requesting and responding to public comment, and in some cases compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.). These costs, which are not required for many other conservation actions, reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only topics directly relevant to the revised designation of critical habitat in this proposed rule. For more information on the marbled murrelet, refer to the final rule for the designation of critical habitat published in the **Federal Register** on May 24, 1996 (61 FR 26256).

Previous Federal Actions

For a description of Federal actions concerning marbled murrelet that occurred prior to our May 24, 1996, final rule for the designation of critical habitat for this species, please refer to that rule (61 FR 26256). In that rule we designated 3,887,800 acres (1,573,340 ha) of critical habitat in 32 units.

On January 22, 1997, we published a notice of availability of the Regulatory Flexibility Analysis examining the effects on small entities of the designation of critical habitat for the marbled murrelet (62 FR 3241).

On September 24, 1997, we completed the Recovery Plan for the marbled murrelet in Washington, Oregon, and California.

On April 21, 2003, we published a notice of review initiating a 5-year review of the marbled murrelet (68 FR 19569), and on July 25, 2003, we published a second information request for the 5-year review (68 FR 44093). The 5-year review was completed on August 31, 2004. The evaluation report that preceded it was completed in March 2004, by McShane et al.

On January 13, 2003, we reached a settlement agreement with the American Forest Resource Council and the Western Council of Industrial Workers to complete a rulemaking for critical

habitat for the marbled murrelet that considers any new information. The settlement agreement includes the date of August 30, 2007, for submission to the **Federal Register** of any final regulation revising marbled murrelet critical habitat.

Taxonomy

Two subspecies of the marbled murrelet were previously recognized—North American murrelet (*Brachyramphus marmoratus*) and Asiatic murrelet (*B. marmoratus perdix*). New information suggests that the Asiatic murrelet is a distinct species (Friesen et al. 1994, 1995). The American Ornithologists' Union, in its "Forty-first Supplement to the Checklist of North American Birds," officially recognized the long-billed murrelet (*B. perdix*) and the marbled murrelet (*B. marmoratus*) as distinct species (American Ornithologists' Union 1997). Therefore, in this rule we are proposing to revise 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus*.

Ecological Considerations

The marbled murrelet is a small seabird of the Alcidae family. The species' breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago, northeast to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound, south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon to northern Monterey Bay in central California. Birds winter throughout the breeding range and also occur in small numbers off southern California.

In the following discussion, we consider two components of marbled murrelet habitat that are biologically essential: (1) Marine foraging habitat, including prey spawning and concentration areas, and (2) terrestrial nesting habitat and associated forest stands. Forested areas with conditions that are capable of supporting nesting marbled murrelets are referred to as "suitable nesting habitat."

Marine Environment

Marbled murrelets spend most of their lives in the marine environment where they consume a diversity of prey species including small fish and invertebrates. Marbled murrelets forage by pursuit diving in waters generally up to 98 feet (ft) (30 meters (m)) deep and up to 1.25 miles (mi) (2 kilometers (km)) off-shore (Strachan et al. 1995, p. 247). Courtship

behaviors have been observed at sea, although copulation occurs both at sea and at inland nest sites (Nelson 1997, p. 13). Marbled murrelets also aggregate, loaf, preen, and exhibit wing-stretching behaviors on the water. Marbled murrelets have been found occasionally on rivers and inland lakes (Carter and Sealy 1986, p. 473).

Areas that support populations of prey species are essential to maintaining successfully reproducing marbled murrelet populations (Burkett 1995, p. 244). However, there are no marine areas currently designated as critical habitat, and this proposal would not designate any critical habitat units in marine areas, because, while important to the life history of the birds, we are unable to define specific areas essential to the conservation of the species (see Areas Considered under Section 3(5)(A), Marine Areas for more detail).

Use of marine habitat is constrained during the breeding season by the quality and quantity of forage resources available. During the breeding season, the distribution of marbled murrelets at sea along the Washington, Oregon, and California coasts has been correlated with specific marine habitat characteristics that concentrate prey, such as cape eddies, river mouths, upwellings, estuarine conditions, sandy substrates, and water temperature (Ainley et al. 1995, p. 365–367; Becker and Beissinger 2003, p. 252; Burger 2002a, pp. 727–728; Loughheed 2000, p. 56–59, 75; Meyer et al. 2002, p. 95; Ostrand et al. 1998, p. 292–295). Nesting marbled murrelets that are returning to their nest at least once per day must balance the energetic costs of foraging trips with the benefits for themselves and their young. This may result in marbled murrelets preferring to forage in marine areas in close proximity to their nesting habitat. However, if adequate or appropriate foraging resources (i.e., "enough" prey, and/or prey with the optimum nutritional value for themselves or their young) are unavailable in close proximity to their nesting areas, marbled murrelets may be forced to forage at greater distances or to abandon their nests (Huff et al. 2006, p. 20).

Terrestrial Environment

Throughout the forested portion of their range, marbled murrelet habitat use is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge and fragmentation, proximity to the marine environment, and increasing forest age and height (McShane et al. 2004, p. 4–39; Binford et al. 1975, pp. 315–316;

Hamer and Nelson 1995b, pp. 72–75; Ralph et al. 1995b, p. 4). In all cases, marbled murrelets focus on the presence of platforms used for nesting. Platform presence is more important than the size of the nest tree, and tree size alone is not a good indicator of the abundance of platforms (Evans Mack 2003, p. 3).

The presence of platforms is the most important characteristic of marbled murrelet nesting habitat (reviewed in Burger 2002b, pp. 40, 43; McShane et al. 2004, pp. 4–45–4–51, 4–53, 4–55, 4–56, 4–59; Nelson 1997, p. 6; and Huff et al. 2006, pp. 12–13, 18). Individual tree attributes that provide platforms suitable for nesting include large or forked branches, deformities caused by broken tops or mistletoe infection, or other structures large enough to provide a platform for a nesting adult murrelet (Hamer and Nelson 1995b, p. 79). Platforms are defined as limbs greater or equal to 4 inches (in) diameter (10 centimeters (cm)) and greater or equal to 33 ft (10 m) above ground (reviewed in Burger 2002b, pp. 41–42 and McShane et al. 2004, p. 4–31). Tree diameter and height have been positively correlated with platform size and the abundance of platforms, but the relationship may change depending on the variety of tree species and forest types marbled murrelets use for nesting (Huff et al. 2006, p. 12). Overall, nest trees in Washington, Oregon, and northern California have been greater than 19 in (48 cm) in diameter-at-breast-height and greater than 98 ft (30 m) tall (Hamer and Nelson 1995b, p. 81).

Other important attributes of the platform are vertical and horizontal cover and substrate. Known nest sites have platforms that are generally protected by branches above (vertical cover) or to the side (horizontal cover) (Huff et al. 2006, p. 14). Marbled murrelets appear to select limbs and platforms that provide protection from predation (Luginbuhl et al. 2001, p. 558; Marzluff et al. 2000, p. 1135; Raphael et al. 2002b, pp. 226, 228) and inclement weather (Huff et al. 2006, p. 14). Substrate, such as moss, duff, or needles, on the nest limb is important for protecting the egg and preventing it from falling (Huff et al. 2006, p. 13).

Marbled murrelets generally nest near the coast, but not usually directly adjacent to the ocean, where wind may affect nest availability and microclimate (Huff et al. 2006, pp. 17–18). It is likely that factors such as energetics, habitat availability, site fidelity, and predation influence where marbled murrelets choose to nest.

At the landscape scale, marbled murrelets show fidelity to marine foraging areas and may return to specific

watersheds for nesting (Nelson 1997, pp. 13, 16–17, 20; Cam et al. 2003, p. 1123). For example, marbled murrelets have been observed to return to the same specific nest branches or sites (Hebert and Golightly 2006, p. 270). Repeated surveys in occupied or nesting stands have revealed site tenacity similar to that of other birds in the alcid family (Huff et al. 2006, p. 12) in that marbled murrelets have been observed in the same suitable habitat during the last 20 years in California and 15 years in Washington.

Marbled murrelet dispersal mechanisms are not well understood, and social interactions may play an important role in determining nesting location. Because the presence of marbled murrelets in a forest stand may attract other pairs to currently unoccupied habitat within the vicinity. The potential use of these areas may depend on how close the new habitat is to occupied habitat, as well as distance to the marine environment, population size, and other factors (McShane et al. 2004, p. 4–78). Marbled murrelets in California and southern Oregon were less likely to occupy old-growth habitat if it was greater than 3 mi (5 km) from other nesting marbled murrelets (Meyer et al. 2002, p. 95).

Raphael et al. (1995, p. 177) found marbled murrelets occupied sites with greater percentages of old-growth forest and large saw-timber within 0.5 mi (0.8 km) of nest sites (501-acre (ac) (203-hectare (ha)) circles). Raphael et al. (1995, p. 189) suggested tentative guidelines based on this analysis that sites with 35 percent old-growth and large saw-timber in the landscape are more likely to be occupied.

Detections of marbled murrelets at inland sites and densities offshore were found to be higher in or adjacent to areas with large patches of significant old-growth, and in areas of low fragmentation and isolation of old-growth patches (Raphael et al. 1995, pp. 188–189; 2002a, p. 221; 2002b, p. 337; Burger 2002b, p. 54; Meyer and Miller 2002, pp. 763–764; Meyer et al. 2002, pp. 109–112; Miller et al. 2002, p. 100). Overall, occupied landscapes tended to have large core areas of old-growth and low amounts of overall edge (Meyer and Miller 2002, pp. 763–764; Raphael et al. 2002b, p. 331). Marzluff and Restani (1999, pp. 8–9, 11–13) and Raphael et al. (2002b, p. 331) suggested that reduced amount of nesting habitat and increased isolation of nesting habitat would have long-term impacts on the number of nests and short-term negative impacts on nest success, both of which affect population size.

The conversion of large tracts of native forest to small, isolated forest patches with large edge areas can create changes in microclimate, vegetation species, and predator-prey dynamics. Unfragmented, older-aged forests have lower temperatures and solar radiation and higher humidity compared to clearcuts and other open areas (e.g., Chen et al. 1993, p. 219; 1995, p. 74). Edge habitat is also exposed to increased temperatures and light, high evaporative heat loss, increased wind, and decreased moisture. Fundamental changes in the microclimate of a stand have been recorded at least as far as 787 ft (240 m) from the forest edge (Chen et al. 1995, p. 74). The changes in microclimate regimes with forest fragmentation can stress an old growth associate species, especially a seabird like the marbled murrelet (Meyer and Miller 2002, p. 764), and can affect the distribution of epiphytes that marbled murrelets use for nesting. Branch epiphytes or substrate have been identified as a key component of marbled murrelet nests (Nelson et al. 2003, p. 52; McShane et al. 2004, pp. 4–48, 4–89, 4–104). While there are no data on the specific effects of microclimate changes on the availability of marbled murrelet nesting habitat at the scale of branches and trees, as discussed in the references above, the penetration of solar radiation, wind, and warm temperatures into the forest could change the distribution of epiphytes or blow moss off nesting platforms.

Marbled murrelets have been known to locate their nests throughout forest stands and fragments, including along various types of natural and human-made edges (Hamer and Meekins 1999, p. 1; Manley 1999, p. 66; Bradley 2002, pp. 42, 44; Burger 2002b, p. 48; Nelson and Wilson 2002, p. 98). However, in California and southern Oregon, areas with abundant numbers of marbled murrelets were farther from roads, occurred more often in parks protected from logging, and were less likely to occupy old-growth habitat if it was isolated (greater than 3 mi (greater than 5 km) from other nesting marbled murrelets (Meyer et al. 2002, p. 102–103). Marbled murrelets are no longer known to occur in areas without suitable forested habitat (sites with 35 percent old growth within 0.5 mi (0.8 km) of nest sites), and they appear to abandon highly fragmented areas over time (areas highly fragmented before the late 1980s generally did not support marbled murrelets by the early 1990s) (Meyer et al. 2002, p. 103).

Fragmentation of older forests has resulted in increased populations of nest predators, and increased visibility

and vulnerability of flying or nesting adults to potential predators. Marbled murrelets are highly vulnerable to nest site predation because their survival depends on their ability to remain hidden. Loss of eggs and chicks to avian predators has been determined to be the most significant cause of nest failure (McShane et al. 2004, p. 2–16). Rates of predation on marbled murrelet nests appear to be high, based on field observations, compared to most other seabirds and are due most often to predators, such as corvids, whose abundance has increased in western North America as a result of land use and urbanization (McShane et al. 2004, pp. 6–11). Nest predation is associated with forest edges; however, the intensity of predation varies with distance to edge, type of edge, structure of the adjacent forest, and proximity to human activity (Huff et al. 2006, p. 18).

A large body of research implies that in fragmented landscapes, marbled murrelet nesting stands may be more productive if surrounded by simple-structured forests, and minimal human recreation and settlement. Marbled murrelet productivity is optimal in large, complex-structured forests far from human activity due to the reduced levels of predation present in such landscapes. Human activities can significantly compromise the effectiveness of the forested areas surrounding nests to protect the birds and/or eggs from predation (Marzluff et al. 1999, pp. 3–4; 2000, pp. 1136–1138; Raphael et al. 2002a, p. 221; Marzluff and Restani 1999, pp. 7–9, 11; Ripple et al. 2003, p. 80; Huhta et al. 1998, p. 464; DeSanto and Willson 2001, pp. 145–147).

Maintaining Habitat Distribution

Maintaining and improving the current distribution of the marbled murrelet is important for maintaining genetic heterogeneity, and increasing the likelihood of future dispersal as populations recover, particularly in areas with low population numbers.

In the geographic range in the United States where the species is listed, five areas exist in the at-sea distribution where marbled murrelet densities are low. The first occurs in the southern Straits of Georgia near and at the U.S. border. The second low density area occurs in southern Puget Sound in Washington. The third low density area occurs along the Washington coast beginning at Destruction Island and extending south past the Columbia River to Tillamook Head, Oregon. The fourth low density area is between Humboldt and San Mateo counties, California. The fifth low density area is

from southern Santa Cruz County through Monterey County (McShane et al. 2004, pp. 6–19–6–20). These low-density marine areas are likely correlated with terrestrial areas that once, but no longer, provided forested habitat. Where possible, it is important to protect and grow suitable marbled murrelet nesting habitat in these gap areas to reduce the impacts associated with fragmentation of the species' range.

Suitable, unoccupied nesting habitat that is in close proximity to currently occupied nesting habitat is more likely to be used by dispersing birds. The species' tendency towards nest site fidelity, combined with the likelihood that occupation of new nesting habitat is more likely in areas already containing marbled murrelets, underscores the importance of maintaining a rangewide distribution of both currently used nesting sites and unoccupied, but suitable, nesting habitat.

Marbled murrelets can be adversely affected by impacts to their nesting habitat, marine foraging habitat, and food supply, as well as by direct mortality from human activities such as oil spills and gillnet fisheries (refer to the October 1, 1992, final listing rule; 57 FR 45328).

We conclude that the maintenance of suitable nesting habitat in relatively large, contiguous blocks will be needed to recover the marbled murrelet. These blocks of nesting habitat should contain the structural features and spatial heterogeneity naturally found at the landscape level, the stand level, and the individual tree level in Pacific Northwest forest ecosystems in order to maintain species distribution and reduce primary threats of predation and fragmentation (see Special Management Considerations or Protections section) (Hansen and Urban 1992, p. 171–172; Raphael et al. 1995, p. 189; Meyer and Miller 2002, p. 763–764; Meyer et al. 2002, p. 95; Miller et al. 2002, p. 105–107).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under

section 3 of the Act, means to use all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas where the primary constituent elements are found, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if its essential features may require special management or protection. We do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2) of the Act. Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but which was not known to be occupied at the time of listing will likely, but not always, be essential to the

conservation of the species and, therefore, typically included in the critical habitat designation.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas to designate as critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials, and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in

some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the marbled murrelet. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following: (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, rearing of offspring; and (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We reviewed available information that pertains to the habitat requirements of the marbled murrelet and evaluated all known occurrence locations using data from numerous sources. This proposal was developed using various data layers. The data is mapped minimally at 1:100,000 scale, and more refined in some cases depending on data. Data used in mapping varied by State, but generally included: Marbled murrelet occurrence information (e.g., terrestrial and marine from State agencies); marbled murrelet habitat (e.g., specific paper maps, reports, and modeling layers from the Regional Ecosystem Office termed Expert Judgment Habitat); Government Ownership (e.g., ownership from California Spatial Information Library, Major Public Lands 2003 from Washington Department of Natural Resources, refuge boundary, and U.S. Forest Service Administrative Boundaries); township, range, and section; contours (developed from USGS 30-meter Digital Elevation Model); orthophotos (e.g., National Agriculture Imagery Program from USDA, USGS Ortho photos, Terraserver); Digital Raster Graphics (USGS); and general boundaries (e.g., coastlines, counties, county parcel data). Mapping was completed using Universal Transverse Mercator System North American Datum 1983—Zone 10.

We studied peer-reviewed and non-peer-reviewed articles and reports for

this proposal, which included: The Service's Biological Report (Marshall 1988); the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328); the Status and Conservation of the Marbled Murrelet in North America (Carter and Morrison 1992); the Biology of the Marbled Murrelet: Inland and at Sea (Nelson and Sealy 1995); the Marbled Murrelet Recovery Plan (USDI 1997); the Ecology and Conservation of the Marbled Murrelet (Ralph et al. 1995a); Evaluation Report for the 5-Year Status Review of the Marbled Murrelet in Washington, Oregon, and California (McShane et al. 2004); and the Northwest Forest Plan—The first 10 years (1994–2003; Huff et al. 2006).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as revised critical habitat, we considered physical and biological features (also known as the primary constituent elements or PCEs) that are essential to the conservation of the species and within areas occupied by the species at the time of listing that may require special management considerations and protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific PCEs required for the marbled murrelet are derived from the biological needs of the species as described in the Background section of this proposal. We determined that the physical and biological habitat features essential to the conservation of the marbled murrelet are associated with the terrestrial environment that supports nesting, roosting, and other normal behaviors. Marine areas, while important to marbled murrelet survival, are not identifiable as specific areas essential to conservation of the species. Further, we find that the terrestrial features identified as being essential require special management considerations and protections.

Primary Constituent Elements for the Marbled Murrelet

Under our regulations, we are required to identify the known physical and biological features essential to the conservation of the marbled murrelet.

All areas proposed as revised critical habitat for marbled murrelet are within the geographic range occupied by the species at the time of listing, and contain sufficient PCEs to support at least one life history function. As indicated above, we have determined that habitat containing features essential to marbled murrelet only occurs in the terrestrial environment.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCEs for the marbled murrelet are:

(1) Forested stands containing large-sized trees, generally more than 32 inches (81 centimeters) in diameter with potential nesting platforms at sufficient height, generally greater than or equal to 33 feet (10 meters) in height; and

(2) The surrounding forested areas within 0.5 mi (0.8 km) of these stands with a canopy height of at least one-half the site-potential tree height.

See previous discussion under Ecological Considerations, Terrestrial Environment for citations on these factors. These PCEs are more detailed than the PCEs established in the May 24, 1996, final critical habitat designation for marbled murrelet (61 FR 26256). The following discussion provides the rationale and latest research on the PCEs, including the species' requirements for trees with large limbs, canopy cover, and surrounding forest.

The site-potential tree height is the average maximum height for trees given the local growing conditions, and is based on species-specific site index tables, such as those established by Franklin and Dyness (1973). Canopy cover, which is important for nesting success, in the area of most marbled murrelet nests averages 84 percent (Hamer and Nelson 1995b, p. 72–79). Canopy cover generally increases with tree height, and we include tree height in the PCEs as a surrogate measurement for canopy cover.

Within these forested stands, nest trees provide and support suitable nesting habitat for successful reproduction of the marbled murrelet. Individual tree attributes that provide these conditions include large size (generally more than 32 in (81 cm) diameter at breast height), large branches (greater than 4 in (10 cm)) or forked branches, deformities (e.g., broken tops), dwarf mistletoe infections, witches brooms, or other structures large enough to provide a platform for a nesting adult marbled murrelet. Because marbled murrelets do not build

nests, substrate on the tree limb (moss, needles, or duff) provides a nest cup and protects the egg from rolling off (Huff et al. 2006, p. 12). Foliage cover above and around the nest provides protection from weather and visually screens the nest from detection by predators (Huff et al. 2006, p. 12). The platform needs to be at a sufficient height to allow jumpoff departures and stall landings, generally greater than or equal to 33 ft (10 m) in height (McShane et al. 2004, pp. 4–50 through 4–58; Huff et al. 2006, p. 13).

Marbled murrelets in southern Oregon and northern California were found to be most abundant in unfragmented old-growth forests located in a matrix of second-growth forest (Meyer et al. 2002, p. 95). Marbled murrelets in western Oregon nested in older-aged forests surrounded by younger forest; older forests surrounded by clearcuts were generally not used (Ripple et al. 2003, p. 84–87). In California, marbled murrelets have also been found in very small residual stands, and younger stands with residual trees (Hunter and Bond 2001, p. 996; Baker et al. in press, p. 3). The younger forests adjacent to older-aged forests may reduce the differences in microclimates associated with forested and unforested areas (Chen et al. 1992, pp. 391–392; Chen et al. 1993, p. 219; Chen et al. 1995, p. 84), reduce potential for windthrow during storms by buffering effects of wind on older forests (Chen et al. 1992, p. 394), and provide a landscape that has a higher probability of occupancy by marbled murrelets (Raphael et al. 1995, pp. 188–189).

The most important factors in the risk of predation on marbled murrelet nests appear to be the landscape context or composition and its effect on the type and abundance of predators (McShane et al. 2004, p. 4–96). While the relationship between forest fragmentation, edge effects, and marbled murrelet nest success is not completely clear, it is apparent that the abundance of some predators is affected by human-caused factors (McShane et al. 2004, p. 6–11; U.S. Fish and Wildlife Service 2004, p. 10–11), and the risk of predation, particularly by corvids, may be higher in proximity to human activities (Raphael et al. 2002a, p. 221). Lowering the risk of predation requires maintaining complex-structured forest in areas that are isolated from human development (McShane et al. 2004, p. 4–96). Simple-structured stands adjacent to nesting areas may provide some ability to decrease predation at marbled murrelet nests by helping to maintain interior conditions and reduce

edge effects (Raphael et al. 2002a, pp. 231–232; Ripple et al. 2003, p. 80).

Therefore, on a landscape basis, forests with a canopy height of at least one-half the site-potential tree height around potential nest trees are essential to the conservation of the marbled murrelet because they reduce the effects of microclimate, windthrow, and predation. Nest trees may be scattered or clumped throughout the area. Potential nesting areas may contain less than one suitable nesting tree per acre (0.5 hectare).

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available to determine whether areas contain the features that are essential to the conservation of the marbled murrelet.

Several qualitative criteria were considered in the selection of specific areas for inclusion in revised critical habitat. These criteria are similar to criteria used in the development of Federal management proposals, such as the Scientific Panel information originally used in development of the Northwest Forest Plan (USDA and USDI 1994b) and the Recovery Plan for the Marbled Murrelet (USDI 1997). The following is a description of the five criteria considered.

(1) The presence of primary constituent elements (PCEs).

As listed above, we determined that the PCEs for marbled murrelet are:

Forested stands containing large-sized trees, generally more than 32 inches (81 centimeters) in diameter with potential nesting platforms at sufficient height, generally greater than or equal to 33 feet (10 meters) in height. Research has shown that the most important component of marbled murrelet nesting habitat is the presence of appropriate platforms (Huff et al. 2006, p. 12). The abundance of nest substrate (e.g., moss, detritus, etc.), foliage cover above and around the nest, tree size, limb height, and location of the nest tree with respect to gaps within a stand of trees also are factors in determining the suitability of nesting habitat (Huff et al. 2006, p. 12). All but the last of these are characteristics of individual nest trees. Tree diameter and height have been directly correlated with platform size and the abundance of platforms (bigger trees provide more and larger platforms), but the relationship is not exact given the variety of tree species and forest types marbled murrelets use for nesting (Huff et al. 2006, p. 12).

Forested areas within 0.5 mi (0.8 km) of forested stands containing trees with

potential nesting platforms. In addition to the presence of nest platforms, the condition of the surrounding forest plays an important role in suitable habitat and successful nesting (Huff et al. 2006, p. 15). Suitable habitat includes forest structure of sufficient height and depth to provide vertical and horizontal cover to the nest and nest tree. These forests contribute to nesting success by protecting the nest from weather, supporting adequate microclimate conditions, and minimizing predation (Luginbuhl et al. 2001, p. 570; Marzluff et al. 2000, p. 1137; Raphael et al. 2002b, p. 339; Meyer et al. 2004, p. 207; Huff et al. 2006, p. 14).

Individual tree characteristics cannot be mapped through general stand data or remote sensing, and require on-the-ground examination of individual trees. In some cases, the average tree diameter in a stand can be used as a surrogate measure, but this measure alone will not enable identification of each tree capable of supporting nesting. Even individual low-elevation aerial photos may not allow identification of scattered nest trees containing potential nest structure, such as mistletoe infection or the presence of moss and detritus. Because marbled murrelets can make use of individual trees, available maps often miss this type of suitable nesting habitat, even when a mapped surrogate such as tree diameter is used. Suitable habitat maps generally do not include the intermediate age forests (surrounding forest PCE) that provide cover for residual nest trees. Existing mapping and remote sensing may include information on the size of major stand components. Areas mapped or identified in databases as containing large trees generally provide suitable nesting habitat. However, areas missing these mapped components may also provide habitat where residual nest trees remain.

We used all available information to map areas that were likely to contain the primary constituent elements. These included site-specific knowledge, GIS data, remote sensing data, habitat maps from many sources (e.g., suitable habitat data layers generated by the Northwest Forest Plan (NWFP) Effectiveness Monitoring team, site specific data from land managers and landowners), aerial photos, the current marbled murrelet critical habitat designation based on forest stand maps, and history leading to specific stand conditions.

(2) Within the inland range of the marbled murrelet.

Marbled murrelet nesting habitat is defined by forest stands that are within the distance marbled murrelets are

known to travel inland from marine foraging areas and contain the appropriate forest structure to produce and buffer potential nest trees. Birds must make this flight at least once a day during the nesting period. Inland distances traveled during the breeding season differ with habitat availability, energetics, predation pressure, and a variety of other factors (McShane et al. 2004, p. 2–5; Huff et al. 2006, p. 10). While some birds have been detected up to 70 mi (112 km) inland, most birds nest within 55 mi (88 km) of marine habitat in Washington, within 35 mi (56 km) in Oregon and northern California, and within 10 to 15 mi (16 to 24 km) in central California. To address this range of use, we propose to revise designated critical habitat to within 55 mi (88 km) of the marine environment in Washington, within 35 mi (56 km) in northern and central Oregon (consistent with Forest Ecosystem Management Assessment Team Zone 1 within the NWFP), within the modified survey zone in southern Oregon and northern California, and within the inland extent of redwood forests in the remainder of the range in California.

(3) Large, contiguous blocks of nesting habitat.

The maintenance and development of large blocks of nesting habitat and contiguous forest cover is important to the stability and long-term recovery of marbled murrelets (USDI 1997, pp. 139–140). Several studies and reviews have emphasized the positive association of marbled murrelets with large core areas of late-seral forest, low amount of edge, and lower fragmentation levels (McShane et al. 2005, pp. 4–39, 4–42–43). Detections of marbled murrelets at inland sites and densities offshore were found to be higher in or adjacent to areas with large patches of significant old-growth, and in areas of low fragmentation and isolation of old-growth patches (all citations from McShane et al. 2004, pp. 6–11).

Large blocks of forest help maintain interior conditions that may support moss or other nest substrate development and reduce the potential for predation. Fragmentation of the remaining older forests has resulted in increased populations of nest predators, and increased visibility and vulnerability of flying or nesting adults to potential predators. Increased predator populations, in turn, may lead to increased rates of predation on young in nests and possibly on adults. Rates of predation on marbled murrelet nests appear to be high, based on field observations, compared to most other seabirds and are due most often to predators, such as corvids, whose

abundance has increased in western North America as a result of forest fragmentation, increased agriculture, and urbanization (McShane et al. 2004, p. 6–11).

There is no established minimum or optimal size defining large blocks for marbled murrelet nesting habitat. Based on the 0.5 mi (0.80 km) data from Raphael et al. 1995 (see Ecological Considerations) in areas where the suitable habitat remains in larger blocks, we generally sought areas of at least 500 ac (200 ha) where possible. In areas where habitat is already limited and fragmented to the point where 500 ac (200 ha) blocks are not available, we selected smaller, more isolated patches of habitat to maintain the distribution of the species. Under these circumstances, small habitat patches are extremely important for the conservation of the species because they represent the only option for maintaining the nest trees and forest buffers that are essential in supporting existing marbled murrelet populations and slowing population declines in these areas. Given the extended time required to develop habitat (decades to centuries depending on the starting condition and tree species involved), maintaining current populations is an important element in the recovery of marbled murrelets (USDI 1997, pp. 138–140). Marzluff and Restani (1999, pp. 8–9, 11–13) and Raphael et al. (2002b, pp. 337–339) suggested that a reduced amount of nesting habitat and increased isolation of nesting habitat would have long-term impacts on the number of nests and short-term impacts on nest success, both of which affect population size. In these situations, we are proposing to designate small areas of critical habitat to maintain the distribution of current populations and PCEs.

(4) Sites occupied by marbled murrelets.

For the purposes of this revised designation, occupied sites are defined as locations where marbled murrelet presence has been documented via a variety of survey techniques or processes. Suitable marbled murrelet habitat, in Late-Successional Reserves (LSRs) in National Forests in Oregon and Washington and in areas covered by Bureau of Land Management (BLM) Western Oregon Land Use Plans, is managed by the Forest Service and the BLM as occupied and therefore we have included the LSRs as occupied habitat.

Surveys not conducted in adherence to the strict protocol may miss occupied sites due to the cryptic nature of marbled murrelets and their nests. For example, a single visit to a location where marbled murrelets are present

has only a 55 percent chance of detecting marbled murrelets (Evans Mack et al. 2003, p. 39). Surveys prior to the listing of the marbled murrelet were few and not conducted to a standardized survey protocol. Marbled murrelet nesting habitat is generally in older, more complex stands including older trees for nesting platforms, and this habitat is slow to recover or to develop. It is highly unlikely that any new significant marbled murrelet nesting habitat has developed since this seabird was listed in 1992. In addition, based on the site tenacity of marbled murrelets (see Ecological Considerations), sites that have been found to be occupied since listing are considered likely to have been occupied at the time of listing.

Marbled murrelets tend to use large watercourses to access inland habitat (Nelson 1997, p. 11; Manley 1999, p. 54; Burger 2002b, p. 27). They cross ridges to enter neighboring watersheds. The likelihood of use would apply to the entire watershed in which marbled murrelets are known to occur, and probably to neighboring watersheds as well.

(5) Maintenance of rangewide distribution.

The current distribution of the species is important for maintaining genetic heterogeneity. Increasing the likelihood of future colonization is equally important as populations recover, particularly in areas with low population numbers. Appropriately distributed nesting habitat reduces the probability that a natural or human-caused catastrophe would threaten the survival or recovery of the species in the three States. Catastrophes that could significantly impact a large portion of the nesting population include wildfires and windstorms. Oil spills could have a significant impact on marbled murrelet foraging. Accordingly, essential habitat was identified throughout the range of the species in Washington, Oregon, and California.

Special Management Considerations or Protections

When designating critical habitat, we assess whether areas that contain the primary constituent elements may require special management considerations or protections.

Marbled murrelets can be adversely affected by impacts to their nesting habitat, marine foraging habitat, and food supply, as well as by direct mortality from human activities such as oil spills and gillnet fisheries. These impacts, and the resulting decline from historic population levels, formed the

basis for the listing of the species as threatened in 1992 (57 FR 45328).

In evaluating marine areas for potential critical habitat designation, we reviewed whether these areas important to the conservation of marbled murrelets require special management consideration or protection at this time beyond that provided by the existing Federal laws and regulations. While the marine habitat is important to the survival of marbled murrelets, the primary concern with respect to marbled murrelet populations is loss of nesting habitat.

In 1996, when we designated critical habitat (61 FR 26256), we concluded that activities or events that adversely affect marbled murrelets in the marine environment seem to be more associated with the mortality of individual birds than the long-term destruction or adverse modification of habitat. We concluded that gillnet fisheries, for example, result in incidental capture of marbled murrelets, but do not significantly adversely affect the prey base. Marbled murrelets appear to forage opportunistically on available fish, and are likely able to respond to minor changes in fish abundance and location.

We also concluded that the principal adverse impacts of oil and other pollutant spills are to individual birds, not their prey base. Our assessment of these events typically relies on bird mortality rather than habitat issues that include prey availability. We indicated we would continue to monitor marine threats and may propose marine critical habitat in the future if warranted.

In this critical habitat revision, we reassessed the importance of marine habitats to marbled murrelets and reaffirm their importance to marbled murrelet conservation. Our consultation experience since 1996 reinforces our previous finding that existing Federal laws and regulations adequately protect marine habitats. For example, section 7 consultations over the last several years on projects authorized, funded, or carried out by Federal agencies in Puget Sound most often conclude as informal consultations because elements of the marine habitat that are important to marbled murrelet prey species production, such as eelgrass beds and forage fish spawning beaches, are adequately protected by the Clean Water Act section 404 permit requirements or State of Washington Hydraulic Permit Application requirements and restrictions. Our Marbled Murrelet 5-Year Review (U.S. Fish and Wildlife Service 2004, p. 11) documented that gill-netting regulations have reduced this threat to marbled murrelets in the

marine environment in northern California and Washington.

Current and historic loss of marbled murrelet nesting habitat is generally attributed to timber harvest and land conversion practices, although, in some areas, catastrophic disturbances such as forest fires have caused losses (Ripple 1994, p. 45). Reduction of the remaining older forest has not been evenly distributed in western Washington, Oregon, and California. Timber harvest has been concentrated at lower elevations and in the Coast Ranges (Thomas et al. 1990, p. 13), generally overlapping the range of the marbled murrelet.

Some of the forests that were affected by past natural disturbances, such as forest fires and windthrow, currently provide suitable nesting habitat for marbled murrelets because they retain scattered individual or clumps of large trees that provide structure for nesting. This is particularly true in coastal Oregon where extensive fires occurred historically. Marbled murrelet nests have been found in remnant old-growth trees in mature forests in Oregon. Forests providing suitable nesting habitat and nest trees generally require 200 to 250 years to develop characteristics that supply adequate nest platforms for marbled murrelets.

In the marbled murrelet 5-year review (U.S. Fish and Wildlife Service 2004, p. 11), we identified key threats to the species, and noted that the rate of habitat loss has declined due to implementation of State and Federal regulations.

The key threats to the marbled murrelet are predation and habitat fragmentation. These two threats merit special management considerations.

Predation

Marbled murrelets are believed to be highly vulnerable to predation en route to and when on the nesting grounds, and the species has evolved a variety of morphological and behavioral characteristics indicative of selection pressures from predation (Ralph et al. 1995b, p. 4). For example, plumage and eggshells exhibit cryptic coloration, and adults fly to and from nests by indirect routes and often under low-light conditions (Nelson and Hamer 1995a, p. 65). From 1974 through 1993, where marbled murrelet nest success or failure in Washington, Oregon, and California was documented, approximately 57 percent failed due to predation (Nelson and Hamer 1995b). The risk of predation by avian predators appears to be highest in complex-structured landscapes in proximity to edges and human activity, where many of the corvid species are

abundant. Predation rates are influenced mainly by habitat stand size, habitat quality, nest placement (on the edge of a stand versus the interior of a stand), and proximity of the stand to human activity centers. Nelson and Hamer (1995b, p. 89), in the only direct measure of marbled murrelet reproductive success published, found that successful marbled murrelet nests were farther from an edge than unsuccessful nests. Forest stands within 0.6 mi (1 km) of human activity centers can experience increased nest predation because humans often provide food that attracts corvids (Marzluff et al. 2000, p. 1137).

Fragmentation

Forest management practices can fragment marbled murrelet habitat, which can reduce the amount and heterogeneous nature of the habitat, forest patch size, and amount of interior or core habitat, and can increase the amount of edge, isolate remaining habitat patches, and create "sink" habitats (McShane et al. 2004, p. 4–83). There are no estimates available for the amount of suitable habitat that has been fragmented or degraded since 1992. However, the ecological consequences of these habitat changes to marbled murrelets can include effects on population viability and size, local or regional extinctions, displacement, fewer nesting attempts, failure to breed, reduced fecundity, reduced nest abundance, lower nest success, increased predation and parasitism rates, and reduced adult survival (Raphael et al. 2002, pp. 222–223).

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision from the areas we designated as critical habitat for the murrelet in 1996 (61 FR 26256). The main reasons for the differences include:

1. We incorporated new information in determining what areas are essential to the conservation of the species. Areas that are now known to not provide PCEs or are not considered to be essential to the conservation of the murrelet based on new information including maps, photos, and ground surveys are not included in this proposal.

2. The PCEs were revised based on new information to make them more specific. The first PCE was changed to include forested stands that contain trees with potential nesting platforms, rather than just individual trees with potential nesting platforms. The second PCE includes surrounding forested areas within 0.5 mi (0.8 km) of the stands,

rather than individual trees. We included more recent research to support these PCEs.

3. Areas were added because they are now known to contain PCEs and are occupied by the species. These areas were not included in the 1996 rule because they had not been determined to be essential to the conservation of the murrelet at that time. Small areas were added in all three States. Please refer to <http://www.fws.gov/westwafwo/>, or contact the Western Washington Fish and Wildlife Office directly (see **ADDRESSES** section) for a further clarification of the differences between lands designated as critical habitat in 1996 and those being proposed in this revision.

4. We refined marbled murrelet boundaries based on studies that showed, specifically in southern Oregon and northern California, the distribution of likely nesting birds was not as far inland as delineated in 1996.

5. Areas determined to be essential but that we have determined do not meet the definition of critical habitat for the murrelet because they do not require special management considerations and protection pursuant to section 3(5)(A) of the Act, are similar to those from the 1996 final critical habitat rule, including marine areas, Federal wilderness areas and national parks, and Quinalt Indian Reservation areas. One addition is the Headwaters Forest Reserve (7,494 ac (2,998 ha)), which was acquired by the Bureau of Land Management in 1999, for the purpose of preserving old-growth redwood forest.

6. We now believe that the late successional reserves (LSRs) designated through the Northwest Forest Plan are appropriate for evaluating for exclusion from the final designation under section 4(b)(2) of the Act. The basis of our determination is that the LSRs have been in place since 1994, and we have now assessed 12 years of documented management, and believe that the areas are sufficiently managed and protected for the murrelet under the provisions of the Northwest Forest Plan. This management will be in place unless and until either agency proposes to change under revised land management plans and resource management plans. Further, Bureau of Land Management and the U.S. Forest Service have indicated that with any revisions to management plans, murrelet habitat will continue to be managed into the future in a manner compatible with murrelet

conservation. We did not exclude LSRs in the 1996 designation because, at that time, our policy was to exclude land with management status secured through statute or other definitive process. Our current policy is to exclude areas with current documented management that provides—(a) the plan is complete and provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (b) the plan provides assurances that the conservation management strategies and actions will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (c) the plan provides assurances that the conservation strategies and measures will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). Therefore, we have determined that the areas covered by LSRs are appropriate for consideration for exclusion under section 4(b)(2) of the Act.

7. Mapping refinements have been made since the 1996 designation.

8. This proposed rule includes 14 critical habitat units. These units cover the same general area as the 1996 designation, which included 32 units. The reduction in number of critical habitat units is a reflection of our decision to combine designated areas into larger habitat units for efficiency of reference. For example, Washington State had 11 units in the 1996 designation, and only 3 in this final designation, but the overall area of the State is comparable. We also are using a more efficient method of providing legal descriptions; instead of using the Public Land Survey System (township and range), we are providing UTM (Universal Transverse Mercator) data points generated through GIS (Geographic Information System) mapping.

Proposed Revised Critical Habitat Designation

We are proposing 14 units as critical habitat for the marbled murrelet throughout Washington, Oregon, and California. These units, which do not

directly correspond to particular units in the 1996 designation, if finalized, would entirely replace the current critical habitat designation for marbled murrelet in 50 CFR 17.95(b). The proposed critical habitat areas described below constitute our best assessment of areas determined to be occupied, that contain the primary constituent elements, that may require special management considerations or protection, and that were found to be essential to the conservation of the marbled murrelet. The 14 areas proposed as revised critical habitat are: Northwest Washington, Southwest Washington, Washington Cascades, Northwest Oregon, Central Oregon, Southwest Oregon, Hebo, Coquille, Yaquina, Elliott, Del Norte/Northern Humboldt, Southern Humboldt, Mendocino, and Santa Cruz Mountains. Based on information available to us, we are proposing to include 3,590,642 ac (1,453,000 ha) in our revised critical habitat for the marbled murrelet. We are further proposing to exclude 3,368,950 ac (1,363,300 ha) under section 4(b)(2) of the Act from the final revised designation, which, if adopted in its entirety, would result in a total of 221,692 ac (89,700 ha) of designated critical habitat for the murrelet. This would mean that our final revised designation would reduce the currently designated critical habitat for marbled murrelet by approximately 3,666,108 ac (1,483,640 ha). We considered an additional 1,574,201 ac (637,328 ha), but did not include them in this proposal because the areas do not meet the definition of critical habitat as defined in section 3(5)(A) of the Act (i.e., they contain the PCEs but do not require special management) or are exempt from designation under section 4(a)(3) of the Act. After the exclusions, if adopted in their entirety, less than 1 percent of this proposed designation is Federal land; 80 percent is city, county, or State land; and 19 percent is private land. We are not proposing critical habitat units in marine areas, because we were not able to define specific areas essential to the conservation of the species. Tables 1 and 2 below provide approximate area, by State and land ownership, determined to meet the definition of critical habitat for the marbled murrelet and the area proposed for exclusion from the final critical habitat designation.

TABLE 1

[Areas determined to meet the definition of critical habitat under section 3(5)(A) of the Act for the marbled murrelet (Definitional Area) and the area proposed for exclusion from the final critical habitat designation under section 4(b)(2) of the Act (Proposed Exclusion Area). Extent of area is defined as acres (ac) (hectares (ha))]

State	Definitional area	Proposed exclusion area 4(b)(2)
Washington	1,677,444 ac (678,800 ha)	1,650,536 ac (667,900 ha).
Oregon	1,499,729 ac (606,900 ha)	1,416,982 ac (573,400 ha).
California	413,469 ac (167,300 ha)	301,432 ac (122,000 ha).
Total	3,590,642 ac (1,453,000 ha)	3,368,950 ac (1,363,300 ha).

TABLE 2.—PROPOSED MARBLED MURRELET CRITICAL HABITAT, MINUS EXCLUSIONS, IN ACRES (HECTARES), BY STATE AND OWNERSHIP

State	Total	Federal	City, county, or state	Private
CA	112,037 (45,300)	0	92,834 (37,500) ...	19,203 (7,800)
OR	82,747 (33,500) ...	0	82,373 (33,400) ...	374 (100)
WA	26,908 (10,900) ...	1,151 (500)	2,469 (1,000)	23,288 (9,400)
Total	221,692 (89,700) ..	1,151 (500)	177,676 (71,900) ..	42,865 (17,300)

The following are brief descriptions of all proposed units. These units are assumed to be occupied given the criteria identified previously, and contain features essential to the conservation of the marbled murrelet (PCEs), and have been determined to be necessary for recovery of the species. These areas have no management specified that would provide for maintaining marbled murrelet habitat. For further discussion of proposed exclusions, see the “Exclusions Under Section 4(b)(2) of the Act” section below.

Washington

Northwest Washington

The parcels in this unit are located in Clallam, Jefferson, Grays Harbor, and Mason Counties and are comprised of lands owned or administered by the Olympic National Forest (414,895 ac; 165,958 ha), Washington Department of Natural Resources (226,395 ac; 90,558 ha), private individuals or companies (1,775 ac; 710 ha), and the Makah Indian Nation (1,507 ac; 603 ha). Federal and State lands make up the majority of the unit. We are proposing to exclude approximately 99 percent of the unit (642,797 ac; 257,119 ha) from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the Olympic National Forest, WDNR, or the Makah Indian Nation.

Southwest Washington

The parcels in this unit are located in southern Grays Harbor, Pacific, and Wahkiakum Counties, and are comprised of lands owned or administered by Grays Harbor County (1,565 ac; 626 ha), Washington State Parks (359 ac; 144 ha), Washington Department of Natural Resources (WDNR) (86,626 ac; 34,650 ha), Bureau of Land Management (1,151 ac; 460 ha), Willapa National Wildlife Refuge (NWR) (5,688 ac; 2,275 ha), the Nature Conservancy (6,122 ac; 24,488 ha), and private individuals or companies (18,822 ac; 7,529 ha). With the exception of the BLM and the Willapa NWR, all lands within this unit are non-Federal. We are proposing to exclude approximately 81 percent of the unit (98,436 ac) from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the Willapa NWR, The Nature Conservancy, or WDNR.

Washington Cascades

The parcels in this unit are located in Whatcom, Skagit, Snohomish, King, Pierce, and Lewis Counties and are comprised of lands owned or administered by the Mount Baker-Snoqualmie National Forest (1,094,117 ac; 437,646 ha), Washington Department of Natural Resources (100,843 ac; 4,337 ha), private individuals or companies (2,168 ac; 867 ha), The Nature Conservancy (502 ac; 200 ha), and the Lummi Indian Nation (545 ac; 218 ha). Federal and State lands make up the

majority of the unit. We are proposing to exclude approximately 99 percent of the unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the Mount Baker-Snoqualmie National Forest and WDNR.

Oregon

Northwest Oregon

The parcels in this unit are in Tillamook and Clatsop Counties, and are comprised of State lands administered by the Oregon Department of Forestry (ODF) and Oregon State Parks (69,603 ac; 27,841 ha), Federal lands administered by the U.S. Forest Service and Bureau of Land Management (BLM) (8,761 ac; 3,504 ha), and private lands (374 ac; 150 ha). Federal lands are very limited within this area. The BLM lands are surrounded by State forests in the southern portion. We propose to exclude approximately 8,761 ac (3,504 ha) (13 percent) of the unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the U.S. Forest Service and Bureau of Land Management under the standards of the Northwest Forest Plan.

Hebo

The parcels in this unit are located in Lincoln, Tillamook, Polk, and Yamhill Counties, and are comprised of State land (1,063 ac; 425 ha) administered by

Oregon Parks and Recreation Department and Federal lands administered by the U.S. Forest Service and Bureau of Land Management (187,788 ac; 75,115 ha). We propose to exclude 187,788 ac (75,115 ha) (99 percent) of the unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the U.S. Forest Service and Bureau of Land Management under the standards of the Northwest Forest Plan.

Yaquina

The parcels in this unit are located in Lincoln, Benton, and Polk Counties, and are comprised of State lands (12,079 ac; 4,832 ha) administered by the Oregon Department of Forestry and Federal lands administered by the U.S. Forest Service and Bureau of Land Management (2,774 ac; 310 ha). We propose to exclude approximately 2,774 ac (310 ha) (19 percent) of the unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the U.S. Forest Service and Bureau of Land Management under the standards of the Northwest Forest Plan.

Central Oregon

The parcels in this unit are located in Lincoln, Benton, Lane, and Douglas Counties and are comprised primarily of Federal lands (663,179 ac; 265,272 ha) administered by the U.S. Forest Service and the Bureau of Land Management. The State land (124 ac; 50 ha) (one parcel) is administered by Oregon Department of Forestry, and is located on the eastern border of Elliot State Forest. We propose to exclude the entire unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below). The lands proposed for exclusion are owned or managed by the U.S. Forest Service and Bureau of Land Management under the standards of the Northwest Forest Plan or the Wilderness Act, or will be covered under the Elliott State Forest HCP.

Elliott

This unit is composed of Elliott State Forest lands located in the south central Oregon Coast Range near Coos Bay, Oregon, in Coos and Douglas Counties. Federal lands administered by the U.S. Forest Service and BLM exist immediately to the north and south of this Forest. The Oregon Department of

Forestry manages this forest (93,564 ac; 37,426 ha), a contiguous block of habitat within 6 to 24 mi (10 to 39 km) of the ocean. We propose to exclude the entire unit from the final designation of critical habitat under section 4(b)(2) of the Act because it will be included in an HCP (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

Coquille

This unit is located in Coos and Douglas Counties and is comprised entirely of Federal lands (83,662 ac; 33,464 ha) administered by the Bureau of Land Management under the standards of the Northwest Forest Plan. It is located in the Klamath Mountains Physiographic Province. Due to the location of Federal lands, proposed critical habitat begins approximately 12 to 35 mi (19 to 56 km) from the coast, with the majority of proposed designation over 20 mi (32 km) from the coast. We propose to exclude the entire unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

Southwest Oregon

This unit is located in the Klamath Mountains and the Coast Range of southwestern Oregon in Coos, Curry, and Josephine Counties and is comprised entirely of Federal lands (377,131 ac; 150,852 ha) administered by the U.S. Forest Service and the Bureau of Land Management under the standards of the Northwest Forest Plan. We propose to exclude the entire unit from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

California

Del Norte/Northern Humboldt

This unit (258,232 ac; 23,292 ha) contains multiple subunits located in Del Norte and northern Humboldt Counties in northern California. The subunits are comprised of lands owned or administered by the Six Rivers National Forest and Bureau of Land Management (257,582 ac; 103,032 ha) and a private timber company (650 ac; 260 ha). We propose to exclude all federally managed lands (approximately 99 percent of the unit) from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

The identified non-Federal subunit, known as the Miracle Mile Habitat

Complex, may be managed in the future under a conservation easement developed to ensure protection of marbled murrelet nesting habitat.

Southern Humboldt

This unit (47,686 ac; 19,074 ha) contains multiple subunits and is located in southern Humboldt County in northern California. The subunits are comprised of lands owned or administered by the California Department of Fish and Game (925 ac; 370 ha); California Department of Parks and Recreation including Humboldt Redwoods State Park and Grizzly Creek State Park (39,958 ac; 15,983 ha); Van Duzen County Park (167 ac; 67 ha); and Pacific Lumber Company (private land) (6,636 ac; 2654 ha). We propose to exclude the privately owned land (approximately 14 percent of the unit) from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

The California Department of Fish and Game subunit, known as the Owl Creek Ecological Reserve, was purchased by the State of California in 2000 for \$67 million. To date, a management plan has not been developed for this property. If a management plan is completed prior to the final rule for marbled murrelet critical habitat, these lands may be considered for exclusion under section 4(b)(2) of the Act.

Mendocino

This unit (46,354 ac; 18,541 ha) contains multiple subunits and is located in Mendocino County, California. The subunits are comprised of lands owned or administered by the Bureau of Land Management (37,214 ac; 14,886 ha); California Department of Parks and Recreation including Admiral William Standley State Recreation Area, Montgomery Woods State Reserve, and Russian Gulch State Park (2,621 ac; 1,048 ha); a portion of California Department of Forestry and Fire Protection's Jackson Demonstration State Forest (5,467 ac; 2,187 ha); and private timber company lands along the Ten Mile River and Alder Creek (1,043 ac; 417 ha). We propose to exclude all federally managed lands (approximately 80 percent of the unit) from the final designation of critical habitat under section 4(b)(2) of the Act (refer to the Exclusions Under Section 4(b)(2) of the Act section below).

Santa Cruz Mountains

The unit (61,196 ac; 24,478 ha) contains multiple subunits and is located in San Mateo and Santa Cruz

Counties, California. The subunits are comprised of lands owned or administered by the California Department of Parks and Recreation, including Butano, Portola, Big Basin Redwoods, Wilder Ranch, and Henry Cowell State Parks, Ano Nuevo State Reserve, and University of California Regents (34,718 ac; 13,887 ha); California County Parks, including Huddart, Pescadero Creek, and Sam McDonald (7,990 ac; 3,196 ha); San Francisco City lands (978 ac; 391 ha); and private lands (17,510 ac; 7,004 ha). Federal lands are completely lacking in this unit. We would include all of this unit in the final designation of critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (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)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize

the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action may affect, but is not likely to adversely affect the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or proposed critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is finalized if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be

documented through the Service's 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, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. “Reasonable and prudent alternatives” are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the marbled murrelet or its designated critical habitat will 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 or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be 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 under permit, do not require section 7 consultations. In addition, currently designated marbled murrelet critical habitat (see 50 CFR 17.95(b)) will remain designated critical habitat, and therefore be subject to section 7, until this proposal is finalized.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Marbled Murrelet and its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for marbled murrelet jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the marbled murrelet. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the marbled murrelet in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting marbled murrelet critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of marbled murrelet critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such

habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the marbled murrelet is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the marbled murrelet include:

(1) Removal, modification, or fragmentation of forested areas can directly impact nesting structures, nesting substrate, and the vertical and horizontal cover provided by the surrounding forest. Fragmentation of forested areas can result in habitat isolation and increased edge, which negatively impacts the quality of the remaining nesting habitat primarily through increased predation. Federal actions primarily impacting the marbled murrelet include timber harvest, salvage logging, hazard tree removal, and windthrow caused by harvest.

(2) New and existing human activity, including recreation, agriculture, and urbanization, adjacent to and within forested areas can result in loss or modification of the PCEs. Human activity occurring in or near forested nesting areas can negatively impact the quality of nesting habitat, because they can significantly compromise the effectiveness of the forested areas in protecting adult incubating birds, eggs, or nestlings from predation.

We consider all of the units proposed as revised critical habitat, as well as those that have been proposed for exclusion, exempted, or not included because of special management considerations or protections, to contain features essential to the conservation of the marbled murrelet. All units are within the geographic range of the species, all units were occupied or likely to be occupied by the species at the time of listing, and all units are likely to be used by the marbled murrelet. Federal agencies already consult with us on activities in areas currently occupied by the marbled murrelet, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the marbled murrelet.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Areas Considered Under Section 3(5)(A) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat.

To determine whether an area requires special management considerations or protection, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management considerations or protection, or if they do in general, but not for the particular area in question because of the existence of an adequate management or protection, then that specific area, and the features contained therein, does not require special management considerations or protection.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and, (3) the plan provides assurances that the conservation strategies and measures will be effective (it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Marine Areas

Marine areas are important to marbled murrelets; however, we were unable to identify specific areas essential to the conservation of the species. As a result, no critical habitat is proposed for marine areas. In 1996, when we designated critical habitat, we concluded that activities or events that

adversely affect marbled murrelets in the marine environment are more associated with the mortality of individual birds than the long-term destruction or adverse modification of habitat. We also concluded that the principal adverse impacts of oil and other pollutant spills are to individual birds, not their prey base.

In this critical habitat revision, we reviewed the available data on marbled murrelet use of nearshore marine areas from Washington to California from at-sea surveys. These marine areas are very important to the conservation of marbled murrelets and helped guide our identification of associated forests that provide nesting habitat with features essential to the conservation of marbled murrelets. While clean water and accessible foraging opportunities are important life history requirements of the species, we maintain that existing Federal laws and regulations provide adequate benefits to marbled murrelets, directly or indirectly, such that special management of the marine environment is not needed.

Mortality of individual birds is our greatest concern for marbled murrelets in the marine environment. The major threats to marbled murrelets in marine waters are oil spills, commercial net fisheries, and noise from underwater construction (see the Ecological Considerations section).

In the mid-1990s, a series of fisheries restrictions and changes were implemented to address mortality of all species of seabirds, resulting in lower mortality rate of marbled murrelets (McShane *et al.* 2004, p. 3–67). In most areas, the threat from gillnet fishing has been reduced since 1992, but threats to adult and juvenile marbled murrelets are still present in Washington nearshore zones due to gillnet mortality (McShane *et al.* 2004, p. 3–67).

Oil spills are the primary threat to marbled murrelets in the marine environment. Since passage of the U.S. Oil Pollution Act in 1990 (33 U.S.C. 2701 *et seq.*), the number of oil spills has generally declined. Vessel inspections and penalties for accidents and violations have improved considerably the effectiveness of oil transport by tankers.

The Service has worked extensively with the U.S. Coast Guard, industry representatives, local response communities, and other State, Federal, and Tribal natural resource trustees to develop area contingency plans and geographic oil spill response plans for Pacific coastal areas. These planning efforts, the associated spill responses, and restoration efforts help prevent or minimize the impact of spills on

marbled murrelets. Natural resources damage assessment restoration efforts for oil spills that injure or kill marbled murrelets in the marine environment (*e.g.*, Apex/Houston in California (Consent Decree and Settlement Agreement, *United States v. Apex Oil Co.*, 1994, p.14); New Carissa in Oregon (M/V New Carissa Oil Spill Natural Resource Trustees. 2006, p. 49); and Tenyo Maru in Washington (Tenyo Maru Oil Spill Natural Resource Trustees 2000, pp. 4–22)) have compensated exclusively for marbled murrelet impacts by protecting forests that provide nesting habitat.

Our section 7 consultations on Federal actions or projects since 1996 reinforce our previous finding that existing Federal laws and regulations provide special management for marbled murrelet habitat in the marine environment. Our section 7 consultations on projects or action that had insignificant adverse effects to marbled murrelets in the marine environment have primarily been related to impacts to individual birds, not to their marine habitat. For example, section 7 consultations over the last several years on projects affecting marbled murrelets in the marine waters of Puget Sound have identified adverse effects to individual birds from disturbance generated from pile driving and other in-water construction activities, and from by-catch associated with net fisheries.

In contrast, our assessment through the section 7 consultation process of effects on marine habitat for marbled murrelets most often conclude that the effects are insignificant. This is largely a result of requirements of the Clean Water Act Section 404 permit or State of Washington Hydraulic Permit Application requirements and restrictions, which protect marine habitat, such as eelgrass beds and forage fish spawning beaches, important to the production of marbled murrelet prey species.

Federal Wilderness Areas in Washington, Oregon, and California Designated Under the Wilderness Act of 1964

The Wilderness Act of 1964 (16 U.S.C. 1131–1136) established the National Wilderness Preservation System, now encompassing more than 105 million ac (42 million ha) nationwide (Wilderness Society, p. 1). A wilderness area is defined as “an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural

conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least 5,000 ac (2,023 ha) of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value (Wilderness Society, p. 7). Furthermore, the Wilderness Act’s Section 2(b) identifies that “these shall be administered * * * so as to provide for the protection of these areas * * * [and] the preservation of their wilderness character.” Within the areas having essential habitat features for the marbled murrelet, there are three congressionally designated wilderness areas in the State of Washington, seven in Oregon, and three in California.

In general, these wilderness areas are managed to meet the habitat needs of the marbled murrelet, directly or indirectly, by providing for large blocks of old-growth and mature forest that may contain the PCEs. These wilderness areas are generally greater than 5,000 ac (2,023 ha), providing for large blocks of protected nesting and suitable habitat, as well as preventing further habitat loss of unoccupied but suitable habitat (USDI 1997, p. 119).

In addition, the wilderness areas are distributed throughout the range of the species and also help meet the recovery objective of maintaining a well-dispersed population, which is essential for the long-term survival and recovery of the marbled murrelet (USDI 1997 p.115). Their distribution on the landscape and protected status help contribute towards this goal by reducing the adverse effects of random catastrophic events that can affect populations with relatively widespread distributions (USDI 1997, p. 116).

The general wilderness management prohibitions limit many of the activities that could adversely affect the marbled murrelet PCEs. While there may be instances where trees may be removed (*e.g.*, hazard trees in dispersed campgrounds or along the wilderness boundary), these activities are not likely to take place at a scale that would adversely affect a significant number of individual nest trees or large forested areas within 0.5 mi (0.8 km) of a suitable nest tree.

Motorized equipment and equipment used for mechanical transport is generally prohibited on all Federal lands designated as wilderness, with

some administrative exceptions. This includes the use of motor vehicles, motorboats, motorized equipment, bicycles, hang gliders, wagons, cart, portage wheels, and the landing of aircraft including helicopters, unless provided for in specific legislation. These restrictions reduce the likelihood of any adverse effects to the PCEs due to motorized or mechanized activities.

Timber harvest is not allowed in wilderness. Some limited tree removal may take place under emergency conditions, such as fire, insect, and disease control, and in the construction and maintenance of authorized improvements (such as trail bridges) when the necessary material cannot be reasonably obtained elsewhere.

Consequently, we find that wilderness areas are generally managed in such a way as to protect PCEs and contribute to the needs of the marbled murrelet by providing for large blocks of old-growth and mature forest. Restrictions on habitat removal through (1) continuing protection and conservation of large tracts of old and mature growth forest containing the PCEs; (2) limiting activities, such as timber operations, that may adversely affect the PCEs; and (3) requiring any activities administered within a wilderness area to "preserve its wilderness character" (Wilderness Act, section 4(b)) provides significant benefits to marbled murrelets.

We conclude that the features essential to the marbled murrelet contained within congressionally designated wilderness areas do not require special management considerations or protection because existing laws and regulations are adequate. Therefore, these areas do not meet the definition of critical habitat. Consequently, no congressionally designated wilderness areas are included in this proposal.

Redwood National and State Parks, California

Redwood National and State Parks (RNSP) is comprised of four park units, all located within the congressionally authorized boundary of the National Park: Redwood National Park, Prairie Creek Redwoods State Park, Del Norte Coast Redwoods State Park, and Jedediah Smith Redwoods State Park. The reasons for which these parks were established are described in various statutes and declarations of purpose by the Federal government and the State of California.

These parks are managed under a cooperative management agreement between the National Park Service and the California Department of Parks and Recreation. Moreover, a joint (Federal

and State) general management plan was developed through cooperative efforts between the Federal and State agencies in an effort to manage this complex of parks as a whole. The strategy of the general management plan, finalized in 1998, is to ensure that all resource management efforts are consistent with and supportive of the perpetuation of the redwood forest ecosystem. A management goal for the park complex is to provide, enhance, and protect marbled murrelet nesting habitat. The parks are committed to preventing the loss of occupied marbled murrelet nesting habitat and managing vegetation to increase the amount of marbled murrelet nesting habitat throughout the park complex.

In 2003, the RNSP superintendents signed a conservation strategy entitled "A Conservation Strategy for Managing Threatened and Endangered Species in Redwood National and State Parks" (Conservation Strategy). The recovery goals identified in this strategy include implementing short-term actions to maintain suitable habitat in large contiguous blocks, restoring watersheds, and decreasing the risk of catastrophic fire in old-growth forests. Also identified is a long-term action to treat approximately 50,000 ac (20,000 ha) of second-growth forests within the parks to accelerate the development of marbled murrelet nesting habitat.

We conclude that the features essential to the marbled murrelet contained within the RNSP do not require special management considerations or protection because existing laws and regulations are adequate. Therefore, these areas do not meet the definition of critical habitat. Consequently, no areas within RNSP are included in this proposal.

Quinalt Indian Reservation North Boundary Area, Washington

We have determined that the features essential to the marbled murrelet contained within the Quinalt Indian Reservation North Boundary Area (NBA) do not require special management or protection. Therefore the NBA is not included in this proposal. In September 2004, the Secretary of the Interior and the President of the Quinalt Indian Nation signed an agreement to preserve 4,207 ac (1,683 ha) of sensitive forest habitat on the Quinalt Indian Reservation in Washington State. This agreement settled a lawsuit brought by the Tribe after the Service issued a 1998 jeopardy biological opinion for the marbled murrelet on the Quinalt's 1995 comprehensive timber management plan. Through implementation of the

agreement, the Department is purchasing perpetual conservation easements on the late-successional forests identified in the reasonable and prudent alternative of the biological opinion.

In 2006, we completed conservation easements with the Bureau of Indian Affairs and the Quinalt Indian Nation for 2,925 ac (1,170 ha) of forested land in the North Boundary Area (NBA). The NBA has been surveyed and is known to be occupied by marbled murrelets (as determined by surveys under the Pacific Seabird Group protocol). When the conservation easements are implemented, they will apply to 4,262 ac (1,705 ha) (2,980 ac (1,192 ha) of old-growth and 1,282 ac (513 ha) of second-growth). The conservation easements convey all future development rights to us in perpetuity, except for harvesting of minor forest products (such as brush and mushrooms), hunting, fishing, trapping, camping, and use of trees as guidelines or tailholds for harvest in adjacent areas.

The purpose of the conservation easements is to preserve, protect, restore, enhance, maintain, and promote the functional value of existing and potential future late-successional forest and its use as habitat for the marbled murrelet and other species dependent on late-successional forest habitat. Generally, the following are prohibited unless determined by us to be consistent with the purposes of the easement: Thinning or timber harvest; salvage of dead or down trees; construction of new roads; modification of existing roads; storing, dumping, or other disposal of toxic or hazardous materials; conversion of native vegetation to exotic species; introduction of nonnative animal species; grazing of livestock; construction or placement of buildings or other structures; application of biocides, herbicides, or other chemicals; changing the topography; human-caused fires; granting of additional easements or rights-of-way; subdivision; or transference of appurtenant water rights.

The Service administers the easements and provides the reasonable assurances that the agreement will be implemented. The old-growth forests will be retained and the second-growth forests will be managed to enhance and promote late-successional forest characteristics. Barring unforeseen circumstances, such as wildfire, the conservation effort of the easements should be effective in providing and conserving marbled murrelet habitat and PCEs.

We have determined that: (1) The plan provides a conservation benefit to the marbled murrelet; (2) sufficient

assurances are in place such that the conservation measures will be implemented; and (3) sufficient assurances are in place that the conservation effort will be effective and provide a conservation benefit to the PCEs and the marbled murrelet. Consequently, we believe that the features essential to the marbled murrelet in the Quinault Indian Reservation North Boundary Area do not require special management or protection and, therefore, do not meet the definition of critical habitat.

Headwaters Forest Reserve (Bureau of Land Management), California

We have determined that the features essential to the marbled murrelet contained within the Headwaters Forest Reserve (Reserve) (7,494 ac (2,998 ha)) managed by the Bureau of Land Management do not require special management or protection. Therefore, the Reserve is not included in this proposal. The Headwaters Forest was acquired by the Secretary of the Interior and the State of California on March 1, 1999, to preserve the old-growth redwood forest. In 2003, a joint (Federal and State) management plan (plan) was developed to assure that human activities are compatible with the ecological integrity and preservation of the Reserve's lands, fish, wildlife, and forest. The Bureau of Land Management has provided \$1.2 to \$1.3 million per year for management of the Reserve since its inception.

The plan includes species' specific goals and management direction for the marbled murrelet. The plan's desired outcome for management of the marbled murrelet is to preserve existing nesting habitat and expand nesting habitat to the entire Reserve. Both short-term and long-term goals for management of the Reserve are established to achieve this outcome. Conservation efforts identified for the Reserve include: Maintaining and protecting all suitable nesting habitat; increasing marbled murrelet reproduction and survivorship; increasing stand size of late-successional and old-growth forest; regrowing late-successional and old-growth forest over the largest amount of the reserve practicable; implementing road closures and decommissioning actions on the maximum acreage to decrease forest fragmentation; minimizing actions that may cause auditory or visual disturbances to marbled murrelets; and minimizing the availability of human food waste, which may serve as a source of food for marbled murrelet nest predators. The plan identifies monitoring requirements to guide plan implementation.

Achieving the plan's long-term goals will nearly double the amount of marbled murrelet nesting habitat in the Reserve.

We have determined that: (1) The plan provides a conservation benefit to the marbled murrelet; (2) sufficient assurances are in place such that the conservation measures will be implemented; and (3) sufficient assurances are in place that the conservation effort will be effective and provide a conservation benefit to the PCEs and the marbled murrelet. Consequently, we believe that the features essential to the marbled murrelet in the Reserve do not require special management or protection and, therefore, do not meet the definition of critical habitat.

Relationship of Critical Habitat to Section 4(a)(3) of the Act—Approved Integrated Natural Resource Management Plans

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16

U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the proposed critical habitat designation for the marbled murrelet were analyzed for exemption under the authority of 4(a)(3) of the Act.

Naval Radio Station Jim Creek, Washington

An INRMP was developed for the Naval Radio Station Jim Creek, Washington, that provides guidance for natural resource management specific to marbled murrelet designated critical habitat (1996 designation) for the period 2002–2007. This INRMP provides a conservation benefit to the marbled murrelet and its PCEs because the broad guiding principles are to preserve the old growth forest, to protect and preserve occupied and unoccupied habitat, to enhance old growth, and to enhance adjacent second growth to encourage late-successional stage forest structure. The INRMP also avoids siting recreational facilities within the old growth forest and limits recreation and military usage in marbled murrelet habitat. This INRMP has been in place since 1993, and has consistently achieved protection of marbled murrelet habitat; therefore, the INRMP provides assurances that the plan will be implemented. The quantifiable parameters and monitoring included in the INRMP provide assurances that the conservation effort for marbled murrelets will be effective. Every 5 years, the INRMP is reviewed and revised as appropriate to maintain resource protection and assure application of best management practices. The Navy fully anticipates that any and all renewals and reviews of the INRMP will include preservation of the old growth forest and continuation of forest practices that will enhance the adjacent old growth.

Based on the above considerations, and consistent with the direction provided in section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the Naval Radio Station Jim Creek INRMP will provide benefits to the marbled murrelet and the features essential to its conservation. Therefore, Naval Radio Station Jim Creek is exempt from inclusion in this revised designation of critical habitat for the marbled murrelet under section 4(a)(3) of the Act.

Exclusions Under Section 4(b)(2) of the Act

There are multiple ways to provide management for species' habitat. Statutory and regulatory frameworks that exist at a local level can provide protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. State, local, or private management plans and management under Federal agency jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factors to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the

benefits of inclusion. If an exclusion is contemplated, we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we are considering. In addition, the Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors that will be available for public review and comment. Based on public comment on that document, the proposed revised designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 424.19. Under 50 CFR 424.19, we must propose an area as critical habitat prior to making an exclusion of that area under section 4(b)(2) of the Act from the final critical habitat designation to receive public comment. We have therefore included these units, or portions thereof, in the regulation portion of this proposed critical habitat rule.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that areas containing physical and biological features essential to the conservation of the species, or unoccupied areas essential to the conservation of the species, are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are

likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*), the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. In that decision, the Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the

standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the marbled murrelet. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect, benefit: designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are proposing for this final designation of critical habitat. We believe that the informational benefits are already provided even though these areas would not be designated as critical habitat. Informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for the marbled murrelet is already well established among State and local governments and Federal agencies, as a result of the 1996 critical habitat final rule (61 FR 26256).

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned, and at least 80 percent of endangered and threatened species occur either partially or solely on private lands (Crouse et al. 2002, p. 720). Stein et al. (1995, p.3) found that only about 12 percent of listed species were found almost exclusively on Federal lands (i.e., 90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the

voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1, 407; Crouse et al. 2002, p. 720; James 2002, p. 270). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as HCPs, Safe Harbors, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-shares. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is some evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove et al. 1996, pp. 2, 5; Bean 2002, p. 409, 412, 414–415, 419–420; Conner and Mathews 2002, p. 2; James 2002, p. 270; Koch 2002, p. 508–510). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main et al. 1999, pp. 1263–1265).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main et al. 1999, p. 1263–1265; Bean 2002, p. 409, 412, 414–415, 419–420). The magnitude of this negative outcome

is greatly amplified in situations where active management measures (e.g., reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002, p. 414, 419–420).

We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (e.g., axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species), and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the Memorandum of Agreement exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

On Lanai, simply preventing “harmful activities” will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service’s ability to further the recovery of these endangered plants.

Conservation agreements with non-Federal landowners (e.g., HCPs, contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available

through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854).

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners,

which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it may have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP application itself is subject to consultation. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

We specifically solicit comment on the inclusion or exclusion of the areas discussed below. We recognize that other conservation efforts are underway that may allow us to exclude some additional areas. If information becomes available during the public comment period on management plans or strategies that would provide benefit to the species, we will analyze the information and make a determination on the appropriateness of an exclusion in our final designation.

Makah Indian Reservation, Washington

The longstanding and distinctive relationship between Federal and Tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal governments from the other entities that deal with, or are affected by, the Federal government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

We identified Tribal lands within proposed revised critical habitat where there was a Tribal management or conservation plan, or the commitment to establish such a plan, that provided benefits to marbled murrelets and

considered whether or not to exclude these lands from critical habitat.

The Makah Indian Nation and the Bureau of Indian Affairs (BIA) developed a forest management plan (FMP) for the entire 30,104-ac Makah Indian Reservation. The FMP covers all forestland under Tribal and BIA timber management, including individual Indian-owned trust land (about 2,000 ac; 800 ha) and tribally owned land (about 25,587 ac; 10,343 ha).

The FMP is a 10-year plan covering the period from August 1999 to July 2009. The FMP is implemented by the Makah Department of Natural Resources and the BIA. Although some adverse effects to marbled murrelets and marbled murrelet habitat are expected, the FMP largely defers timber harvest in known occupied marbled murrelet breeding sites near Cape Flattery, Anderson Point, and the Waatch River Valley.

The Makah Indian Nation has further demonstrated commitment to the protection of known occupied marbled murrelet nesting habitat and the future restoration of marbled murrelet breeding habitat through collaborative efforts to establish 200-year Tribal land use agreements (in 2002 and 2006) to protect the functional values of occupied marbled murrelet breeding habitat, to regenerate breeding habitat, and to promote the conservation and restoration of marbled murrelet populations affected by the July 22, 1991, Tenyo Maru Oil Spill off the Washington coast. These land use agreements collectively cover about 566 ac (226 ha) in the Anderson Point and Waatch River Valley.

The Makah Indian Nation has cooperated with us to implement proactive conservation measures. They have cooperated with Federal and State agencies and private organizations to implement voluntary conservation activities on their lands that have resulted in tangible conservation benefits.

We believe that excluding these Tribal lands from critical habitat will help maintain and improve our partnership relationship by recognizing their positive contribution to marbled murrelet conservation. This exclusion would also reduce the cost and logistical burden of regulatory oversight. We believe this recognition would provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, especially where there is no regulatory requirement to implement such actions.

We will continue to consult with Tribes during the proposal period to

evaluate whether other Tribal lands should be considered for exclusion in the final designation.

Washington Department of Natural Resources Habitat Conservation Plan

In September 1997, the Washington Department of Natural Resources (WDNR) completed a multi-species, long-term HCP. The HCP covered approximately 1.6 million ac (0.6 million ha) of State trust forest lands managed by WDNR within the range of the northern spotted owl (*Strix occidentalis*), and excludes urban, commercial, industrial, agricultural, or residential lands. These lands range from isolated parcels less than 40 ac (16 ha) in size to large, contiguous blocks of land greater than 100,000 ac (40,000 ha) in size. The plan addressed the conservation of nine listed species, including the marbled murrelet.

The WDNR's HCP provides mitigation for the incidental take of the marbled murrelet (and other listed and unlisted species). Although a Final Conservation Strategy for marbled murrelets is incomplete, an Interim Conservation Strategy was developed to protect marbled murrelets on WDNR-managed trust lands until the final long-term strategy is developed. The Final Conservation Strategy is planned to cover WDNR-managed lands in all six of the planning units known to be inhabited by marbled murrelets (Columbia, South Coast, Straits, Olympic Experimental State Forest (OESF), North Puget, and South Puget).

The 1997 Interim Conservation Strategy involved several steps. First, the WDNR identified and deferred harvest to any part of a block of suitable marbled murrelet habitat until surveys could be completed in these areas. Second, within each west-side planning unit and the Olympic Experimental State Forest (OESF) planning unit, WDNR conducted 2-year habitat relationship studies to determine the relative marbled murrelet occupancy of various forest types within each planning unit. Third, after the habitat relationship studies were completed in each planning unit, WDNR identified the marginal habitat types that would be expected to contain a maximum of 5 percent of marbled murrelet occupied sites on WDNR-managed lands, and 50 percent of this area was made available for harvest, except in the Columbia and South Coast Planning Units where all suitable marbled murrelet habitat was protected. Therefore, not fully 50 percent of these marginal habitat types were released. However, all known occupied sites in each of the six planning units were protected, and any

additional occupied sites that were found during the Interim Conservation Strategy were also protected. Fourth, all the remaining acreage (95 percent) of higher-quality habitat was included in an inventory survey using survey protocols approved by the Service to locate sites occupied by marbled murrelets.

While these Interim Conservation Strategy steps were being implemented, WDNR participated in cooperative regional research efforts. These research projects included: (1) Participation in studies describing the nest site characteristics and habitat preferences of the marbled murrelet; (2) marine surveys to document distribution and population size; (3) examination of factors affecting nest success; and (4) development of demographic models that incorporated effects on the population from differences in the amount of habitat quality (structural complexity) provided, degree of landscape contiguity and edge, and total amount of habitat present over time.

The information collected during these studies and other research efforts is being used to develop the Final Conservation Strategy for marbled murrelet habitat on WDNR-managed HCP lands within each of the six planning units. Four of these watershed plans (Columbia, South Coast, OESF, and Straits) are currently in draft form and due to be completed within the next 2 years. The WDNR will operate under the Interim Conservation Strategy in the remaining two planning units (North Puget and South Puget) until the long-term strategy for them is complete as well.

The WDNR, National Marine Fisheries Service, and Service signed an Implementation Agreement (IA) for the 1997 WDNR HCP (WDNR et al. 1996, App. 4). The WDNR has a 70-year incidental take permit with options to extend to year 100. Marbled murrelet conservation is part of the commitment. The Service has assurances that the WDNR will implement the HCP as described in its 1997 document, based on the IA. If the WDNR does not implement the HCP as specified, the Service can suspend or revoke the permit (WDNR et al. 1996, p. A4–14).

Annual reports and monitoring are a requirement of the HCP (WDNR 1997, p. V. 9). Those reports, combined with continual contact between the Service's HCP Implementation personnel and the WDNR HCP Implementation personnel, and the WDNR's substantial monetary commitment to HCP implementation to date, provide a large degree of certainty that the WDNR is working toward and

dedicated to realizing the goals of the HCP.

According to the HCP, Natural Resource Conservation Areas (NRCAs) and Natural Area Preserves (NAPs) managed by WDNR are not subject to the HCP but WDNR is given credit for the habitat contributions provided by these lands in terms of meeting the conservation objectives of the HCP. Whether these lands continue to provide such contributions to the conservation objectives, and the remedy if they do not, will be discussed at each of the scheduled HCP comprehensive reviews. WDNR's management of the Natural Area Preserves and Natural Resource Conservation Areas is not expected to increase the level of take for any species covered by the incidental take permit. WDNR's management of these lands will maintain the conservation objectives described in the HCP. Consequently, we are proposing to exclude from the final designation of critical habitat the NRCAs and NAPs as well as lands subject to the HCP under 4(b)(2) of the Act.

We believe that a critical habitat designation for the marbled murrelet on HCP lands would provide a relatively low level of additional regulatory conservation benefit to the species and its PCEs beyond what is already provided by the HCP. Any minimal conservation benefits that would be afforded from consulting on critical habitat is outweighed by the benefits of avoiding the additional costs (staff time and money) of designating and consulting on critical habitat. These costs, while not significant, are avoidable, create very little additional benefits to the species, and could be better used to effectuate conservation measures on the ground. We thereby propose to exclude these HCP lands from the final critical habitat designation under section 4(b)(2) of the Act.

Willapa National Wildlife Refuge and The Nature Conservancy Ellsworth Creek Reserve, Washington

Approximately 354 ac (142 ha) of marbled murrelet habitat on the Willapa National Wildlife Refuge are designated Research Natural Area (Cedar Grove RNA 274 ac and Diamond Point RNA; 80 ac (32 ha)). Another 73 ac (29 ha) of late-successional forest is located in the Teal Slough portion of the Refuge.

Activities on Research Natural Areas (RNAs) are limited to research, study, observation, monitoring, and educational activities that are non-destructive, non-manipulative, and maintain unmodified conditions (USFWS Refuge Manual 10.2). RNAs

must be reasonably protected from any influence that could alter or disrupt the characteristic phenomena for which the area was established (USFWS Refuge Manual 10.8). Generally, no permanent physical improvements such as roads, fences, or buildings are permitted within a RNA (USFWS Refuge Manual 10.8D).

The adjacent Ellsworth Creek Reserve of The Nature Conservancy is managed to protect and restore old-growth forest. The Nature Conservancy (TNC) is partnering with the Willapa National Wildlife Refuge (NWR) to develop a joint Forest Restoration and Management Plan for the Ellsworth Creek Reserve and all the forests on the NWR. TNC was awarded a Cooperative Conservation Challenge cost share grant in 2004 to develop the joint management plan. A draft is expected in September 2006. TNC has expressed interest in having its land covered by the joint management plan excluded from critical habitat designation based on the benefits of the management plan. We expect to conduct a section 7 consultation on the completed management plan.

We believe that a critical habitat designation for the marbled murrelet in areas within the Willapa National Wildlife Refuge and the adjacent Ellsworth Creek Reserve of The Nature Conservancy would provide a relatively low level of additional regulatory conservation benefit to the species and its PCEs beyond what is already provided by existing section 7 consultation requirements due to the physical presence of the species. Any minimal conservation benefits that would be gained from consulting on critical habitat are outweighed by the benefits of avoiding the additional costs (staff time and money) of designating and consulting on critical habitat. These costs, while not significant, are avoidable, create very little additional benefits to the species, and could be better used to effectuate conservation measures on the ground. We therefore propose to exclude Willapa National Wildlife Refuge and the adjacent Ellsworth Creek Reserve of The Nature Conservancy covered by the joint forest management plan from the final critical habitat designation under section 4(b)(2) of the Act.

Late-successional forests in the nearby Teal Slough NRCA and the Ellsworth Creek NRCA are managed by the Washington Department of Natural Resources (WDNR). We are proposing to exclude these forests and other NRCAs and NAPs under WDNR management from the final designation of critical habitat for the marbled murrelet under

section 4(b)(2) of the Act as part of the WDNR HCP exclusion.

Elliott State Forest Habitat Conservation Plan

Public scoping for the Elliott State Forest HCP began in February 2005, and the Oregon Department of Forestry released a draft version of the HCP in August 2005. A second draft of the HCP was released in June 2006. The HCP covers 93,282 ac (37,313 ha) of State land in Coos and Douglas Counties, Oregon. We continue to work with the State on development of the HCP. The Oregon State Land Board and Board of Forestry have committed to developing a multi-species HCP for the Elliott State Forest that would include the marbled murrelet.

The Elliott State Forest HCP would provide mitigation for the incidental take of the marbled murrelet. We received a letter, dated August 4, 2006, from the Oregon Department of State Lands and the Oregon Department of Forestry. This letter documented motions passed directing appropriate State agencies to move forward with the development of this HCP, which is based on the draft Elliott State Forest Management Plan. The June 2006 draft HCP describes the maintenance of 22,225 ac (8,890 ha) in conservation areas with little or no active management, including 34 areas (9,236 ac; 3,694 ha) established for marbled murrelets. These areas contain 3,269 ac (1,307 ha) of mapped murrelet habitat and range in size from 54 to 2,016 ac (22 to 806 ha) with a median of 149 ac (60 ha). They encompass 66 of the 78 murrelet occupied sites known as of 2004. Habitat may be removed from the remaining 12 sites and any sites located after 2004. An additional 2,543 ac (1,017 ha) of habitat are protected in other conservation areas. Requirements to provide advanced structure in each management basin may also provide additional support for core areas. The State will periodically survey core areas for occupancy, as well as the development of murrelet habitat.

The draft HCP proposes that, in the long term (50 years of the permit), a maximum of 5,000 ac (200 ha) outside of conservation areas would be subject to clearcut harvest activities. A maximum of 1,000 ac (400 ha) would be harvested per decade with no more than 250 ac (100 ha) in any 1 year.

We believe that a critical habitat designation for the marbled murrelet on HCP lands would provide a relatively low level of additional regulatory conservation benefit to the species and its PCEs. Any minimal conservation benefits that would be gained from

consulting on critical habitat would be outweighed by the benefits of avoiding the additional costs (staff time and money) of designating and consulting on critical habitat. These additional costs, while not significant, are avoidable, create few additional benefits to the species, and could be better used to implement conservation measures on the ground. We therefore propose to exclude these HCP lands from the final designation of critical habitat for the marbled murrelet under section 4(b)(2) of the Act.

We are also working in partnership with the State Land Board and the Board of Forestry to explore developing a conservation agreement or management plan that will provide for conservation of marbled murrelets on the Tillamook State Forest. If these efforts are successful, we will analyze that information and make a determination of the appropriateness of excluding the Tillamook State Forest from our final designation.

Pacific Lumber Company Habitat Conservation Plan, California

The Sustained Yield Plan and Habitat Conservation Plan for the Properties of the Pacific Lumber Company (Palco), Scotia Pacific Company, LLC, and Salmon Creek Corporation (Palco SYP/HCP) dated February 1999, encompasses approximately 211,700 ac (84,680 ha) of privately owned Palco lands and up to 25,000 ac (10,000 ha) of additional lands adjacent to the main contiguous portion of Palco's ownership that may be acquired by Palco over the 50-year term of the incidental take permit. The biological opinion for the Palco SYP/HCP was completed on February 24, 1999, and analyzes effects to 17 species: 6 listed species (including the marbled murrelet), 1 proposed species, and 10 unlisted species.

Palco lands are located in southern Humboldt County, California, primarily in watersheds of the Elk, Van Duzen, Eel, Bear, Salt, and Mattole Rivers. Palco lands are located in the southern portion of Marbled Murrelet Conservation Zone 4 as described in the Marbled Murrelet Final Recovery Plan (USDI 1997, pp. 127–128).

Under the HCP, conservation programs were developed for aquatic species, marbled murrelets, northern spotted owls, and other species, as well as for habitat diversity and structural components. An independent HCP monitor reviews the implementation and effectiveness of the conservation programs. In addition, a timber harvest plan checklist was developed to ensure and confirm that all relevant elements of

the conservation programs are contained in the timber harvest plans.

The marbled murrelet conservation plan consists of the establishment of 11 Marbled Murrelet Conservation Areas (MMCAs) covering 6,529 ac (2,612 ha) that remain in Palco's ownership. These areas are managed with the objective of maintaining the value of currently suitable marbled murrelet nesting habitat, recruiting suitable habitat in residual stands, and providing a buffer for and contiguity of suitable and recruitment nesting habitat in young-growth stands for the 50-year permit term. Palco or outside contractors monitor the effectiveness of the conservation strategies. Effectiveness monitoring for the marbled murrelet consists of documenting changes in marbled murrelet populations and habitat on Palco lands, and, to a lesser degree, changes in marbled murrelet populations on neighboring lands and waters. Palco provides an annual marbled murrelet effectiveness monitoring report (Pacific Lumber Company 1999, pp. P-18 through P-31).

We believe that a critical habitat designation for marbled murrelets on HCP lands would provide a relatively low level of additional regulatory conservation benefit to the species and its PCEs beyond what is already provided by the HCP. Any minimal conservation benefits that would be afforded from consulting on critical habitat is outweighed by the benefits of avoiding the additional costs (staff time and money) of designating and consulting on critical habitat. These costs, while not significant, are avoidable, create very little additional benefits to the species, and could be better used to effectuate conservation measures on the ground. We thereby propose to exclude these HCP lands from the final designation of critical habitat for the marbled murrelet under section 4(b)2 of the Act.

Northwest Forest Plan, U.S. Forest Service and Bureau of Land Management, Washington, Oregon and California

The Northwest Forest Plan (NWFP), adopted in April 1994, amended U.S. Forest Service and BLM land management plans in the range of the marbled murrelet relative to the management of habitat for late-successional and old-growth forest related species. The goal of the Northwest Forest Plan is to provide a substantial contribution towards protecting nesting habitat on Federal lands, especially habitat that is currently occupied by marbled murrelets, and represents the backbone

of the Recovery Plan strategy (USDI 1997, p.119). The general approach involved protecting occupied marbled murrelet sites by both protecting and developing late-successional and old growth forest by prescribing management action through Standards and Guidelines for seven land use allocations. Allocations include Congressionally Reserved Areas, Late-Successional Reserves (LSRs), Adaptive Management Areas, Managed Late-Successional Areas, Administratively Withdrawn Areas, Riparian Reserves, and Matrix lands.

To provide guidance for management of Federal habitat for the marbled murrelet, the Forest Ecosystem Management Assessment Team (FEMAT) Marbled Murrelet Working Group developed three general goals: Stabilize or improve nesting habitat through protection of all occupied sites (both current and future); develop future habitat in large blocks; and improve distribution of habitat, thereby improving distribution of marbled murrelet populations (USFWS 1994 NWFP Biological Opinion (p. 25) In addition, the Recovery Plan (USDI 1997, p. 131) identified essential nesting habitats that occur on Northwest Forest Plan lands managed by the Federal government, including any suitable habitat in LSRs located in the FEMAT Zone 1 and any suitable habitat in LSRs in FEMAT Zone 2 in Washington.

Congressionally Reserved Areas and Late-Successional Reserves provide the bulk of the conservation benefits for marbled murrelets. Congressionally Reserved Area management is determined by other laws and designating statutes, such as the Wilderness Act, and is described separately.

The objective of the Standards and Guidelines for the LSR land use designation is to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species (Standards and Guidelines C-9). The Service used the Late-Successional Reserve system identified in the Northwest Forest Plan to the extent possible to provide large blocks of habitat. Marbled murrelet locations and habitat were considered in the development of these reserves. There are two primary types of LSRs that provide conservation benefits to marbled murrelets: (1) Large areas mapped as part of an interacting reserve system, and (2) occupied marbled murrelet sites.

Most LSRs are large mapped areas, shown on the Alternative 9 map and included in the Final Supplemental

Environmental Impact Statement for the Northwest Forest Plan. The LSRs also incorporate all areas designated as Late-Successional/Old Growth 1 and Late-Successional/Old Growth 2 (defined as the most ecologically significant, and ecologically significant late-successional and old growth forests, respectively, from the Scientific Panel on Late-Successional forest Ecosystems (1991)) within marbled murrelet Zone 1.

These LSRs are managed to protect and enhance old-growth forest conditions. As a general guideline, all non-silvicultural activities located inside LSRs that are neutral or beneficial to the creation and maintenance of late-successional habitat are allowed (USDA/USDI 1994b, p. 2-23). These restrictions reduce the likelihood of adverse effects to the PCEs. Non-silvicultural activities include mining, habitat improvement projects, range management, recreational uses, and removal of nonnative species (plant and animal). While there may be some effects from these activities, given their limited and localized nature, and management direction which avoids or reduces the negative impacts to the LSR objectives, and thus the PCEs, it is unlikely that these effects would occur on a large scale.

Activities in LSRs that may have an impact on marbled murrelet PCEs include road construction and maintenance, rights-of-way, contracted rights, easements, and special use permits. While there may be some effects from these activities, given their limited and localized nature, and the management direction which avoids or reduces the negative impacts to the LSR objectives, and thus the PCEs, it is unlikely that there would be large scale effects to the PCEs from these activities. This Standard and Guideline will help minimize habitat losses by providing management direction intended to protect habitat and enhance late-successional and old growth conditions.

Research may also have an impact in the LSRs. Research activities must be assessed to determine if they are consistent with LSR objectives. While there may be some effects from these activities, given their limited and localized nature, and the management direction which avoids or reduces the negative impacts to the LSR objectives, and thus the PCEs, it is unlikely that impacts would occur on a large scale. This Standard and Guideline will help minimize habitat losses through providing management direction intended to protect habitat and enhance late-successional and old growth conditions.

Fires have the potential to cause catastrophic habitat losses. Because habitat loss was identified as a threat to the continued survival of the marbled murrelet, any large-scale, stand-replacing fire can have a negative impact on the species. In LSRs, the goal of wildfire suppression is to limit the size of all fires with an emphasis on maintaining late-successional habitat. This Standard and Guideline will help minimize habitat losses through catastrophic fires by promoting appropriate fuels management techniques that are intended to protect and enhance late-successional and old growth conditions.

No programmed timber harvest is allowed inside the LSRs. However, thinning or other silvicultural treatments inside these reserves may occur in stands up to 80 years of age if the treatments are beneficial to the creation and maintenance of late-successional forest conditions.

Marbled murrelet sites that are outside of designated LSRs and are found to be occupied are subsequently protected as "unmapped" LSRs. Currently, pre-project surveys, following the interagency protocol developed by the Pacific Seabird Group (PSG), are required for all activities that occur in marbled murrelet habitat. If behavior indicating occupation is documented, all contiguous existing and recruitment habitat for marbled murrelets (*i.e.*, stands that are capable of becoming marbled murrelet habitat within 25 years) within a 0.5-mi (0.8 km) radius are protected. This requirement applies to all land allocations. Currently, timber harvest is prohibited within occupied marbled murrelet habitat, and silvicultural treatments in non-habitat within the 0.5-mi circle are required to protect or enhance the suitable or replacement habitat. Because occupied marbled murrelet sites are managed according to the Standards and Guidelines, with restrictions on timber harvest within the LSRs around all current and future occupied marbled murrelet sites, the area covered by the non-habitat allocation is constantly changing.

The implementation of the Northwest Forest Plan has substantially reduced the rate of habitat loss on Federal lands. Some loss of primary constituent elements may occur in areas where surveys do not detect occupancy, but use of the interagency survey protocol developed by the PSG to determine murrelet occupancy should help minimize losses. Improvement of nesting habitat will likely occur in the next few decades in some large LSRs as forest grows around currently isolated

individual nest trees (residual from previous stand replacement). Development of PCEs where no residual nest trees remain may require several decades or centuries.

Based on the Northwest Forest Plan's Standards and Guidelines, the PCEs within LSRs will persist, unless catastrophic events, such as wildfire, take place. Over time, with the continuation of this management regime, additional nesting habitat containing PCEs is likely to develop.

Several other land allocations and Standards and Guidelines may provide some protection for primary constituent elements within the remaining land allocations. These include the Adaptive Management Areas focused on development of late-successional forest, some Administratively Withdrawn Areas capable of producing late-successional forest, Riparian Reserves, 100-ac (40-ha) spotted owl core areas, and green tree retention areas within the matrix. All of these areas may contain and protect primary constituent elements at times, though the degree to which this occurs is not predictable. Some areas, such as Riparian Reserves, 100-ac (40 ha) spotted owl core areas, and green tree retention areas within the matrix (non-LSR allocation) are small or linear, and would not provide for interior habitat conditions or protection from predation.

The Northwest Forest Plan was implemented through the amendment of individual U.S. Forest Service and BLM land use plans in April 1994. The agencies monitored compliance with the complex Standards and Guidelines of the plan from 1996 through 2003, using a random selection and interagency groups. In general, compliance has generally averaged over 95 percent for all aspects of the projects. Most of the identified non-compliance project elements did not affect the primary constituent elements in LSRs (Huff *et al.* 2006, pp. 5, 7–9).

LSRs are managed to protect and enhance old-growth forest conditions. The Standards and Guidelines identify management actions with the objective of protecting and enhancing the characteristics of late-successional and old-growth forest ecosystems that serve as habitat for late-successional and old-growth related species. As a general guideline, all non-silvicultural activities located inside LSRs that are neutral or beneficial to the creation and maintenance of late-successional habitat are allowed.

We have a reasonable expectation that the Northwest Forest Plan will continue to be implemented, or if revised, that the revised plans will continue to

provide for the PCEs essential to the conservation of marbled murrelets. BLM is currently revising their land use plans for Western Oregon; the Purpose and Need for the land use plan revisions includes compliance with the provisions of the Endangered Species Act. Over the next several years, National Forests will be reviewing their current land management plans, including the amendments incorporated by the Northwest Forest Plan. The public process for plan amendments ensures that any changes from the current management will allow for adequate notice and comment.

It is possible to have management actions that are not included in the LSR Standards and Guidelines, and that would be equally beneficial to the marbled murrelet PCEs. Beneficial management actions are not reliant on, or restricted to, the LSR designation; any management action that supports and enhances the PCEs can be found to be beneficial to the marbled murrelet. Management activities that minimize habitat losses, are intended to protect habitat, or enhance late-successional and old growth conditions will be analyzed under the 4(b)(2) exclusion process.

We find that the LSRs, both mapped and unmapped (protected as a result of surveys determining occupancy), within the Northwest Forest Plan are managed to protect the PCEs. The protection of the marbled murrelet PCEs, and restrictions on habitat removal through—(1) continuing protection and conservation of large tracts of old and mature growth forest containing the PCEs; (2) limiting activities that may adversely affect the PCEs; and (3) requiring activities, with few exceptions, administered within the LSRs to be consistent with the Standards and Guidelines that guide specific management direction of these lands largely meets the conservation needs of the marbled murrelet.

We believe that a critical habitat designation for the marbled murrelet in areas within the Northwest Forest Plan would provide a relatively low level of additional regulatory conservation benefit to the species and its PCEs beyond what is already provided by existing section 7 consultation requirements due to the physical presence of the species. Any minimal conservation benefits that would be gained from consulting on critical habitat would be outweighed by the benefits of avoiding the additional costs (staff time and money) of designating and consulting on critical habitat. These costs, while not significant, are avoidable, create very little additional

benefits to the species, and could be better used to effectuate conservation measures on the ground. We therefore propose to exclude the Northwest Forest Plan areas described above from the final designation of critical habitat for the marbled murrelet under section 4(b)(2) of the Act.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if he determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In considering exclusions, we will assess whether the costs and other impacts predicted in the economic analysis may be avoided by excluding areas, as most areas are currently occupied by the listed species, and consultation under section 7 of the Act or for permits under section 10 (henceforth “consultation”) will be required for any take of the species. Other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the *New Mexico Cattle Growers Assn. v. U.S. Fish and Wildlife Service*, 248F.3d 1285 (10th Cir 2001) ruling, which directed us to consider all impacts, “regardless of whether those impacts are attributable co-extensively to other causes.” As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs.

Conversely, in the *Gifford Pinchot* case, the court ruled that the Service’s regulations defining “adverse modification” of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court’s direction may result in additional costs and benefits associated with the designation of critical habitat

(depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7 and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

Economic Analysis

We are preparing an analysis of the economic impacts of proposing revised critical habitat for the marbled murrelet. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at: <http://www.fws.gov/westwafwo/>, or by contacting the Western Washington Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and based on our implementation of the Office of Management and Budget’s Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent peer reviewers regarding the science in this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed revised designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period (see **DATES**). We will schedule public hearings on this proposal, if any

are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more, or to affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal

regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the internet website at: <http://www.fws.gov/westwafwo/> or by contacting the Western Washington Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a

significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed revised designation and reopen the public comment period for the proposed revised designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate revised critical habitat for the marbled murrelet is considered a significant regulatory action under Executive Order 12866 in that it may raise novel legal and policy issues. However, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the

Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. The areas being proposed as revised critical habitat are mostly lands owned by cities, counties, or States. Less than 10 percent are owned privately. None of these entities fits the definition "small governmental jurisdiction." As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in Washington, Oregon, and California. The revised designation of critical habitat in areas currently occupied by the marbled murrelet imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed revised critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the marbled murrelet.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have worked with the Quinault Indian Nation extensively in the past. In September 2004, an agreement was signed by the Secretary of Interior and the Nation preserving sensitive forest habitat on the Quinault Indian Reservation in Washington State. Because of this formal agreement, no further special management is needed for marbled murrelets, and this land is not included in proposed revised critical habitat under section 3(5)(A) of the Act. We have a strong relationship with the Makah Indian Nation; a cooperatively developed forest management plan for all Indian-owned trust land and tribally owned land addresses the needs of marbled murrelets. We believe that this existing management plan will be adequate for us to consider excluding these lands from the final designation of revised critical habitat under section 4(b)(2) of the Act.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Western Washington Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary authors of this package are the staff of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

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. In § 17.11(h), the List of Endangered and Threatened Wildlife, under BIRDS, in the entry for "Murrelet, marbled," remove the scientific name "*Brachyramphus marmoratus marmoratus*" and add in its place the scientific name "*Brachyramphus marmoratus*."

3. In § 17.95(b), revise the entry for "Marbled Murrelet (*Brachyramphus marmoratus marmoratus*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Marbled Murrelet (*Brachyramphus marmoratus*)

(1) Critical habitat units are depicted for the States of Washington, Oregon, and California on the maps below.

(2) The primary constituent elements of critical habitat for the marbled murrelet are the habitat components that provide:

(i) Forested stands containing large-sized trees, generally more than 32 inches (81 centimeters) in diameter with potential nesting platforms at sufficient height, generally greater than or equal to 33 feet (10 meters) in height, and

(ii) Surrounding forested areas within 0.5 mile (0.8 kilometer) of the stands described in paragraph (2)(i) of this entry with a canopy height of at least one-half the site-potential tree height.

(3) Critical habitat does not include manmade structures, such as buildings, aqueducts, airports, parking lots, roads, and other paved areas, or the land on which such structures are located, that exist on the effective date of this rule and do not contain one or more of the primary constituent elements.

(4) *Critical habitat map units.* The designated critical habitat units for marbled murrelet are set forth in the text

and depicted on the maps below. Critical habitat units were mapped using Universal Transverse Mercator (UTM) coordinates at a minimum of the 1:100,000 scale. We have used the Northwest Forest Plan (NWFP; USDA and USDI 1994b) Land Use Allocation (LUA) dataset as a reference point for the location information for Late-Successional Reserves. See the LUA Map Update Process Description and weblink for a detailed description of the map compilation process and datasets and maps available (<http://www.reo.gov/gis/projects/luu/index.htm>). In Washington, LSRs within 55 miles of the marine environment and identified in the NWFP (USDA and USDI 1994b), or identified after development of the NWFP, are excluded. In California, the following LSRs identified in the Northwest Forest Plan (1994) are proposed for exclusion: in Humboldt and Del Norte Counties, LSRs within 30 miles of the marine environment except for BLM's LSR RC-322 (King Range National Conservation Area) and BLM's RC-323 (Gilham Butte) that do not contain suitable habitat; and in Mendocino County, LSRs within 20 miles of the marine environment. In Oregon, LSRs within 35 miles of the marine environment and identified in the Northwest Forest Plan (1994) and LSRs designated since 1994 as a result of documented marbled murrelet occupancy are excluded. UTM coordinates are not provided for Late-successional Reserve Land Use Allocations (LAU) as described under the NWFP (USDA and USDI 1994b) that are included as critical habitat.

(5) *Northwest Washington Unit, Washington.* Clallam, Jefferson, Mason, and Grays Harbor counties. From USGS 1:24,000 scale quadrangles: Cape Flattery, Neah Bay, Makah Bay, Angeles Point, Disque, Joyce, Twin Rivers, West of Pysht, Pysht, Ellis Mountain, Elwha, Port Angeles, Morse Creek, Carlsborg, Sequim, Lake Crescent, Lake Sutherland, Snider Peak, Mount Muller, Lake Pleasant, Deadmans Hill, Dickey Lake, Gunderson Mountain, Allens Bay, Tyler Peak, Mount Zion, Uncas, Slide Peak, Maiden Peak, Indian Pass, Hunger Mountain, Reade Hill, Forks, La Push, Quillayute Prairie, Mount Deception, Mount Townsend, Mount Walker, Owl Mountain, Spruce Mountain, Anderson Creek, Winfield Creek, Hoh Head, The Brothers, Mount Jupiter, Brinnon, Kalaloch Ridge, Christmas Creek, Kloochman Rock, Stequaleho Creek, Holly, Mount Hoquiam, Mount Olson, Mount Skokomish, Mount Washington, Eldon, Finley Creek, Salmon River West, Salmon River East, Matheny

Ridge, Queets, Lake Quinault East, Wynoochee Lake, Mount Tebo, Hoodspout, Colonel Bob, Lightning Peak, Lake Quinault West, Grisdale, Dry Bed Lakes, Stevens Creek, Burnt Hill, Larsen Creek, Vance Creek, and Moclips.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 409574, 5232033; 409575, 5232019; 409593, 5232057; 409676, 5232006; 409712, 5231965; 409768, 5231939; 409828, 5231926; 409866, 5231833; 409930, 5231751; 409918, 5231702; 409946, 5231653; 409997, 5231640; 410118, 5231640; 410165, 5231635; 410224, 5231630; 410360, 5231555; 410377, 5231577; 410381, 5231581; 410432, 5231620; 410491, 5231558; 410517, 5231494; 410560, 5231453; 411178, 5231432; 411177, 5231316; 411193, 5231314; 411221, 5231295; 411253, 5231295; 411237, 5231326; 411246, 5231354; 411273, 5231343; 411291, 5231366; 411248, 5231391; 411255, 5231401; 411312, 5231412; 411357, 5231423; 411388, 5231418; 411411, 5231408; 411400, 5231351; 411373, 5231298; 411348, 5231201; 411314, 5231156; 411342, 5231107; 411402, 5231098; 411454, 5231160; 411446, 5231210; 411435, 5231270; 411423, 5231295; 411429, 5231332; 411423, 5231368; 411421, 5231391; 411436, 5231401; 411426, 5231416; 411393, 5231430; 411379, 5231432; 411378, 5231432; 411375, 5231433; 411375, 5231462; 411178, 5231465; 411175, 5231555; 411198, 5231630; 411317, 5231656; 411453, 5231694; 411569, 5231772; 411805, 5231859; 411928, 5231872; 411989, 5231872; 412073, 5231849; 412144, 5231885; 412344, 5231872; 412425, 5231823; 412525, 5231736; 412628, 5231681; 412716, 5231620; 412772, 5231427; 412800, 5231427; 412801, 5231183; 413011, 5231186; 413056, 5230998; 412801, 5230802; 412802, 5230674; 412942, 5230724; 413313, 5230760; 413441, 5230934; 413615, 5230952; 413720, 5230806; 413899, 5230673; 413921, 5230518; 413963, 5230389; 413981, 5230380; 413972, 5230170; 413802, 5230174; 413542, 5230197; 413505, 5230248; 413413, 5230225; 413340, 5230206; 413235, 5230193; 413162, 5230069; 413162, 5229918; 413239, 5229826; 413303, 5229785; 413326, 5229730; 413491, 5229726; 413542, 5229666; 413546, 5229524; 413445, 5229474; 413345, 5229474; 413180, 5229556; 412979, 5229552; 412928, 5229428; 413038, 5229195; 412933, 5228993; 412770, 5229025; 412770, 5228996; 411555, 5229025; 411567, 5229425; 412070, 5229415; 411566, 5229426; 411553,

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(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 421294, 5271487; 421291, 5271272; 421275, 5269852; 421274, 5269663; 421272, 5269267; 421272, 5269266; 421272, 5269266; 421262, 5268054; 421232, 5266644; 421232, 5266446; 421234, 5265220; 421232, 5265025; 420152, 5265030; 420154, 5265021; 420155, 5265019; 420156, 5265016; 420153, 5265021; 420151, 5265025; 420135, 5265021; 420111, 5265015; 420111, 5265015; 419818, 5265019; 419622, 5265023; 419537, 5265024; 419537, 5265024; 418406, 5265040; 418406, 5265040; 418406, 5265040; 418005, 5265046; 417190, 5265058; 417190, 5265058; 416950, 5265062; 416354, 5265088; 415989, 5265076; 415843, 5265078; 414767, 5265094; 413797, 5265108; 413383, 5265115; 413135, 5265122; 413122, 5265126; 412534, 5265127; 412534, 5265127; 411961, 5265136; 411582, 5265141; 411603, 5265953; 411604, 5266733; 411604, 5266733; 413173, 5266753; 413174, 5266753; 413174, 5266753; 413173, 5266743; 413173, 5266743; 413174, 5266753; 413174, 5266753; 413174, 5266753; 413171, 5268351; 413171, 5268352; 413171, 5268352; 413186, 5268714; 414804, 5268706; 414804, 5268713; 414805, 5268713; 414809, 5269114; 416431, 5269098; 416432, 5269098; 417603, 5269091; 417603, 5269098; 417604, 5269098; 417625, 5269885; 417635, 5270277; 418031, 5270272; 418037, 5270272; 418037, 5270279; 418037, 5270279; 418046, 5271484; 419646, 5271483; 419646, 5271490; 419646, 5271490; 419656, 5271905; 420034, 5271911; 420034, 5271918; 420035, 5271918; 420044, 5272297; 421296, 5272300; 421297, 5272300; 421296, 5271904; 421294, 5271487; 421294, 5271487;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 404068, 5290682; 404054, 5289876; 403659, 5289888; 403672, 5290685; 404068, 5290682;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 416788, 5295716; 416252,

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(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 411316, 5290908; 411316, 5290907; 411316, 5290904; 411316, 5290904; 411316, 5290907; 411316, 5290908; 411316, 5290908; 411308, 5291737; 411339, 5292511; 411339, 5292511; 411339, 5292512; 411355, 5293319; 411374, 5293898; 411375, 5293936; 411375, 5293936; 411383, 5294126; 411383, 5294126; 411383, 5294126; 411383, 5294126; 412614, 5294120; 412917, 5294119; 412917, 5294119; 412927, 5294119; 413044, 5294117; 413044, 5294117; 413044, 5294117; 414017, 5294116; 414536, 5294115; 414536, 5294115; 414617, 5294118; 416145, 5294104; 416145, 5294104; 416195, 5294107; 416229, 5294109; 416229, 5294109; 416439, 5294109; 416631, 5294109; 416631, 5294109; 417021, 5294106; 417021, 5294106; 417496, 5294107; 417797, 5294108; 417841, 5294109; 417894, 5294110; 418620, 5294092; 418620, 5294092; 418620, 5294092; 418620, 5294092; 418651, 5294877; 419517, 5294861; 419517, 5294861; 420078, 5294856; 420092, 5294855; 421072, 5294821; 421072, 5294821; 421072, 5294821; 422637, 5294811; 422637, 5294811; 422638, 5294811; 424226, 5294791; 424226, 5294791; 424226, 5294791; 424226, 5294791; 425849, 5294772; 425849, 5294772; 425849, 5294772; 425993, 5294771; 425993, 5294771; 425993, 5294771; 425993, 5294771; 426097, 5294762; 426276, 5294762; 426558, 5294762; 426558, 5294762; 426556, 5294767; 427457, 5294762; 427457, 5294762; 427468, 5295553; 427465, 5295561; 425860, 5295603; 425860, 5295603; 425144, 5295603; 424905, 5295603; 424905, 5295603; 424233, 5295602; 424233, 5295602; 423940, 5295612; 423938, 5295612; 423490, 5295628; 423459, 5295629; 423459, 5295629; 422700, 5295690; 422696, 5296073; 422696, 5296073; 422696, 5296073; 422696, 5296073; 422696, 5296187; 422696, 5296188; 422690, 5296456; 422690, 5296456; 422690, 5296456; 422689, 5296531; 422848, 5296516; 422959, 5296506; 422960, 5296506; 423053, 5296497; 423054, 5296497; 423754, 5296434; 423759, 5296433; 424240, 5296390; 424241, 5296390; 425042, 5296381; 425865, 5296371; 425866, 5296371; 427484, 5296357; 427467, 5295562; 427477, 5295553; 429068, 5295545; 429064, 5293930; 429064, 5293923; 428963,

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 5299621; 419538, 5299586; 419536,
 5298913; 419537, 5298913; 421142,
 5298860; 421143, 5298860; 421900,
 5298840; 422706, 5298825; 422694,
 5298090; 422694, 5298024; 422689,
 5297260; 421039, 5297313; 421039,
 5297313; 420415, 5297302; 419519,
 5297285; 419519, 5297285; 419518,
 5297285; 418763, 5297306; 417888,
 5297330; 417888, 5297330; 417888,
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 5297299; 416278, 5297299; 416278,
 5297299; 415745, 5297304; 415466,
 5297307; 415466, 5297307; 415461,
 5296909;

(ix) Land bounded by the following
 UTM Zone 10, NAD83 coordinates
 (E,N): 401944, 5302733; 401956,
 5302334; 401124, 5302358; 401124,
 5302358; 401127, 5302754; 401944,
 5302733;

(x) Land bounded by the following
 UTM Zone 10, NAD83 coordinates
 (E,N): 384498, 5306295; 384507,
 5305897; 384507, 5305897; 384507,
 5305897; 384903, 5305901; 385299,
 5305906; 385298, 5305510; 384896,
 5305505; 384496, 5305495; 384486,
 5305093; 384498, 5304705; 384498,
 5304705; 384892, 5304702; 384888,
 5305109; 385698, 5305126; 385706,
 5305136; 385722, 5305919; 386126,
 5305931; 386126, 5305931; 386125,
 5305942; 386132, 5305938; 386531,
 5305795; 386516, 5305140; 386127,
 5305144; 386127, 5305144; 385715,
 5305127; 385706, 5305121; 385694,
 5304320; 384896, 5304306; 384896,
 5304306; 384510, 5304300; 384510,

5312320; 406928, 5312313; 406939, 5313462; 406939, 5313470; 407012, 5313473; 408203, 5313466; 408487, 5313464;

(xiv) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 378120, 5312543; 378941, 5312515; 379761, 5312487; 379716, 5313256; 379669, 5314044; 378997, 5314082; 378874, 5314089; 378908, 5313292; 378095, 5313328; 378120, 5312543; 378120, 5312543; 377716, 5312561; 377694, 5312562; 377694, 5312561; 377311, 5312579; 377287, 5313334; 376880, 5313337; 376854, 5314146; 376854, 5314146; 376854, 5314147; 376854, 5314146; 377262, 5314139; 377382, 5314139; 377397, 5314501; 378202, 5314468; 378210, 5314889; 378210, 5314889; 379437, 5314840; 379440, 5315231; 379846, 5315226; 379846, 5315226; 380235, 5315220; 380251, 5315610; 379863, 5315620; 379863, 5315620; 379863, 5315620; 379879, 5316458; 379050, 5316466; 379034, 5315647; 379034, 5315646; 378637, 5315659; 378637, 5315660; 378661, 5317275; 378661, 5317275; 378661, 5317276; 379059, 5317284; 379059, 5317284; 379895, 5317300; 379887, 5316879; 379887, 5316879; 380293, 5316871; 380295, 5316447; 381065, 5316423; 381040, 5316010; 380644, 5316015; 380639, 5315601; 380639, 5315600; 380611, 5315214; 381017, 5315200; 381009, 5314801; 381407, 5314806; 381418, 5315580; 381418, 5315580; 381418, 5315581; 382237, 5315582; 383025, 5315571; 383026, 5315538; 383001, 5314760; 382990, 5313968; 382990, 5313968; 382990, 5313967; 382990, 5313967; 382970, 5313157; 382970, 5313157; 382960, 5312756; 382645, 5312762; 382445, 5313140; 382216, 5312770; 381689, 5312779; 381686, 5313176; 381694, 5313178; 381273, 5313182; 381273, 5312788; 381273, 5312393; 381273, 5312393; 381273, 5312392; 381273, 5312392; 381692, 5312383; 381704, 5311588; 381299, 5311599; 381298, 5311599; 381286, 5311996; 380899, 5312017; 380902, 5311618; 380506, 5311637; 380116, 5311655; 380104, 5311251; 379707, 5311268; 379689, 5310862; 379689, 5310862; 378883, 5310932; 378076, 5311002; 378076, 5311013; 378076, 5311013; 378076, 5311014; 378086, 5311394; 378098, 5311757; 378098, 5311757; 378098, 5311772; 378098, 5311772; 378120, 5312542; 378120, 5312543;

(xv) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 386615, 5317900; 386605, 5317513; 386595, 5317104; 386595, 5317103; 386578, 5316313; 386976, 5316304; 386945, 5315502; 386194,

5315501; 386194, 5315501; 384976, 5315508; 384976, 5315508; 384585, 5315510; 384582, 5315615; 384582, 5315616; 384580, 5315878; 384580, 5315879; 384592, 5316313; 384993, 5316305; 385011, 5317114; 385412, 5317112; 385389, 5316312; 386185, 5316313; 386211, 5317106; 385820, 5317109; 385820, 5317109; 385829, 5317518; 386212, 5317515; 386214, 5317910; 386214, 5317910; 386615, 5317900;

(xvi) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 488487, 5317886; 488500, 5317488; 488895, 5317489; 488909, 5317088; 488937, 5316285; 488538, 5316283; 488534, 5316283; 488247, 5316284; 487874, 5316285; 487743, 5316285; 487735, 5316285; 487726, 5316684; 488126, 5316684; 488115, 5317086; 488104, 5317487; 488093, 5317888; 488471, 5317889; 488487, 5317900; 488477, 5318694; 488872, 5318696; 489267, 5318699; 489275, 5317891; 488881, 5317890; 488501, 5317889; 488487, 5317886;

(xvii) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 482067, 5319468; 482870, 5319430; 483681, 5319432; 484441, 5319464; 484460, 5318662; 483677, 5318645; 483271, 5318636; 483272, 5317843; 483673, 5317861; 483669, 5317450; 484078, 5317454; 484487, 5317458; 484480, 5317860; 484881, 5317859; 485283, 5317859; 485286, 5317458; 486096, 5317463; 486098, 5317060; 486088, 5316289; 485915, 5316289; 484502, 5316293; 484097, 5316294; 483584, 5316295; 483255, 5316296; 482852, 5316298; 481525, 5316302; 481253, 5316302; 481049, 5316303; 481040, 5316303; 481040, 5316303; 481040, 5316334; 481040, 5316335; 481047, 5317076; 482010, 5317074; 481998, 5317074; 482007, 5317476; 481654, 5317477; 481663, 5317896; 481588, 5317901; 481588, 5317903; 481605, 5318706; 481612, 5319103; 482058, 5319073; 482067, 5319468;

(xviii) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 479472, 5319861; 479469, 5319559; 479063, 5319560; 479059, 5319158; 479058, 5319057; 478855, 5319058; 478854, 5318958; 478652, 5318959; 478650, 5318758; 477845, 5318763; 477045, 5318767; 477039, 5317965; 477840, 5317960; 478643, 5317954; 479449, 5317946; 479421, 5316352; 479421, 5316352; 478619, 5316356; 477833, 5316351; 477037, 5316353; 476242, 5316355; 475550, 5316374; 474637, 5316400; 474637, 5316401; 474619, 5317155; 474625, 5317981; 475433, 5317972; 475862,

5317970; 476238, 5317969; 476244, 5318772; 475790, 5318778; 475446, 5318783; 475431, 5319581; 475684, 5319579; 476250, 5319575; 477050, 5319570; 477850, 5319566; 477846, 5318964; 478165, 5318956; 478158, 5319564; 478253, 5319563; 478657, 5319560; 478662, 5319964; 479067, 5319961; 479066, 5319862; 479472, 5319861; and excluding land bound by 476500, 5316863; 477038, 5316860; 477038, 5317012; 477038, 5317162; 476495, 5317165; 476226, 5317167; 476232, 5316864; 476500, 5316863;

(xix) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 400792, 5319918; 400779,

5319516; 400765, 5319113; 400754, 5318758; 400752, 5318758; 400752, 5318742; 400732, 5318756; 400718, 5318772; 400708, 5318784; 400672, 5318795; 400657, 5318810; 400648, 5318830; 400639, 5318842; 400597, 5318874; 400586, 5318890; 400583, 5318898; 400575, 5318910; 400573, 5318921; 400572, 5318935; 400585, 5318962; 400586, 5318979; 400580, 5318990; 400568, 5319002; 400545, 5319017; 400527, 5319026; 400511, 5319029; 400489, 5319044; 400465, 5319071; 400450, 5319083; 400435, 5319085; 400425, 5319086; 400407, 5319084; 400365, 5319085; 400317, 5319082; 400298, 5319081; 400265, 5319068; 400219, 5319059; 400202, 5319053; 400162, 5319024; 400159, 5319022; 400123, 5319003; 400117, 5319002; 400104, 5318999; 400087, 5319001; 400036, 5319019; 400021, 5319020; 400005, 5319016; 399988, 5319008; 399968, 5318992; 399948, 5318970; 399938, 5318963; 399915, 5318952; 399896, 5318947; 399878, 5318948; 399865, 5318955; 399854, 5318965; 399842, 5318972; 399833, 5318973; 399825, 5318970; 399806, 5318955; 399796, 5318950; 399789, 5318945; 399778, 5318931; 399769, 5318918; 399745, 5318872; 399724, 5318860; 399693, 5318836; 399688, 5318828; 399671, 5318808; 399663, 5318794; 399645, 5318782; 399625, 5318763; 399615, 5318757; 399601, 5318754; 399591, 5318754; 399577, 5318757; 399572, 5318759; 399573, 5318783; 399588, 5319185; 399192, 5319209; 399192, 5319209; 398008, 5319278; 397595, 5319297; 397595, 5319297; 397605, 5319715; 397605, 5319715; 398012, 5319677; 398817, 5319626; 398828, 5320045; 399216, 5320005; 399216, 5320005; 399614, 5319984; 400013, 5319963; 400402, 5319940; 400792, 5319918;

(xx) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 491579, 5318708; 491580, 5318708; 491557, 5319524; 491557, 5319525; 491557, 5319525; 491565,

5319925; 491565, 5319931; 491965, 5319930; 491973, 5319930; 492373, 5319921; 492373, 5319921; 492373, 5319921; 493183, 5319914; 493184, 5319914; 493179, 5320307; 493174, 5320703; 493174, 5320704; 493318, 5320701; 493316, 5320304; 493570, 5320298; 493961, 5320289; 494367, 5320297; 494374, 5319891; 495217, 5319881; 495214, 5319479; 495598, 5319479; 495620, 5319479; 495620, 5319479; 495720, 5319479; 496014, 5319478; 496014, 5319478; 496020, 5319063; 496418, 5319070; 496418, 5319070; 496415, 5319473; 496415, 5319478; 496415, 5319478; 496815, 5319477; 497118, 5319476; 497222, 5319475; 498025, 5319469; 498027, 5319065; 498028, 5318661; 498429, 5318660; 498429, 5318660; 498428, 5319062; 498428, 5319063; 498830, 5319060; 498830, 5319060; 498830, 5318748; 498830, 5318658; 498830, 5318597; 498823, 5317860; 498823, 5317859; 499656, 5317859; 499656, 5317847; 499619, 5317031; 499603, 5316687; 499603, 5316687; 499641, 5316294; 499639, 5316294; 499640, 5316294; 499660, 5316271; 499192, 5316272; 499197, 5316279; 499198, 5316280; 499197, 5316279; 499197, 5316280; 499197, 5317066; 498807, 5317061; 498807, 5317060; 498792, 5316272; 498791, 5316272; 498607, 5316272; 498607, 5316264; 498336, 5316267; 498025, 5316271; 497951, 5316272; 497951, 5316272; 497951, 5316272; 497951, 5316272; 497684, 5316275; 497258, 5316280; 497253, 5317083; 497253, 5317084; 497641, 5317078; 498027, 5317072; 498028, 5317072; 498029, 5317463; 497635, 5317467; 497630, 5317856; 497630, 5317856; 497630, 5317856; 497628, 5318663; 497229, 5318664; 497229, 5318664; 497228, 5318664; 496831, 5318665; 496831, 5318665; 496830, 5318272; 496830, 5318272; 496419, 5318276; 496419, 5318275; 496417, 5317854; 496417, 5317854; 496429, 5317457; 496428, 5317457; 495616, 5317467; 495613, 5317630; 495608, 5317866; 495608, 5317867; 495607, 5317867; 495478, 5317867; 495227, 5317867; 495227, 5317867; 495227, 5317867; 495227, 5317866; 495235, 5317452; 495235, 5317452; 494835, 5317454; 494835, 5317454; 494841, 5317065; 495232, 5317066; 495253, 5316697; 495252, 5316697; 494855, 5316700; 494855, 5316699; 494853, 5316335; 494869, 5316305; 495031, 5316299; 495641, 5316279; 495641, 5316273; 495655, 5315043; 495655, 5315040; 495655, 5315040; 495243, 5315031; 495238, 5315464; 494400, 5315464; 494390, 5315486; 494380, 5315486; 494368, 5315487; 494337, 5315494; 494325,

5315495; 494313, 5315495; 494295, 5315496; 494276, 5315496; 494240, 5315510; 494210, 5315517; 494180, 5315531; 494107, 5315527; 494082, 5315528; 494070, 5315529; 494017, 5315525; 494015, 5315525; 494013, 5315524; 494017, 5315875; 494017, 5315876; 494781, 5315867; 494781, 5315867; 494781, 5315867; 494846, 5315866; 494846, 5315866; 494853, 5316268; 494853, 5316274; 494853, 5316302; 494847, 5316305; 494018, 5316276; 494018, 5316276; 494018, 5316276; 493741, 5316276; 493275, 5316276; 493214, 5316275; 492973, 5316275; 492972, 5316276; 492909, 5316276; 492413, 5316277; 492289, 5316277; 491600, 5316274; 491607, 5316302; 491607, 5316303; 491606, 5316692; 491219, 5316695; 491215, 5317096; 491210, 5317499; 490877, 5317503; 490877, 5317503; 490880, 5317143; 490881, 5317101; 490881, 5317071; 490885, 5316698; 490885, 5316698; 490884, 5316698; 490529, 5316688; 490494, 5316696; 490494, 5316695; 490500, 5316294; 490500, 5316294; 490500, 5316294; 490496, 5316294; 490496, 5316293; 490501, 5316279; 490117, 5316280; 490118, 5316291; 490118, 5316292; 490112, 5316292; 490112, 5316292; 490104, 5316693; 489712, 5316691; 489701, 5317092; 489678, 5317893; 489678, 5317894; 489678, 5317894; 489682, 5318286; 489682, 5318286; 490023, 5318290; 490073, 5318290; 490073, 5318290; 490048, 5319507; 490048, 5319508; 490048, 5319508; 490219, 5319511; 490243, 5319511; 490244, 5319511; 490244, 5319511; 490230, 5319895; 490427, 5319904; 490436, 5320292; 490811, 5320325; 490822, 5320326; 490822, 5320326; 490822, 5320332; 490790, 5320737; 491154, 5320728; 491154, 5320715; 491155, 5320669; 491159, 5320326; 491159, 5320325; 491155, 5319523; 491155, 5319523; 491155, 5319522; 491173, 5318710; 491579, 5318708; and excluding land bound by 493189, 5318696; 493189, 5318696; 493194, 5319084; 493194, 5319084; 493189, 5319521; 493189, 5319522; 493188, 5319522; 492617, 5319518; 492371, 5319516; 492371, 5319516; 492371, 5319516; 492371, 5319516; 492373, 5319320; 492382, 5318703; 492382, 5318703; 493189, 5318696; and excluding land bound by 492391, 5318295; 492398, 5317888; 492398, 5317888; 492398, 5317888; 492398, 5317888; 492398, 5317888; 492209, 5317890; 492000, 5317892; 492000, 5317892; 492000, 5317892; 492005, 5317086; 492406, 5317081; 492406, 5317081; 492807, 5317076; 492807, 5317076; 492801, 5317878; 492801, 5317879;

492801, 5317879; 492804, 5318312; 492391, 5318296; 492391, 5318295; (xxi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 378763, 5321543; 378743, 5320872; 378351, 5320882; 378351, 5320882; 378334, 5320487; 378334, 5320486; 378298, 5318912; 377920, 5318917; 377920, 5318917; 377920, 5319302; 377123, 5319322; 377139, 5319716; 376708, 5319724; 376708, 5319724; 376720, 5320551; 376720, 5320551; 377543, 5320506; 377543, 5320506; 377583, 5321710; 378374, 5321684; 378374, 5321684; 378566, 5321681; 378763, 5321543;

(xxii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 468833, 5321754; 468831, 5321628; 468830, 5321634; 468811, 5321650; 468793, 5321657; 468782, 5321674; 468784, 5321689; 468790, 5321706; 468798, 5321714; 468812, 5321723; 468819, 5321732; 468823, 5321739; 468828, 5321739; 468833, 5321754;

(xxiii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 468777, 5322226; 468777, 5322216; 468777, 5322217; 468779, 5321962; 468770, 5321979; 468768, 5321981; 468763, 5321989; 468736, 5321995; 468722, 5321999; 468710, 5322003; 468702, 5322013; 468695, 5322026; 468689, 5322042; 468684, 5322056; 468681, 5322115; 468683, 5322130; 468685, 5322136; 468687, 5322155; 468696, 5322161; 468707, 5322170; 468724, 5322184; 468751, 5322199; 468768, 5322212; 468776, 5322225; 468776, 5322226; 468777, 5322226;

(xxiv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 392564, 5315447; 392564, 5315448; 392579, 5316243; 392182, 5316245; 391905, 5316247; 391786, 5316248; 391796, 5316651; 391399, 5316651; 391001, 5316652; 391001, 5316652; 390601, 5316666; 390591, 5316258; 390991, 5316253; 390980, 5315852; 390980, 5315852; 391378, 5315851; 391368, 5315452; 391368, 5315452; 391354, 5315050; 391360, 5315050; 391754, 5315050; 391766, 5315453; 392165, 5315450; 392564, 5315447; 392554, 5315047; 392543, 5314647; 392533, 5314277; 392532, 5314247; 392518, 5314223; 392507, 5314207; 392484, 5314182; 392454, 5314158; 392373, 5314099; 392295, 5314039; 392241, 5313988; 392233, 5313974; 392223, 5313953; 392220, 5313944; 392184, 5313850; 392184, 5313850; 392117, 5313850; 391719, 5313849; 391319, 5313853; 390919, 5313858; 390913, 5313858; 390890, 5313858; 390501, 5313865; 390501, 5313865; 390537, 5314655; 390137,

5322834; 469954, 5322834; 469958, 5322447; 469954, 5322834; 469954, 5322834; 469954, 5322834; 469954, 5322834; 469954, 5322834; and excluding land bound by 469957, 5322447; 469953, 5322834; 469746, 5322826; 469756, 5322445; 469957, 5322447;

(xxvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 427943, 5325657; 427938, 5325261; 427530, 5325267; 427530, 5325260; 427529, 5325260; 427524, 5324866; 427116, 5324872; 427121, 5325273; 426304, 5325282; 425903, 5325294; 425915, 5325681; 426308, 5325677; 426309, 5325677; 427124, 5325667; 427533, 5325662; 427943, 5325657;

(xxviii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 391649, 5323072; 391671, 5323881; 391683, 5324302; 390867, 5324313; 390847, 5323101; 390847, 5323101; 391180, 5323086; 391180, 5323072; 391641, 5322634; 391179, 5322669; 391178, 5322669; 389985, 5322699; 389949, 5321897; 389949, 5321896; 389543, 5321918; 389543, 5321918; 389543, 5321919; 389598, 5322734; 389626, 5323153; 389626, 5323153; 390004, 5323135; 390057, 5323133; 390057, 5323132; 390452, 5323118; 390452, 5323118; 390459, 5323515; 390064, 5323527; 390078, 5324327; 390471, 5324321; 390469, 5324711; 390482, 5325123; 391282, 5325120; 391294, 5325499; 391708, 5325490; 392103, 5325486; 392128, 5326280; 392541, 5326274; 393349, 5326240; 393329, 5325441; 393317, 5324664; 393256, 5323035; 392835, 5323064; 392453, 5323059; 391649, 5323072;

(xxix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 429549, 5326062; 429545, 5325811; 429456, 5325924; 429283, 5325774; 429401, 5325623; 429539, 5325445; 429536, 5325217; 429529, 5324817; 429528, 5324743; 429482, 5324747; 429442, 5324753; 429394, 5324765; 429347, 5324776; 429295, 5324797; 429249, 5324820; 429189, 5324844; 429129, 5324886; 429135, 5325227; 428737, 5325237; 428737, 5325244; 428494, 5325249; 428494, 5325249; 428473, 5325249; 428452, 5325249; 428452, 5325250; 428338, 5325252; 428338, 5325253; 428337, 5325253; 428337, 5325246; 427939, 5325254; 427939, 5325262; 427944, 5325664; 427954, 5326476; 429555, 5326433; 429554, 5326425; 429549, 5326062;

(xxx) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 382917, 5326474; 382891,

5324873; 382891, 5324873; 383694, 5324864; 383627, 5323290; 383627, 5323290; 383228, 5323292; 382886, 5323297; 382050, 5323308; 382050, 5323308; 381623, 5323316; 381255, 5323324; 381254, 5323324; 380458, 5323337; 380466, 5323767; 380466, 5323767; 380473, 5324149; 380473, 5324149; 380478, 5324517; 380484, 5324914; 380484, 5324914; 380883, 5324906; 380902, 5325337; 382102, 5325317; 382146, 5326479; 382146, 5326479; 382917, 5326474;

(xxxi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 439779, 5326060; 439760, 5324909; 439736, 5324917; 439715, 5324926; 439678, 5324946; 439651, 5324954; 439628, 5324967; 439587, 5324987; 439562, 5324993; 439534, 5324994; 439502, 5324990; 439457, 5324984; 439418, 5324978; 439358, 5324962; 439321, 5324951; 439273, 5324935; 439237, 5324925; 439195, 5324916; 439157, 5324909; 439125, 5324908; 439061, 5324904; 439010, 5324911; 438985, 5324914; 438951, 5324914; 438919, 5324917; 438899, 5324929; 438877, 5324935; 438849, 5324942; 438823, 5324944; 438787, 5324936; 438738, 5324922; 438712, 5324924; 438690, 5324935; 438675, 5324954; 438660, 5324972; 438649, 5324994; 438635, 5325026; 438622, 5325045; 438598, 5325067; 438580, 5325082; 438558, 5325098; 438529, 5325111; 438502, 5325118; 438471, 5325122; 438345, 5325132; 438292, 5325140; 438262, 5325145; 438214, 5325158; 438173, 5325165; 438110, 5325172; 438065, 5325170; 438040, 5325172; 438006, 5325169; 437961, 5325172; 437920, 5325170; 437869, 5325176; 437830, 5325184; 437783, 5325194; 437720, 5325191; 437672, 5325195; 437632, 5325194; 437585, 5325192; 437523, 5325194; 437476, 5325196; 437412, 5325201; 437375, 5325201; 437346, 5325194; 437308, 5325172; 437287, 5325161; 437247, 5325143; 437209, 5325132; 437171, 5325121; 437127, 5325107; 437057, 5325084; 437026, 5325071; 436990, 5325068; 436954, 5325074; 436929, 5325093; 436910, 5325111; 436890, 5325134; 436871, 5325154; 436845, 5325172; 436816, 5325187; 436785, 5325196; 436755, 5325201; 436693, 5325201; 436634, 5325193; 436586, 5325194; 436540, 5325193; 436496, 5325200; 436468, 5325218; 436448, 5325242; 436429, 5325263; 436394, 5325299; 436351, 5325333; 436317, 5325348; 436268, 5325352; 436235, 5325363; 436201, 5325370; 436164, 5325384; 436134, 5325405; 436101, 5325414; 436054, 5325424; 436019, 5325433; 435978, 5325443; 435917,

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(xxxii) Land bounded by the following UTM Zone 10, NAD83

coordinates (E,N): 460864, 5326856; 460850, 5326443; 461659, 5326445; 462066, 5326446; 462066, 5326446; 462067, 5326605; 462067, 5326605; 462474, 5326605; 462474, 5326605; 462474, 5326605; 462475, 5326853; 462475, 5326854; 462901, 5326881; 463307, 5326921; 463296, 5326517; 463296, 5326517; 462894, 5326484; 462894, 5326484; 462473, 5326447; 462473, 5326447; 462471, 5326041; 462471, 5326041; 462894, 5326073; 462894, 5326073; 462898, 5325690; 462468, 5325650; 462467, 5325650; 462466, 5325484; 462464, 5325269; 462464, 5325269; 462466, 5325269; 463322, 5325309; 463322, 5325288; 463323, 5324524; 463323, 5324507; 463323, 5324507; 463448, 5324510; 463552, 5324514; 463552, 5324514; 463562, 5324102; 463568, 5323885; 463568, 5323868; 463744, 5323862; 463745, 5323895; 463770, 5324501; 463770, 5324520; 463770, 5324520; 463770, 5324521; 464153, 5324911; 464155, 5324512; 464516, 5324504; 464539, 5324503; 464779, 5324498; 465308, 5324486; 465308, 5324486; 465309, 5324543; 465310, 5324789; 465310, 5324869; 465639, 5324865; 465667, 5324865; 465672, 5325252; 465672, 5325254; 466028, 5325256; 466010, 5324469; 466010, 5324469; 466010, 5324469; 466326, 5324462; 466360, 5324462; 466371, 5324072; 466738, 5324071; 466738, 5324071; 466739, 5324049; 466746, 5324049; 466767, 5323682; 467147, 5323671; 467138, 5324058; 467138, 5324058; 467138, 5324059; 467517, 5324049; 467517, 5324048; 467517, 5324041; 467551, 5324041; 467552, 5324039; 467552, 5324039; 467560, 5323657; 467907, 5323645; 467908, 5323645; 467914, 5323638; 468318, 5323059; 468403, 5323055; 468404, 5323055; 468500, 5323056; 468496, 5322827; 468496, 5322820; 468485, 5322028; 468544, 5322021; 468521, 5321254; 468391, 5321271; 468352, 5321268; 468160, 5321255; 468066, 5321252; 468062, 5321252; 468070, 5321246; 468065, 5321245; 468067, 5321041; 468154, 5321035; 468155, 5320991; 468142, 5320979; 468090, 5320929; 468047, 5320883; 468010, 5320843; 467970, 5320844; 467898, 5320846; 467645, 5320851; 467491, 5320854;

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(xxxiii) Land bounded by the following UTM Zone 10, NAD83

coordinates (E,N): 431579, 5328281; 431579, 5327958; 432329, 5327941; 432342, 5328075; 432585, 5328218; 432497, 5328298; 432639, 5328352; 432711, 5328281; 432836, 5328394; 432891, 5328218; 432719, 5328109; 432815, 5327979; 432736, 5327920; 432719, 5327526; 432317, 5327543; 432321, 5327141; 432706, 5327132; 432706, 5327015; 432711, 5327005; 432705, 5327009; 432704, 5327010; 432694, 5327017; 432598, 5327061; 432594, 5326737; 432699, 5326733; 432986, 5326722; 432987, 5326720; 432988, 5326701; 432985, 5326485; 432985, 5326484; 432313, 5326528; 432312, 5326529; 432180, 5326524; 432180, 5326537; 432183, 5326746; 432178, 5326746; 432178, 5326747;

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431196, 5327975; 431194, 5327975;
431198, 5328359; 431332, 5328239;
431482, 5328402; 431579, 5328281;

(xxxiv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 385348, 5328449; 385320, 5328042; 385320, 5328042; 385312, 5326449; 384553, 5326459; 384553, 5326459; 384548, 5327277; 383740, 5327288; 383740, 5327289; 383763, 5328089; 384551, 5328065; 384551, 5328065; 384570, 5328467; 385348, 5328449;

(xxxv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 406094, 5329033; 406498, 5329010; 406621, 5329004; 406621, 5329004; 407281, 5329004; 407282, 5329004; 407675, 5329002; 407684, 5329002; 407687, 5329002; 407687, 5328981; 407687, 5328948; 407687, 5328948; 407687, 5328948; 407690, 5328607; 407691, 5328378; 407692, 5328300; 407694, 5328299; 407713, 5328282; 407713, 5328282; 407707, 5328283; 407698, 5328178; 407693, 5328179; 407693, 5328178; 407692, 5328178; 406101, 5328222; 406098, 5328458; 406092, 5329033; 406094, 5329033; 406094, 5329033;

(xxxvi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 403709, 5329878; 403710, 5329870; 403717, 5329775; 403718, 5329758; 403718, 5329754; 403737, 5329502; 403737, 5329501; 403737, 5329496; 403737, 5329494; 403738, 5329482; 403938, 5329482; 404114, 5329481; 404250, 5329480; 404307, 5329480; 404333, 5329480; 404495, 5329479; 404541, 5329477; 404541, 5329477; 404736, 5329468; 404736, 5329458; 404937, 5329458; 404937, 5329458; 404938, 5329459; 404938, 5329459; 404951, 5329458; 404952, 5329438; 404952, 5329305; 404954, 5329057; 404954, 5329044; 404933, 5329061; 404933, 5329057; 404537, 5329065; 404555, 5328693; 404554, 5328693; 404556, 5328641; 404650, 5328641; 404648, 5328627; 404606, 5328347; 404528, 5327541; 404525, 5327511; 404524, 5327502; 404521, 5327475; 404520, 5327465; 404523, 5327465; 404688, 5327461; 404909, 5327456; 404905, 5327444; 404901, 5327046; 404899, 5326848; 404898, 5326770; 404897, 5326647; 404491, 5326660; 404496, 5327057; 404502, 5327448; 404497, 5327454; 403686, 5327472; 403697, 5327872; 404118, 5327861; 404145, 5328259; 403707, 5328272; 403018, 5328293;

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(xxxvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 444692, 5330921; 444724, 5330724; 444755, 5330610; 444914, 5330483; 445048, 5330432; 445257, 5330273; 445270, 5330064; 445397, 5330007; 445562, 5329861; 445670, 5329619; 445676, 5329511; 445644, 5329467; 445365, 5329759; 445327, 5329683; 445467, 5329461; 445467, 5329378; 445359, 5329353; 445098, 5329461; 445003, 5329740; 444952, 5329981; 444794, 5330140; 444641, 5330096; 444540, 5329988; 444584, 5329835; 444654, 5329664; 444832, 5329549; 444978, 5329480; 444959, 5329403; 444914, 5329295; 445035, 5329187; 445244, 5329245; 445327, 5329207; 445530, 5329137; 445778, 5329111; 445879, 5329283; 445867, 5329441; 445721, 5329473; 445848, 5329956; 445875, 5330003; 446254, 5330004; 446267, 5329633; 446267, 5329633; 447085, 5329640; 447080, 5329257; 447080, 5329257; 447081, 5328800; 447484, 5328806; 447485, 5328806; 447479, 5329253; 447479, 5329254; 447862, 5329251; 447878, 5329251; 447878, 5329251; 447897, 5328461; 447905, 5328064; 448322, 5328048; 448327, 5327653; 448327, 5327653; 448395, 5327651; 448741, 5327638; 448741, 5327638; 448739, 5328031; 448738, 5328424; 448738, 5328425; 449558, 5328389; 449967, 5328384; 449975, 5327990; 450386, 5327981; 450386, 5327981; 450377, 5328379; 450377, 5328379; 450789, 5328374; 450789, 5328374; 450779, 5328777; 450779, 5328777; 451191, 5328776; 451590, 5328786; 451590, 5328784; 451594, 5328579; 451598, 5328379; 451598, 5328371; 451995, 5328388; 451995, 5328388; 451989, 5328792; 451989, 5328792; 452799, 5328803; 452791, 5328407; 452791, 5328407; 452592, 5328402; 452592, 5328402; 452590, 5328201; 452787, 5328209; 452787, 5328209; 452783, 5328012; 452776, 5327616; 452776, 5327616; 452886, 5327606; 453089, 5327586; 453089, 5327586; 453093, 5327200; 453092, 5327200; 452768, 5327221; 452768, 5327221; 452768, 5327220; 452377, 5327197; 452391, 5327580; 452391, 5327580; 452391, 5327580; 452391, 5327580; 452392, 5327989; 452001, 5327966; 451606, 5327964; 451211, 5327962; 451211, 5327962; 451211, 5327962;

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excluding land bound by 444742,
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5327642; 444742, 5327642; 444742,
5327642; and excluding land bound by
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(xxxix) Land bounded by the
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(xl) Land bounded by the following
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(xlii) Land bounded by the following
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(xlv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 374190, 5359087; 374212, 5359064; 374214, 5359062; 374239, 5359037; 374277, 5359011; 374324, 5358988; 374367, 5358971; 374357, 5358964; 374320, 5358928; 374320, 5358926; 374333, 5358913; 374350, 5358899; 374364, 5358891; 374384, 5358870; 374403, 5358856; 374375, 5358828; 374364, 5358838; 374352, 5358851; 374338, 5358868; 374321, 5358885; 374300, 5358899; 374285, 5358900; 374256, 5358896; 374227, 5358891; 374196, 5358881; 374165, 5358869; 374129, 5358855; 374130, 5358839; 374132, 5358819; 374131, 5358801; 374134, 5358774; 374140, 5358753; 374142, 5358709; 374134, 5358681; 374134, 5358672; 374131, 5358645; 374129, 5358640; 374118, 5358616; 374100, 5358608; 374081, 5358606; 374047, 5358593; 374028, 5358593; 373972, 5358580; 373960, 5358583; 373953, 5358598; 373958, 5358611; 373972, 5358621; 373967, 5358626; 373953, 5358651; 373947, 5358666; 373937, 5358680; 373925, 5358713; 373923, 5358722; 373919, 5358720; 373897, 5358722; 373867, 5358725; 373867, 5358748; 373861, 5358777; 373845, 5358805; 373844, 5358812; 373838, 5358811; 373825, 5358799; 373820, 5358754; 373816, 5358719; 373816, 5358683; 373816, 5358673; 373806, 5358666; 373798, 5358660; 373798, 5358647; 373805, 5358628; 373815, 5358579; 373822, 5358535; 373826, 5358522; 373808, 5358515; 373786, 5358512; 373760, 5358499; 373717, 5358475; 373688, 5358457; 373684, 5358460; 373641, 5358477; 373581, 5358499; 373553, 5358523; 373547, 5358548; 373538, 5358568; 373523, 5358586; 373504, 5358599; 373486, 5358603; 373467, 5358606; 373460, 5358599; 373458, 5358594; 373456, 5358589; 373457, 5358588; 373438, 5358587; 373422, 5358585; 373404, 5358578; 373391, 5358574; 373378, 5358572; 373369, 5358571; 373364, 5358576; 373351, 5358588; 373341, 5358612; 373335, 5358641; 373300, 5358651; 373267, 5358670; 373209, 5358698; 373211, 5358691; 373217, 5358663; 373226, 5358639; 373228, 5358629; 373206, 5358642; 373185, 5358661; 373178, 5358666; 373156, 5358682; 373144, 5358694; 373124, 5358709; 373098, 5358723; 373072, 5358737; 373041, 5358751; 373006, 5358778; 372980, 5358810; 372967, 5358840; 372940, 5358866; 372883, 5358895; 372856, 5358905; 372832, 5358920; 372827, 5358931; 372826, 5358947; 372824, 5358956; 372826, 5358986; 372828, 5358999; 372829, 5359007; 372831, 5359030; 372832, 5359055; 372833, 5359057; 372824, 5359067; 372821, 5359077; 372820, 5359080; 372833, 5359098; 372846, 5359128; 372859, 5359140; 372874, 5359148; 372893, 5359150; 372903, 5359148; 372921, 5359147; 372944, 5359148; 372961, 5359155; 372980, 5359168; 372994, 5359179; 372999, 5359189; 373009, 5359209; 373022, 5359222; 373051, 5359234; 373095, 5359241; 373124, 5359249; 373145, 5359250; 373170, 5359251; 373197, 5359255; 373229, 5359271; 373252, 5359282; 373279, 5359292; 373317, 5359292; 373348, 5359284; 373371, 5359270; 373387, 5359256; 373398, 5359249; 373403, 5359243; 373410, 5359242; 373427, 5359251; 373442, 5359270; 373450, 5359291; 373450, 5359303; 373454, 5359311; 373457, 5359313; 373468, 5359318; 373487, 5359309; 373515, 5359296; 373561, 5359276; 373586, 5359266; 373609, 5359259; 373629, 5359254; 373647, 5359256; 373672, 5359267; 373703, 5359292; 373719,

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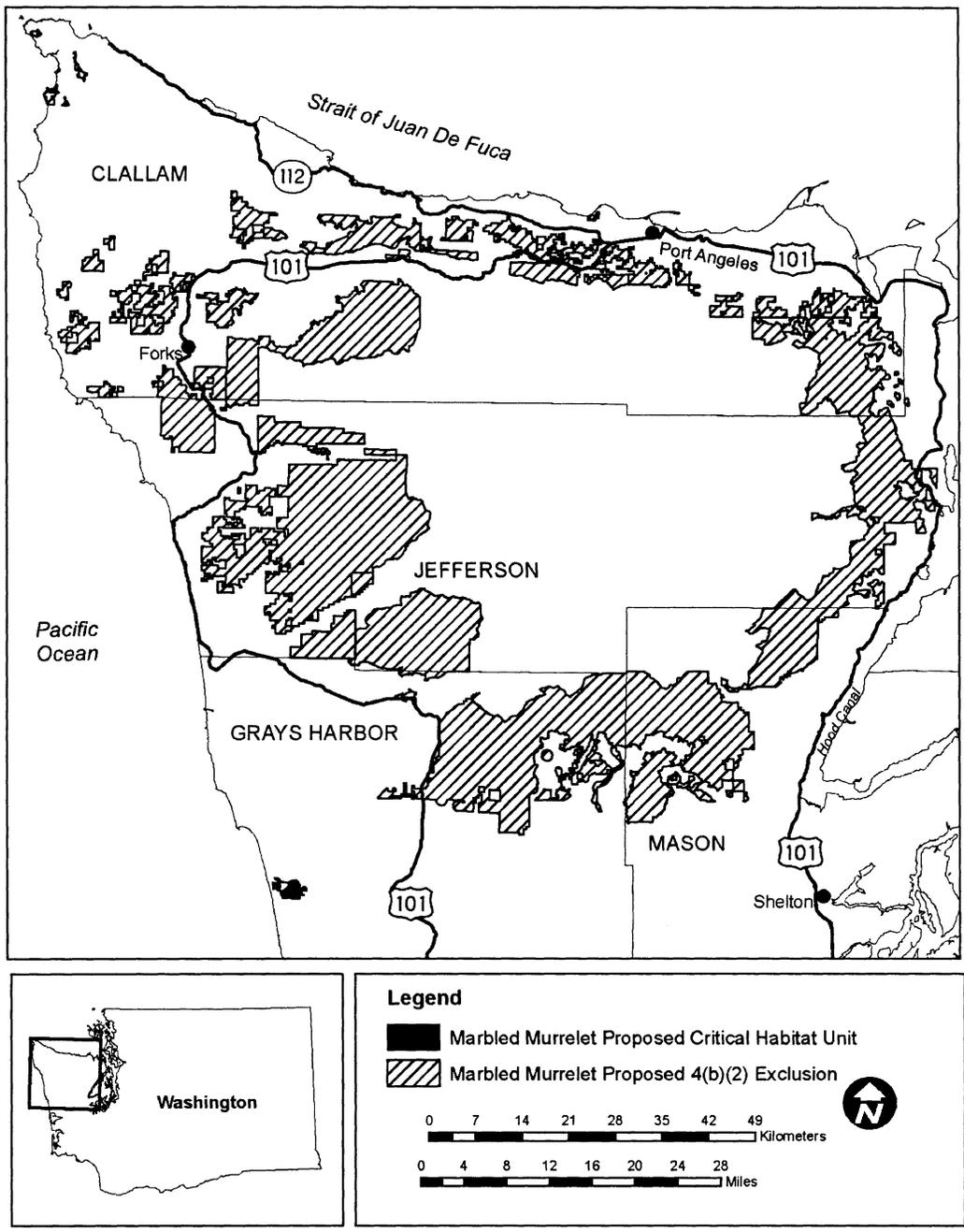
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5359529; 373941, 5359513; 373970,
5359485; 373989, 5359450; 374031,
5359357; 374069, 5359281; 374082,
5359267; 374103, 5359242; 374115,
5359210; 374123, 5359179; 374134,
5359142; 374154, 5359116; 374190,
5359087; and excluding land bound by
373100, 5358767; 373117, 5358765;
373122, 5358768; 373125, 5358791;
373121, 5358820; 373106, 5358843;
373069, 5358869; 373050, 5358881;
373048, 5358889; 373063, 5358910;

373088, 5358917; 373107, 5358928;
373110, 5358936; 373100, 5358951;
373062, 5358957; 373030, 5358957;
373021, 5358959; 373001, 5358953;
372983, 5358923; 372984, 5358905;
372992, 5358878; 372995, 5358862;
372991, 5358854; 372989, 5358851;
373026, 5358816; 373069, 5358787;
373079, 5358779; 373100, 5358767;

(xlv) Note: Map of Northwest
Washington Unit (Map 1) follows:

BILLING CODE 4310-55-P

Map 1. Northwest Washington Proposed Critical Habitat Unit, Washington



(6) Washington Cascades Unit, Washington. Whatcom, Skagit, Snohomish, King, Kittitas, Pierce, Thurston, Yakima, and Lewis. From USGS 1:24,000 scale quadrangles: Glacier OE N, Maple Falls, Glacier, Bearpaw Mountain, Mount Larrabee, Mount Sefrit, Sumas, Kendall, Shuksan Arm, Deming, Canyon Lake, Groat Mountain, Mount Baker, Mount Shuksan, Bacon Peak, Baker Pass, Welker Peak, Lake Whatcom, Acme, Cavanaugh Creek, Twin Sisters Mountain, Eldorado Peak, Marblemount, Big Devil Peak, Lake Shannon, Sauk Mountain, Cascade Pass, Snowking Mountain, Sonny Boy Lakes, Gee Point, Finney Peak, Rockport, Illabot Peaks, Haystack Mountain, Day Lake, Downey Mountain, Prairie Mountain, Huckleberry Mountain, Mount Higgins, Fortson, Darrington, Oso, Lime Mountain, Whitehorse Mountain, Helena Ridge, White Chuck Mountain, Riley Lake, Meadow Mountain, Pugh Mountain, Glacier Peak West, Mallardy Ridge, Silverton, Bedal, Sloan Peak, Verlot, Monte Cristo, Benchmark Mountain, Wallace Lake, Mount Stickney, Blanca Lake, Lake Chaplain, Captain Point, Labyrinth Mountain, Index, Baring, Evergreen Mountain, Gold Bar, Skykomish, Scenic, Stevens Pass, Mount Phelps, Grotto, Mount Si, Lake Philippa, Snoqualmie Lake, Big Snow Mountain, Snoqualmie Pass, Chikamin Peak, Chester Morse Lake, Bandera, Lost Lake, Findley Lake, Lester, Nagrom, Noble Knob, Clear West Peak, Sun Top, Old Baldy Mountain, Bearhead Mountain, White River Park, Norse Peak, Golden Lakes, Mowich Lake, Sunrise, Mount Wow, Eatonville, Wahpenayo Peak, Tatoosh Lakes, Mineral, Sawtooth Ridge, Bernier Creek, Newaukum Lake, The Rockies, Morton, Randle, Purcell Mountain, Mossyrock.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 536640, 5170030; 536895, 5169872; 537102, 5170055; 537248, 5170012; 537126, 5169726; 537406, 5169696; 537455, 5169580; 537564, 5169580; 537740, 5169702; 537874, 5169775; 538044, 5169787; 538233, 5169635; 538476, 5169586; 538604, 5169574; 538500, 5169276; 538464, 5168966; 538774, 5168833; 538945, 5168874; 538944, 5167742; 538949, 5167742; 538946, 5167719; 538852, 5167799; 538795, 5168062; 538523, 5168014; 538268, 5168191; 538306, 5167718; 537841, 5167977; 537832, 5168298; 537509, 5168377; 537248, 5168346; 537224, 5168553; 537047, 5168553; 537029, 5168857; 536731, 5168857; 536561, 5168656; 536129, 5168863; 536129, 5168991; 536366,

5169289; 536397, 5169574; 536214, 5169599; 535941, 5169714; 535819, 5169720; 535813, 5169720; 535810, 5169957; 535813, 5169957; 536111, 5169969; 536287, 5170006; 536287, 5170091; 536476, 5170207; 536452, 5170450; 536658, 5170261; 536640, 5170030;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 618774, 5249362; 618596, 5249187; 618588, 5249180; 618561, 5249153; 618556, 5249152; 618464, 5249128; 617798, 5248956; 617793, 5248954; 617792, 5248942; 617785, 5248879; 617766, 5248720; 617739, 5248486; 617843, 5248126; 617943, 5247776; 617957, 5247726; 617969, 5247684; 617947, 5247688; 617946, 5247689; 617944, 5247694; 617937, 5247713; 617899, 5247788; 617873, 5247837; 617839, 5247892; 617817, 5247921; 617796, 5247955; 617769, 5248001; 617752, 5248054; 617747, 5248084; 617742, 5248132; 617740, 5248157; 617740, 5248209; 617744, 5248234; 617743, 5248266; 617746, 5248292; 617741, 5248340; 617739, 5248374; 617733, 5248400; 617716, 5248445; 617704, 5248466; 617686, 5248491; 617677, 5248517; 617666, 5248554; 617652, 5248630; 617649, 5248679; 617648, 5248742; 617646, 5248777; 617652, 5248836; 617656, 5248900; 617659, 5248940; 617663, 5248979; 617667, 5249017; 617674, 5249090; 617685, 5249134; 617688, 5249142; 617577, 5249313; 617553, 5249312; 617395, 5249305; 617392, 5249439; 617392, 5249445; 617392, 5249463; 616974, 5249784; 616974, 5249784; 616978, 5250099; 617370, 5250119; 617352, 5250901; 618106, 5250942; 618314, 5250951; 618533, 5250964; 618450, 5250809; 618292, 5250518; 618281, 5250497; 618859, 5249937; 618874, 5249827; 618921, 5249507; 618885, 5249472; 618837, 5249424; 618774, 5249362;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 606415, 5255076; 606326, 5255065; 606321, 5255186; 606384, 5255130; 606415, 5255076;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 614420, 5265998; 614569, 5265861; 614707, 5265772; 614840, 5265667; 615012, 5265719; 615127, 5265490; 615242, 5265317; 615338, 5265198; 615479, 5265179; 615611, 5265070; 615589, 5264903; 615724, 5264706; 615868, 5264633; 615967, 5264516; 616112, 5264472; 616268, 5264459; 616438, 5264387; 616618, 5264299; 616740, 5264174; 616867, 5264111; 617075, 5264124; 617095, 5263607; 617281, 5263518; 617490, 5263438; 617673, 5263347; 617816,

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(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 600661, 5267771; 600646, 5267771; 600650, 5268744; 600653, 5269354; 600653, 5269372; 601451, 5269419; 602101, 5269387; 602232, 5269380; 602243, 5268596; 602243, 5268596; 602254, 5267796; 602253, 5267796; 600661, 5267771;

(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 608521, 5268655; 608522, 5268632; 608519, 5268632; 608203, 5268635; 608183, 5269586; 608182, 5269649; 608320, 5269656; 608492, 5269639; 608492, 5269589; 608492, 5269588; 608519, 5268732; 608521, 5268655;

(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 610407, 5268709; 610348, 5268582; 610344, 5268577; 610267, 5268467; 610168, 5268368; 610123, 5268336; 610053, 5268287; 609926, 5268228; 609790, 5268192; 609651, 5268180; 609511, 5268192; 609376,

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(viii) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 605447, 5278812; 605488, 5278808; 605518, 5278812; 605539, 5278821; 605559, 5278832; 605578, 5278844; 605592, 5278852; 605614, 5278863; 605622, 5278865; 605634, 5278866; 605644, 5278866; 605652, 5278865; 605666, 5278865; 605672, 5278860; 605680, 5278852; 605693, 5278843; 605711, 5278829; 605740, 5278817; 605766, 5278810; 605803, 5278811; 605837, 5278808; 605876, 5278813; 605905, 5278827; 605933, 5278847; 605960, 5278865; 605990, 5278874; 606020, 5278874; 606052, 5278877; 606071, 5278872; 606096, 5278856; 606114, 5278838; 606137, 5278823; 606152, 5278813; 606152, 5278788; 606181, 5278780; 606192, 5278777; 606270, 5278721; 606339, 5278671; 606475, 5278541; 606608, 5278519; 606828, 5278379; 606829, 5278378; 606976, 5278236; 607002, 5278176; 607138, 5278021; 607253, 5277977; 607259, 5277975; 607309, 5277891; 607363, 5277626; 608247, 5277642; 608463, 5277646; 608473, 5277635; 607664, 5277614; 607361, 5277611; 607320, 5277771; 607164, 5277963; 606979, 5278144; 606877, 5278253; 606732, 5278397; 606555, 5278491; 606424, 5278554; 606162, 5278766; 606168, 5277598; 604571, 5277586; 604571, 5277587; 604517, 5278426; 604541, 5279182; 604542, 5279190; 605332, 5279219; 605332, 5279220; 605333, 5279220; 606146, 5279208; 606146, 5279201; 606146, 5279199; 604815, 5279185; 604825, 5279158; 604833, 5279133; 604846, 5279109; 604859, 5279090; 604876, 5279070; 604893, 5279059; 604914, 5279049; 604933, 5279040; 604958, 5279034; 604975, 5279021; 604994, 5279016; 605014, 5279006; 605047, 5278987; 605071, 5278971; 605096,

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(ix) Land bounded by the following

UTM Zone 10, NAD83 coordinates (E,N): 603861, 5299121; 603879, 5299104; 603884, 5299098; 603891, 5299088; 603898, 5299078; 603909, 5299056; 603922, 5299026; 603930, 5299003; 603933, 5298992; 603936, 5298975; 603938, 5298961; 603938, 5298936; 603937, 5298924; 603935, 5298912; 603932, 5298893; 603932, 5298893; 603931, 5298893; 603712, 5298890; 603532, 5298888; 603532, 5298888; 603532, 5298888; 603552, 5298888; 603553, 5298482; 603552, 5298482; 602746, 5298475; 602742, 5298760; 602740, 5298874; 602740, 5298874; 602740, 5298874; 602741, 5298948; 602742, 5299149; 602742, 5299150; 602765, 5299140; 602788, 5299133; 602804, 5299129; 602816, 5299127; 602840, 5299124; 602901, 5299120; 602938, 5299118; 602998, 5299116; 603070, 5299116; 603162, 5299119; 603284, 5299127; 603369, 5299130; 603504, 5299137; 603527, 5299138; 603532, 5299139; 603585, 5299144; 603608, 5299147; 603632, 5299151; 603668, 5299158; 603739, 5299170; 603751, 5299171; 603763, 5299171; 603775, 5299169; 603789, 5299166; 603800, 5299161; 603811, 5299155; 603841, 5299135; 603851, 5299128; 603861, 5299121;

(x) Land bounded by the following

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(xi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 610294, 5321426; 610294, 5321426; 610295, 5321426; 610308, 5321426; 610309, 5321418; 610309, 5321415; 610630, 5321421; 610658, 5319917; 610044, 5319911; 609470, 5319904; 609470, 5319905; 609456, 5320640; 609133, 5320636; 609203, 5320683; 609216, 5320692; 609217, 5320693; 609236, 5320708; 609242, 5320715; 609249, 5320725; 609256, 5320736; 609272, 5320767; 609279, 5320782; 609282, 5320794; 609284, 5320815; 609282, 5320846; 609283, 5320883; 609282, 5320910; 609279, 5320947; 609277, 5320959; 609273, 5320970; 609267, 5320981; 609259, 5320990; 609242, 5321008; 609234, 5321017; 609219, 5321034; 609210, 5321042; 609193, 5321054; 609173, 5321068; 609159, 5321074; 609148, 5321077; 609111, 5321080; 609102, 5321082; 609089, 5321086; 609077, 5321091; 609066,

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(xiii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 604008, 5324503; 603530, 5324494; 603523, 5324893; 603922, 5324901; 603914, 5325319; 604693, 5325333; 604701, 5324922; 604656, 5324921; 604469, 5324917; 604457, 5324917; 604308, 5324914; 604309, 5324844; 604316, 5324509; 604043, 5324504; 604008, 5324503;

(xiv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 602703, 5325689; 602325, 5325682; 602317, 5326100; 602695, 5326107; 602703, 5325689;

(xv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 595180, 5325535; 594783, 5325529; 594772, 5326204; 594763, 5326751; 595159, 5326758; 595179, 5325586; 595180, 5325535;

(xvi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 590332, 5327430; 590363, 5327061; 590369, 5327061; 590369, 5327058; 590753, 5327064; 590759, 5326667; 591167, 5326669; 591172, 5326349; 591179, 5325869; 590206, 5325843; 590075, 5325840; 589595, 5325833; 589584, 5326594; 589574, 5327190; 589571, 5327415; 590332, 5327430;

(xvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 615569, 5334593; 615447, 5334593; 615442, 5334777; 615519, 5334716; 615569, 5334593;

(xviii) Land bounded by the following UTM Zone 10, NAD83 coordinates

(E,N): 618536, 5336296; 618552, 5335481; 618568, 5334668; 618567, 5334611; 618601, 5333867; 618632, 5333025; 617531, 5332998; 617500, 5333045; 617376, 5333352; 617130, 5333774; 617002, 5334223; 616988, 5334236; 616977, 5334599; 616804, 5334598; 616804, 5334599; 616735, 5334598; 616638, 5334597; 616625, 5335213; 616436, 5335210; 616431, 5335423; 615837, 5335411; 615829, 5335815; 615616, 5335811; 615612, 5336001; 615412, 5336000; 615407, 5336220; 616962, 5336251; 616983, 5336251; 618536, 5336296;

(xix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 608995, 5336371; 608978, 5336154; 608997, 5336154; 610018, 5336177; 610009, 5336241; 610179, 5336437; 610211, 5336444; 610356, 5336595; 610407, 5336622; 610555, 5336752; 610555, 5336742; 610556, 5336697; 610564, 5336168; 610135, 5336159; 610026, 5336157; 608988, 5336138; 608757, 5336109; 608170, 5336099; 608161, 5336158; 608215, 5336236; 608274, 5336363; 608311, 5336498; 608323, 5336638; 608311, 5336778; 608275, 5336913; 608215, 5337040; 608135, 5337155; 608036, 5337255; 607949, 5337316; 607785, 5337505; 607723, 5337636; 607679, 5337825; 607750, 5337745; 607774, 5337704; 607813, 5337639; 607893, 5337505; 608023, 5337287; 608490, 5336810; 608667, 5336585; 608819, 5336486; 608995, 5336371;

(xx) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 609194, 5337045; 609054, 5337033; 608990, 5337038; 608914, 5337045; 608779, 5337081; 608652, 5337140; 608537, 5337221; 608438, 5337320; 608357, 5337435; 608298, 5337562; 608262, 5337698; 608151, 5337701; 608112, 5337719; 608024, 5337760; 607909, 5337841; 607810, 5337940; 607729, 5338055; 607670, 5338182; 607634, 5338318; 607622, 5338457; 607634, 5338597; 607670, 5338733; 607730, 5338860; 607810, 5338975; 607909, 5339074; 608024, 5339154; 608151, 5339213; 608287, 5339250; 608426, 5339262; 608566, 5339250; 608702, 5339213; 608829, 5339154; 608932, 5339082; 608944, 5339074; 609043, 5338974; 609123, 5338859; 609183, 5338732; 609219, 5338597; 609330, 5338593; 609456, 5338534; 609572, 5338454; 609671, 5338354; 609751, 5338239; 609810, 5338112; 609847, 5337977; 609859, 5337837; 609853, 5337770; 609847, 5337697; 609810, 5337562; 609751, 5337435; 609670, 5337320; 609571, 5337221; 609456, 5337140; 609329, 5337081; 609194, 5337045;

(xxi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 582644, 5340271; 582665, 5338616; 582276, 5338619; 581475, 5338616; 581445, 5340254; 581705, 5340259; 582644, 5340271;

(xxii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 606625, 5341679; 606689, 5341466; 606652, 5341098; 606555, 5340896; 606511, 5340896; 606490, 5340867; 606483, 5340856; 606383, 5340757; 606268, 5340676; 606251, 5340668; 606265, 5340639; 606270, 5340629; 606281, 5340614; 606265, 5340628; 606249, 5340668; 606240, 5340687; 606204, 5340698; 605675, 5340796; 605669, 5341174; 605669, 5341185; 605662, 5341536; 605636, 5341535; 605627, 5342017; 605624, 5342138; 605648, 5342145; 605648, 5342157; 605830, 5342189; 606043, 5342175; 606275, 5342084; 606484, 5341920; 606625, 5341679;

(xxiii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 633040, 5346603; 633097, 5346594; 633021, 5346603; 633040, 5346603;

(xxiv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 588008, 5345172; 588018, 5343892; 588006, 5343892; 587965, 5344736; 587922, 5344775; 587869, 5344795; 587755, 5344811; 587646, 5344824; 587583, 5344822; 587514, 5344794; 587442, 5344731; 587377, 5344667; 587312, 5344596; 587282, 5344508; 587288, 5344444; 587284, 5344365; 587266, 5344269; 587229, 5344209; 587168, 5344177; 587162, 5344031; 587160, 5343981; 587099, 5343981; 587095, 5343981; 586900, 5343979; 586828, 5343979; 586469, 5343977; 586468, 5343977; 586480, 5343597; 585653, 5343585; 585652, 5343585; 584895, 5343575; 584863, 5343574; 584827, 5344729; 584827, 5344730; 584815, 5345119; 584815, 5345120; 586029, 5345132; 586438, 5345130; 586439, 5345130; 586432, 5345951; 586420, 5346803; 586420, 5346804; 586748, 5346805; 587144, 5346807; 587145, 5346807; 587558, 5346816; 587970, 5346824; 587971, 5346824; 587971, 5346824; 587975, 5346418; 587975, 5346418; 587983, 5346013; 588008, 5345180; 588008, 5345179; 588008, 5345172;

(xxv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 608993, 5347423; 608975, 5347423; 608973, 5347423; 608968, 5347423; 608947, 5347422; 608810, 5347415; 608810, 5347415; 608774, 5347413; 608773, 5347413; 608762, 5347413; 608749, 5347821; 608742, 5347999; 608742, 5348000; 608742, 5348019; 608742, 5348020; 608735,

5348227; 609922, 5348280; 609932, 5347874; 609537, 5347856; 609548, 5347449; 608993, 5347424; 608993, 5347423;

(xxvi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 581511, 5354741; 579893, 5354728; 579927, 5356341; 579927, 5356342; 581500, 5356336; 581512, 5354741; 581511, 5354741;

(xxvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 585495, 5356010; 585095, 5356001; 585091, 5356389; 585092, 5356782; 586304, 5356816; 586304, 5356809; 586310, 5356609; 586312, 5356410; 585494, 5356396; 585495, 5356010;

(xxviii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 578324, 5354718; 578290, 5353081; 578290, 5353080; 578324, 5352675; 578324, 5352674; 578365, 5352263; 578353, 5351859; 578337, 5351462; 578337, 5351461; 578323, 5351071; 578323, 5351070; 578292, 5350288; 578277, 5349896; 578276, 5349896; 578211, 5349895; 577875, 5349887; 577874, 5349887; 577476, 5349885; 576640, 5349881; 576648, 5350510; 576648, 5350511; 576650, 5350669; 576650, 5350670; 576650, 5350670; 576655, 5351067; 576655, 5351067; 576660, 5351460; 576660, 5351461; 576659, 5351461; 575846, 5351457; 575845, 5351457; 575843, 5351865; 575442, 5351864; 575447, 5352274; 575035, 5352274; 575035, 5352275; 575031, 5352675; 575031, 5352676; 575027, 5353084; 575027, 5353085; 575023, 5353477; 575023, 5353478; 575008, 5354665; 575008, 5354666; 575815, 5354672; 576622, 5354679; 576622, 5354679; 576635, 5356254; 576627, 5357051; 576627, 5357052; 576627, 5357114; 576627, 5357115; 576626, 5357209; 576626, 5357210; 576619, 5357854; 576619, 5357855; 577468, 5357883; 578288, 5357911; 578289, 5357911; 578289, 5357910; 578292, 5357731; 578292, 5357730; 578294, 5357619; 578294, 5357618; 578303, 5357119; 578303, 5357119; 578313, 5356311; 578324, 5354718; 578324, 5354718;

(xxix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 604579, 5356931; 603776, 5356919; 603736, 5358518; 605577, 5358548; 605578, 5358548; 605579, 5358375; 605579, 5358375; 605578, 5358375; 605569, 5356943; 605569, 5356943; 604579, 5356931;

(xxx) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 566950, 5359724; 566953, 5359297; 566952, 5359297; 566136, 5359317; 566136, 5359317; 565375,

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(xxxi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 586332, 5370282; 586347, 5369454; 586346, 5369454; 584790, 5369445; 584774, 5370244; 584669, 5370242; 584724, 5370914; 584732, 5371020; 584732, 5371021; 586317, 5371034; 586332, 5370282;

(xxxii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 600582, 5378924; 599185, 5378900; 599181, 5378915; 599179, 5378922; 599170, 5378954; 599158, 5379093; 599170, 5379233; 599207, 5379369; 599266, 5379496; 599347, 5379611; 599446, 5379710; 599561, 5379790; 599688, 5379849; 599823, 5379886; 599963, 5379898; 600103, 5379886; 600238, 5379849; 600365, 5379790; 600480, 5379710; 600579, 5379610; 600660, 5379495; 600677, 5379459; 600719, 5379368; 600755, 5379233; 600768, 5379093; 600755, 5378953; 600752, 5378943; 600751, 5378936; 600748, 5378927; 600582, 5378924;

(xxxiii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 601930, 5382349; 602254, 5382165; 602254, 5382212; 602320, 5382212; 602253, 5382159; 602253, 5382135; 602254, 5382134; 602256, 5381712; 602256, 5381640; 602261, 5380601; 602261, 5380553; 602251, 5380550; 602112, 5380538; 601972, 5380550; 601836, 5380586; 601820, 5380594; 601709, 5380645; 601594, 5380726; 601495, 5380825; 601415, 5380940; 601355, 5381067; 601319, 5381203; 601307, 5381342; 601319, 5381482; 601356, 5381618; 601415, 5381745; 601495, 5381860; 601595, 5381959; 601709, 5382040; 601837, 5382099; 601972, 5382135; 602112, 5382147; 602200, 5382139; 602199, 5382161; 601924, 5382344; 601705, 5382321; 601697, 5382322; 601930, 5382349;

(xxxiv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 586985, 5387080; 586569, 5387073; 586540, 5387074; 586540, 5387074; 585870, 5387063; 585869, 5387063; 585869, 5387093; 585974, 5387094; 586077, 5387096; 586101, 5387096;

585883, 5388492; 585890, 5388492; 586547, 5388505; 587002, 5388507; 587002, 5388507; 587791, 5388512; 587791, 5388505; 587796, 5388238; 587791, 5387860; 587791, 5387101; 587791, 5387100; 586985, 5387080;

(xxxv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 589407, 5387911; 589406, 5387911; 589415, 5388525; 589465, 5388527; 589717, 5388537; 590222, 5388559; 591010, 5388587; 591033, 5388589; 591033, 5388587; 591032, 5388587; 591010, 5388586; 590222, 5388553; 590222, 5388553; 589465, 5388521; 589407, 5387916; 589407, 5387911;

(xxxvi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 555394, 5390471; 555394, 5390417; 555749, 5390424; 555694, 5390180; 555498, 5390096; 555540, 5389803; 555798, 5389740; 555826, 5389545; 556077, 5389329; 556014, 5388764; 555659, 5388743; 555735, 5388339; 554599, 5388332; 554592, 5389915; 554592, 5390737; 555394, 5390751;

(xxxvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 570715, 5392528; 570687, 5391739; 570687, 5391739; 570687, 5391739; 570679, 5391308; 570673, 5390912; 571198, 5390912; 571199, 5390911; 571235, 5390872; 571264, 5390848; 571298, 5390817; 571326, 5390794; 571353, 5390778; 571380, 5390763; 571407, 5390754; 571451, 5390745; 571480, 5390739; 571477, 5390131; 571477, 5390131; 570701, 5390127; 570701, 5390125; 570715, 5389718; 569885, 5389704; 569885, 5389704; 569870, 5390123; 569870, 5390123; 569870, 5390124; 569873, 5390529; 569879, 5391308; 569879, 5391313; 569071, 5391313; 569071, 5391728; 569067, 5391728; 568871, 5391727; 568677, 5391726; 568676, 5391724; 568669, 5391264; 568258, 5391264; 568233, 5391385; 568278, 5391409; 568323, 5391457; 568296, 5391516; 568323, 5391582; 568323, 5391686; 568254, 5391700; 568178, 5391675; 568088, 5391644; 568060, 5391713; 568015, 5391745; 567970, 5391717; 567524, 5391703; 567479, 5391748; 567406, 5391859; 567337, 5391945; 567351, 5392004; 567330, 5392132; 567313, 5392264; 567258, 5392371; 567161, 5392482; 567413, 5392489; 568247, 5392502; 568248, 5392502; 568866, 5392507; 569902, 5392515; 569902, 5392515; 570715, 5392528;

(xxxviii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 604688, 5398896; 604479, 5398679; 604480, 5398631; 604071, 5398292; 603836, 5398204;

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 600876, 5398338; 600923, 5398387;
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 601906, 5398642; 601904, 5398737;
 602091, 5398883; 602386, 5398971;
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 602976, 5399125; 603024, 5399126;
 603116, 5399270; 603443, 5399549;
 603761, 5399650; 603859, 5400126;
 605024, 5399994; 605025, 5399911;
 604979, 5399863; 605027, 5399816;
 604993, 5399709; 604936, 5399589;
 604893, 5399387; 604704, 5399336;
 604803, 5399100; 604805, 5399017;
 604688, 5398896;

(xxxix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 576410, 5399822; 575475, 5399804; 575386, 5399802; 575376, 5399802; 575372, 5399808; 575371, 5399808; 575222, 5399807; 575221, 5399807; 574797, 5399804; 574793, 5400219; 574793, 5400220; 574787, 5400782; 574787, 5400783; 574787, 5400828; 574781, 5401403; 574781, 5401404; 574726, 5402577; 574726, 5402578; 574708, 5402973; 574708, 5402979; 575523, 5402997; 576331, 5403016; 576331, 5403010; 576371, 5400169; 576382, 5400069; 576411, 5399937; 576413, 5399822; 576410, 5399822;

(xl) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 561952, 5406754; 561962, 5406353; 562348, 5406353; 562366, 5405946; 563503, 5405917; 563503, 5405916; 563770, 5405929; 563746, 5405878; 563740, 5405867; 563736, 5405856; 563734, 5405841; 563735, 5405828; 563738, 5405817; 563740, 5405812; 563746, 5405801; 563752, 5405791; 563759, 5405781; 563790, 5405746; 563814, 5405719; 563831, 5405702; 563845, 5405690; 563903, 5405646; 563931, 5405622; 563950,

5405607; 563961, 5405601; 563983, 5405591; 563994, 5405585; 564002, 5405578; 564010, 5405569; 564016, 5405559; 564018, 5405556; 564061, 5405555; 564059, 5405562; 564705, 5405596; 564669, 5405215; 565066, 5405237; 565067, 5405237; 565083, 5404448; 565083, 5404447; 565084, 5404237; 565084, 5404236; 565081, 5404198; 565081, 5404197; 565075, 5403862; 565075, 5403862; 565075, 5403862; 565072, 5403666; 564848, 5403655; 564765, 5403651; 564765, 5403667; 564668, 5403662; 564668, 5403646; 564263, 5403626; 564262, 5403233; 564664, 5403255; 564661, 5402863; 564662, 5402842; 564337, 5402807; 563924, 5402763; 563518, 5402718; 563518, 5402799; 563515, 5403518; 563515, 5403589; 563511, 5404322; 563452, 5404324; 563081, 5404338; 561854, 5404374; 561847, 5404375; 561836, 5404362; 561864, 5402787; 561829, 5402786; 561829, 5402786; 561829, 5402775; 561821, 5402781; 560256, 5402714; 560254, 5402716; 560254, 5402716; 560254, 5402721; 560265, 5403118; 560265, 5403124; 560269, 5403386; 560283, 5403528; 560661, 5403541; 560667, 5403938; 561049, 5403951; 561061, 5404349; 561066, 5404349; 561447, 5404361; 561545, 5405577; 561322, 5405566; 561349, 5405951; 561360, 5406749; 561952, 5406754;

(xli) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 567704, 5415810; 567918, 5415715; 568147, 5415708; 568587, 5415655; 568608, 5415646; 568608, 5415652; 569747, 5415652; 569756, 5414055; 569640, 5413337; 569783, 5412449; 569371, 5412458; 568168, 5412413; 566823, 5412422; 566816, 5412429; 566059, 5412409; 565379, 5412412; 565331, 5412883; 565083, 5412930; 564976, 5413057; 564822, 5413318; 564627, 5413540; 564527, 5413855; 564205, 5413989; 563923, 5414009; 563576, 5414009; 563575, 5414019; 563575, 5414020; 563573, 5414835; 563573, 5414836; 564078, 5414893; 564372, 5415041; 564701, 5415456; 564712, 5415650; 565143, 5415663; 565214, 5415665; 566815, 5415745; 566829, 5415746; 566830, 5415734; 566887, 5415799; 567080, 5415852; 567302, 5415894; 567506, 5415901; 567704, 5415810;

(xlii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 587035, 5417980; 587311, 5417742; 587324, 5417767; 587327, 5417768; 587389, 5417794; 587401, 5417785; 587703, 5417914; 587641, 5417746; 587393, 5417633; 587463, 5417583; 587462, 5417582; 587351, 5417582; 587297, 5417580; 587297, 5417581; 587033, 5417791; 586985,

5417814; 586881, 5417806; 586802,
5417810; 586758, 5417906; 586804,
5417978; 586827, 5417979; 587035,
5417980;

(xliii) Land bounded by the following
UTM Zone 10, NAD83 coordinates
(E,N): 556986, 5418533; 556980,
5418057; 556973, 5417656; 556966,

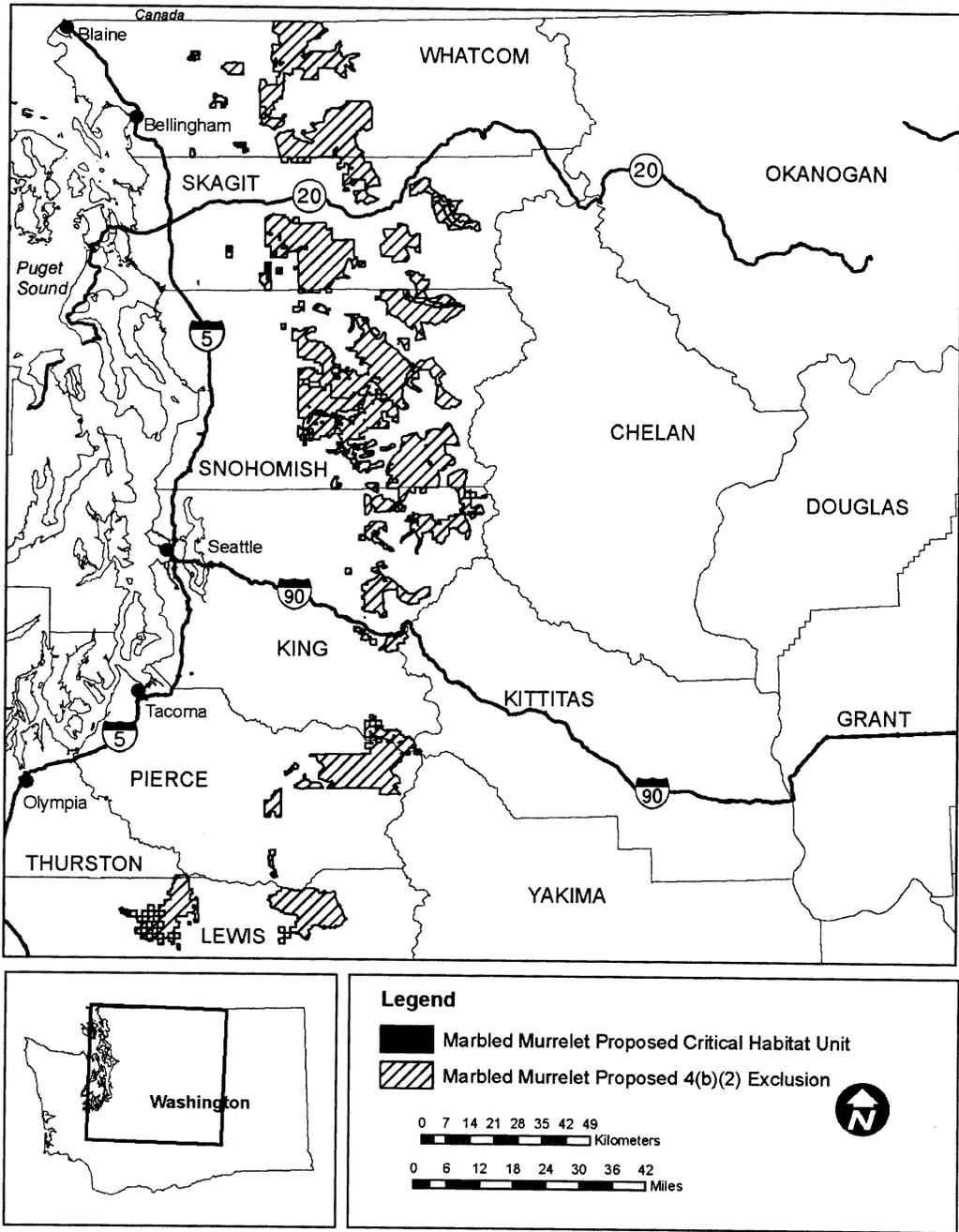
5417254; 556972, 5416656; 555801,
5416607; 555794, 5416285; 555407,
5416269; 555421, 5416691; 554616,
5416721; 554622, 5416413; 554197,
5416413; 553817, 5416414; 553812,
5417214; 554216, 5417216; 554212,
5417621; 554620, 5417624; 554628,
5417218; 555438, 5417223; 555412,

5418439; 555008, 5418436; 555016,
5418031; 554612, 5418029; 554605,
5418433; 554597, 5418838; 555000,
5418841; 555403, 5418845; 556990,
5418869; 556986, 5418533;

(xliv) Note: Map of Washington
Cascades Unit (Map 2) follows:

BILLING CODE 4310-55-P

Map 2. Washington Cascades Proposed Critical Habitat Unit, Washington



5125522; 479944, 5125561; 479944, 5125561; 479944, 5125561; 479941, 5125576; 479907, 5126022; 479907, 5126022; 479997, 5126023; 479998, 5126023; 479986, 5126031; 479980, 5126069; 479979, 5126123; 479987, 5126191; 479981, 5126209; 479968, 5126220; 479943, 5126222; 479914, 5126209; 479828, 5126157; 479828, 5126157; 479798, 5126129; 479798, 5126129; 479752, 5126098; 479731, 5126092; 479718, 5126098; 479714, 5126112; 479715, 5126136; 479726, 5126172; 479775, 5126250; 479798, 5126298; 479840, 5126361; 479862, 5126432; 479862, 5126432; 479988, 5126532; 479989, 5126532; 480002, 5126559; 480001, 5126593; 479986, 5126634; 479969, 5126652; 479956, 5126681; 479906, 5126736; 479877, 5126782; 479820, 5126851; 479804, 5126889; 479803, 5126890; 479784, 5126926; 479749, 5127017; 479620, 5127215; 479541, 5127303; 479541, 5127303; 479540, 5127303; 479991, 5127283; 480216, 5127273; 480217, 5127273; 480217, 5127273; 480982, 5127244; 481041, 5127244; 481814, 5127240;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 418138, 5128193; 418135, 5128183; 418124, 5128153; 418102, 5128095; 418087, 5128056; 418070, 5128024; 418053, 5127992; 418042, 5127967; 418036, 5127950; 418031, 5127931; 418029, 5127914; 418037, 5127892; 418052, 5127868; 418064, 5127849; 418078, 5127825; 418087, 5127811; 418094, 5127796; 418100, 5127782; 418104, 5127778; 418291, 5127770; 418512, 5127765; 419040, 5127747; 419032, 5127689; 419036, 5127592; 419076, 5127559; 419126, 5127541; 419112, 5127400; 418968, 5127306; 418917, 5127246; 418865, 5127155; 418830, 5127056; 418817, 5126988; 418834, 5126942; 418869, 5126893; 418902, 5126868; 418899, 5126845; 418943, 5126839; 418989, 5126780; 418981, 5126762; 418993, 5126709; 418965, 5126702; 418942, 5126664; 418938, 5126562; 418971, 5126534; 418973, 5126498; 418993, 5126470; 418999, 5126351; 418988, 5126280; 418944, 5126242; 418923, 5126209; 418900, 5126207; 418898, 5126203; 418874, 5126164; 418880, 5126126; 418888, 5126065; 418886, 5126030; 418746, 5126031; 418732, 5125693; 419092, 5125569; 419097, 5125478; 418927, 5125397; 418934, 5125387; 418924, 5125369; 418896, 5125354; 418865, 5125343; 418847, 5125347; 418827, 5125353; 418821, 5125360; 418820, 5125360; 418796, 5125382; 418766, 5125409; 418766, 5125409; 418735, 5125437; 418728,

5125443; 418706, 5125456; 418688, 5125462; 418667, 5125468; 418655, 5125467; 418644, 5125466; 418637, 5125468; 418624, 5125472; 418624, 5125472; 418624, 5125495; 418624, 5125495; 418631, 5125504; 418635, 5125511; 418646, 5125527; 418646, 5125527; 418645, 5125541; 418645, 5125543; 418617, 5125560; 418579, 5125570; 418579, 5125570; 418578, 5125571; 418535, 5125594; 418485, 5125698; 418461, 5125748; 418452, 5125766; 418451, 5125766; 418346, 5125762; 418343, 5125762; 418340, 5125756; 418307, 5125683; 418299, 5125664; 418283, 5125629; 418239, 5125562; 418213, 5125541; 418213, 5125541; 418185, 5125517; 418085, 5125427; 417879, 5125258; 417527, 5124969; 417294, 5124778; 417294, 5124778; 416798, 5124371; 416818, 5124983; 416846, 5125959; 416850, 5126098; 417108, 5126439; 417105, 5126467; 417112, 5126481; 417106, 5126517; 417110, 5126545; 417113, 5126567; 417114, 5126570; 417115, 5126573; 417123, 5126602; 417136, 5126620; 417135, 5126643; 417135, 5126643; 417135, 5126643; 417164, 5126679; 417216, 5126770; 417225, 5126785; 417281, 5126864; 417315, 5126916; 417315, 5126916; 417340, 5126954; 417354, 5126983; 417382, 5127041; 417401, 5127094; 417401, 5127094; 417421, 5127147; 417439, 5127192; 417447, 5127213; 417462, 5127277; 417463, 5127280; 417463, 5127280; 417468, 5127296; 417473, 5127302; 417477, 5127306; 417477, 5127306; 417477, 5127306; 417477, 5127319; 417477, 5127327; 417451, 5127348; 417449, 5127351; 417439, 5127368; 417434, 5127376; 417432, 5127380; 417419, 5127394; 417413, 5127385; 417412, 5127385; 417402, 5127380; 417391, 5127385; 417386, 5127395; 417386, 5127395; 417381, 5127400; 417374, 5127408; 417363, 5127410; 417352, 5127409; 417343, 5127416; 417341, 5127418; 417329, 5127443; 417321, 5127451; 417320, 5127452; 417317, 5127455; 417308, 5127463; 417302, 5127465; 417296, 5127467; 417286, 5127468; 417277, 5127470; 417266, 5127467; 417263, 5127466; 417243, 5127472; 417243, 5127479; 417242, 5127485; 417242, 5127485; 417248, 5127497; 417248, 5127497; 417249, 5127498; 417250, 5127500; 417256, 5127510; 417260, 5127517; 417264, 5127524; 417266, 5127526; 417272, 5127531; 417279, 5127538; 417283, 5127541; 417292, 5127539; 417297, 5127537; 417299, 5127536; 417306, 5127534; 417309, 5127538; 417311, 5127541; 417311, 5127549; 417311, 5127549; 417311, 5127551; 417317, 5127560; 417318, 5127561; 417326,

5127567; 417335, 5127575; 417335, 5127575; 417333, 5127578; 417333, 5127578; 417333, 5127578; 417317, 5127587; 417328, 5127588; 417317, 5127587; 417311, 5127586; 417311, 5127586; 417303, 5127585; 417288, 5127584; 417277, 5127583; 417275, 5127583; 417260, 5127581; 417251, 5127570; 417242, 5127573; 417241, 5127573; 417230, 5127572; 417210, 5127570; 417198, 5127569; 417198, 5127569; 417189, 5127568; 417181, 5127568; 417181, 5127568; 417171, 5127568; 417151, 5127570; 417145, 5127574; 417138, 5127579; 417121, 5127586; 417108, 5127585; 417105, 5127583; 417096, 5127578; 417085, 5127575; 417067, 5127588; 417065, 5127588; 417048, 5127590; 417043, 5127594; 417042, 5127593; 416909, 5127669; 416890, 5127815; 416934, 5127930; 416991, 5128012; 416959, 5128107; 417048, 5128196; 417112, 5128177; 417175, 5128209; 417226, 5128190; 417302, 5128260; 417264, 5128374; 417366, 5128463; 417442, 5128469; 417525, 5128596; 417544, 5128793; 417588, 5128965; 417842, 5129314; 417905, 5129332; 417920, 5129354; 417920, 5129354; 417923, 5129357; 417978, 5129388; 418022, 5129401; 418041, 5129413; 418041, 5129415; 418041, 5129415; 418289, 5129412; 418277, 5129393; 418235, 5129333; 418201, 5129286; 418154, 5129217; 418118, 5129167; 418092, 5129129; 418077, 5129109; 418063, 5129078; 418055, 5129061; 418052, 5129051; 418050, 5129037; 418051, 5129019; 418061, 5128989; 418092, 5128941; 418138, 5128868; 418181, 5128798; 418228, 5128724; 418272, 5128652; 418306, 5128597; 418320, 5128573; 418328, 5128554; 418329, 5128541; 418329, 5128530; 418324, 5128515; 418300, 5128477; 418268, 5128434; 418234, 5128387; 418214, 5128358; 418198, 5128335; 418181, 5128301; 418171, 5128283; 418159, 5128260; 418145, 5128215; 418138, 5128193;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434573, 5130143; 434587, 5130017; 434785, 5130070; 434845, 5129991; 434759, 5129878; 434686, 5129739; 434620, 5129541; 434891, 5129475; 435281, 5129475; 435202, 5129349; 435050, 5129203; 434891, 5129190; 434745, 5129170; 434745, 5128965; 434745, 5128846; 434792, 5128734; 434864, 5128575; 434911, 5128489; 434911, 5128390; 434825, 5128258; 434811, 5128092; 434792, 5127947; 434792, 5127841; 434739, 5127715; 434712, 5127537; 434600, 5127384; 434487, 5127232; 434249, 5127034; 433852, 5126842; 433581, 5126829; 433409, 5126829; 432973,

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(ix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 457483, 5145450; 457615, 5145439; 457868, 5145560; 458364, 5145461; 458761, 5145417; 458926, 5145461; 459234, 5145296; 459532, 5145164; 459774, 5145065; 459972, 5144822; 459939, 5144304; 459785, 5143853; 459752, 5143577; 459697, 5143357; 459477, 5143004; 459411, 5142784; 459168, 5142597; 459025, 5142244; 458882, 5141947; 458551, 5141716; 458111, 5141308; 457780, 5141077; 457384, 5140911; 457331, 5140973; 457326, 5140969; 457338, 5140956; 457358, 5140934; 457367, 5140916; 457377, 5140868; 457377, 5140863; 457377, 5140811; 457384, 5140788; 457406, 5140751; 457404, 5140730; 457377, 5140646; 457375, 5140610; 457380, 5140586; 457397, 5140550; 457430, 5140516; 457593, 5140441; 457598, 5140439; 457609, 5140429; 457609, 5140429; 457625, 5140415; 457643, 5140383; 457647, 5140359; 457615, 5140271; 457619, 5140234; 457643, 5140212; 457701, 5140208; 457733, 5140193; 457798, 5140118; 457812, 5140083; 457814, 5140058; 457814, 5140058; 457427, 5140056; 456683, 5140053; 456683, 5140053; 456683, 5140053; 456683, 5140053; 456680,

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(x) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 458518, 5149084; 458677, 5148887; 458861, 5148411; 459204, 5147998; 459191, 5147484; 459185, 5147312; 459172, 5147153; 458219,

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(xi) Land bounded by the following
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447965, 5162400; 447960, 5162131; 448080, 5162125; 448064, 5162065; 448066, 5162035; 448066, 5162034; 448067, 5162033; 448080, 5162013; 448086, 5162004; 448104, 5161984; 448148, 5161937; 448164, 5161926; 448188, 5161919; 448214, 5161920; 448266, 5161934; 448284, 5161930; 448314, 5161924; 448349, 5161899; 448351, 5161897; 448357, 5161894; 448359, 5161893; 448359, 5161893; 448438, 5161796; 448502, 5161711; 448501, 5161711; 448349, 5161710; 448349, 5161710; 448349, 5161710; 448349, 5161710; 448347, 5161410; 448346, 5161302; 448742, 5161302; 448740, 5160895; 448740, 5160894; 449136, 5160893; 449136, 5160893; 449139, 5161302; 449139, 5161302; 449535, 5161301; 449536, 5161301; 449538, 5161713; 449538, 5161713; 449141, 5161711; 449141, 5161712; 449152, 5162117; 448760, 5162117; 448775, 5162523; 448775, 5162523; 449943, 5162522; 449942, 5162419; 449942, 5162403; 449942, 5162403; 449942, 5162403; 450001, 5162475; 450021, 5162506; 450021, 5162506; 450142, 5162503; 450236, 5162501; 450237, 5162200; 450452, 5162195; 450453, 5162195; 450456, 5162259; 450456, 5162259; 450746, 5162260; 450725, 5162005; 450678, 5161934; 450627, 5161818; 450596, 5161722; 450596, 5161705; 450594, 5161698; 450594, 5161697; 450593, 5161697; 450457, 5161701; 450331, 5161704; 450331, 5161704; 450331, 5161703; 450342, 5161294; 450342, 5161291; 450756, 5161284; 450763, 5160063; 450762, 5160063; 449926, 5160069; 449919, 5160095; 449919, 5160095; 449264, 5160078; 449132, 5160074; 449131, 5160074; 448734, 5160077; 448338, 5160079; and excluding land bound by 443612, 5164054; 443605, 5164120; 443602, 5164143; 443612, 5163929; 443612, 5164054; and excluding land bound by 444012, 5164121; 444012, 5164071; 444407, 5164089; 444407, 5164500; 444355, 5164497; 444014, 5164474; 444012, 5164121; and excluding land bound by 443614, 5159929; 443620, 5159677; 443620, 5159677; 445181, 5159712; 445181, 5159712; 445181, 5159989; 445180, 5160111; 445180, 5160112; 445180, 5160112; 444676, 5160109; 443620, 5160104; 443620, 5160104; 443620, 5160103; 443617, 5160077; 443612, 5160019; 443612, 5160019; 443614, 5159929;

(xv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434073, 5169200; 434098, 5169200; 434120, 5169202; 434146, 5169210; 434147, 5169210; 434168, 5169219; 434187, 5169229; 434198, 5169240; 434204, 5169245; 434204, 5169245; 434208, 5169245; 434224, 5169243; 434243, 5169244; 434261, 5169245; 434282, 5169246; 434298, 5169243; 434313, 5169233; 434328, 5169216; 434348, 5169197; 434357, 5169183; 434369, 5169157; 434375, 5169136; 434390, 5169104; 434398, 5169088; 434399, 5169086; 434392, 5168169; 434439, 5168128; 434496, 5168064; 434588, 5167943; 434603, 5167815; 434624, 5167686; 434752, 5167558; 434681, 5167444; 434695, 5167288; 434731, 5167096; 434688, 5166839; 434645, 5166668; 434631, 5166469; 434524, 5166412; 434346, 5166384; 434264, 5166430; 434264, 5166428; 434263, 5166428; 433947, 5166421; 433883, 5166390; 433745, 5166312; 433712, 5166223; 433627, 5166141; 433530, 5166082; 433430, 5166056; 433341, 5166119; 433196, 5166048; 433162, 5166048; 433170, 5166015; 433144, 5165929; 433103, 5165818; 432995, 5165862; 432846, 5165952; 432720, 5165985; 432735, 5166130; 432690, 5166252; 432687, 5166308; 432699, 5166404; 432362, 5166457; 431981, 5166517; 431948, 5166523; 431214, 5166643; 431214, 5166643; 431161, 5166643; 430727, 5166641; 429976, 5166638; 429975, 5166638; 429831, 5166643; 429798, 5166644; 429795, 5166683; 429792, 5166706; 429787, 5166744; 429767, 5166874; 429758, 5166926; 429752, 5166961; 429744, 5166984; 429736, 5167008; 429725, 5167038; 429694, 5167120; 429681, 5167157; 429666, 5167195; 429656, 5167215; 429649, 5167234; 429647, 5167253; 429647, 5167270; 429650, 5167290; 429654, 5167314; 429655, 5167331; 429660, 5167359; 429699, 5167594; 429615, 5167627; 429613, 5167627; 429614, 5167651; 429621, 5167841; 430036, 5167837; 430048, 5168232; 430048,

5168232; 430049, 5168272; 430062, 5168597; 430541, 5168585; 430630, 5168583; 430630, 5168583; 430628, 5168383; 430627, 5168363; 430675, 5168363; 430675, 5168363; 431243, 5168366; 431503, 5168363; 431601, 5168362; 431648, 5168362; 431654, 5168639; 431656, 5168706; 431657, 5168805; 431662, 5169065; 431662, 5169065; 431665, 5169064; 431672, 5169064; 431681, 5169059; 431697, 5169052; 431713, 5169048; 431726, 5169049; 431742, 5169045; 431757, 5169043; 431764, 5169037; 431771, 5169032; 431789, 5169027; 431816, 5169018; 431837, 5169013; 431863, 5169010; 431884, 5169010; 431906, 5169014; 431932, 5169020; 431948, 5169022; 431961, 5169017; 431986, 5169009; 432005, 5169000; 432026, 5168984; 432040, 5168976; 432050, 5168970; 432059, 5168969; 432073, 5168970; 432083, 5168972; 432085, 5168972; 432090, 5168968; 432098, 5168959; 432103, 5168950; 432116, 5168932; 432138, 5168911; 432149, 5168899; 432168, 5168893; 432177, 5168893; 432190, 5168888; 432196, 5168884; 432252, 5168820; 432246, 5168847; 432269, 5168837; 432278, 5168834; 432294, 5168833; 432312, 5168834; 432324, 5168833; 432339, 5168832; 432353, 5168833; 432368, 5168830; 432377, 5168825; 432387, 5168822; 432402, 5168815; 432412, 5168811; 432422, 5168808; 432436, 5168808; 432448, 5168810; 432464, 5168812; 432464, 5168812; 432481, 5168829; 432488, 5168840; 432501, 5168852; 432512, 5168870; 432520, 5168877; 432521, 5168877; 432531, 5168865; 432544, 5168851; 432555, 5168840; 432556, 5168823; 432556, 5168814; 432582, 5168815; 432609, 5168813; 432635, 5168814; 432635, 5168814; 432658, 5168825; 432686, 5168847; 432712, 5168869; 432737, 5168879; 432737, 5168879; 432763, 5168882; 432794, 5168893; 432817, 5168899; 432835, 5168905; 432835, 5168905; 432844, 5168908; 432864, 5168910; 432880, 5168905; 432896, 5168892; 432931, 5168854; 432950, 5168836; 432964, 5168824; 432985, 5168811; 433007, 5168808; 433034, 5168812; 433056, 5168813; 433074, 5168811; 433095, 5168810; 433122, 5168817; 433123, 5168817; 433141, 5168826; 433165, 5168839; 433187, 5168852; 433210, 5168869; 433224, 5168881; 433243, 5168897; 433262, 5168914; 433280, 5168927; 433300, 5168940; 433318, 5168948; 433318, 5168948; 433337, 5168953; 433359, 5168952; 433383, 5168952; 433413, 5168953; 433436, 5168953; 433456, 5168949; 433477, 5168940; 433495, 5168932; 433514, 5168928; 433541,

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(xvi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 431890, 5184230; 431651, 5184148; 431874, 5185705; 431997, 5185644; 432006, 5185602; 432047, 5185458; 432080, 5185372; 432100, 5185322; 432282, 5185203; 432343, 5185170; 432389, 5185157; 432451, 5185141; 432479, 5185100; 432488, 5185050; 432512, 5184988; 432529, 5184927; 432537, 5184861; 432372, 5184828; 432174, 5184754; 432174, 5184671; 432166, 5184597; 432129, 5184506; 432047, 5184412; 431948, 5184358; 431911, 5184284; 431890, 5184230;

(xvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 433396, 5187709; 433375, 5187319; 433736, 5187359; 433829, 5187288; 433969, 5187144; 434034, 5187033; 434169, 5187014; 434238, 5187005; 434238, 5187158; 434229, 5187302; 434257, 5187391; 434271, 5187408; 434363, 5187405; 434388, 5187353; 434402, 5187265; 434404, 5187228; 434439, 5187260; 434465, 5187276; 434508, 5187336; 434582, 5187384; 434592, 5187398; 434728, 5187394; 434708, 5187344; 434726, 5187195; 434699, 5187065; 434745, 5186986; 434754, 5186870; 434750, 5186768; 434787, 5186693; 434819, 5186707; 434866, 5186796; 434889, 5186800; 434917, 5186717; 434875,

5186610; 434801, 5186591; 434768, 5186563; 434763, 5186508; 434510, 5186521; 434495, 5186522; 434492, 5186110; 433685, 5186138; 433657, 5185715; 433294, 5185738; 431883, 5185782; 431771, 5184992; 431764, 5184946; 431759, 5184906; 431651, 5184147; 430007, 5184248; 430198, 5185008; 430232, 5185007; 430232, 5185046; 430281, 5185069; 430315, 5185044; 430326, 5185069; 430349, 5185086; 430395, 5185049; 430418, 5185089; 430432, 5185061; 430463, 5185029; 430463, 5185089; 430517, 5185112; 430551, 5185015; 430605, 5185015; 430623, 5185044; 430668, 5185172; 430660, 5185214; 430614, 5185254; 430455, 5185166; 430389, 5185175; 430395, 5185200; 430463, 5185260; 430494, 5185334; 430432, 5185334; 430429, 5185377; 430406, 5185431; 430432, 5185482; 430466, 5185454; 430517, 5185471; 430546, 5185462; 430540, 5185522; 430455, 5185624; 430514, 5185713; 430426, 5185713; 430394, 5185753; 430339, 5185752; 430300, 5187359; 431210, 5187351; 431833, 5187343; 432585, 5187331; 432596, 5187724; 433397, 5187711; 433396, 5187709;

(xviii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 449685, 5188774; 449705, 5188608; 449925, 5188682; 450000, 5188702; 450044, 5188726; 450074, 5188736; 450155, 5188729; 450230, 5188719; 450304, 5188638; 450301, 5188503; 450403, 5188435; 450501, 5188384; 450559, 5188215; 450714, 5188106; 450860, 5188133; 450904, 5188103; 451565, 5188116; 451565, 5188408; 451945, 5188259; 451945, 5188228; 451941, 5188225; 451875, 5188066; 451824, 5187919; 451945, 5187727; 451945, 5187291; 451182, 5187278; 451181, 5187278; 451181, 5187278; 450812, 5187283; 450812, 5187284; 450442, 5187289; 450442, 5187289; 450435, 5185850; 450445, 5185845; 450717, 5186002; 450723, 5186107; 450848, 5186175; 450942, 5186175; 451083, 5185955; 451366, 5185887; 451460, 5185793; 451486, 5185793; 451544, 5185741; 451544, 5185678; 451611, 5185532; 451653, 5185427; 451706, 5185411; 451727, 5185338; 451706, 5185218; 451711, 5185118; 451570, 5185087; 451528, 5185265; 451434, 5185254; 451324, 5185160; 451183, 5185155; 451083, 5185213; 450984, 5185202; 450916, 5185129; 450675, 5184998; 450451, 5184930; 450351, 5184899; 450189, 5184998; 449865, 5185354; 449551, 5185725; 448860, 5185671; 448860, 5185669; 448830, 5185669; 448823, 5185668; 448823, 5185669; 447228, 5185658; 447198, 5187263; 447194,

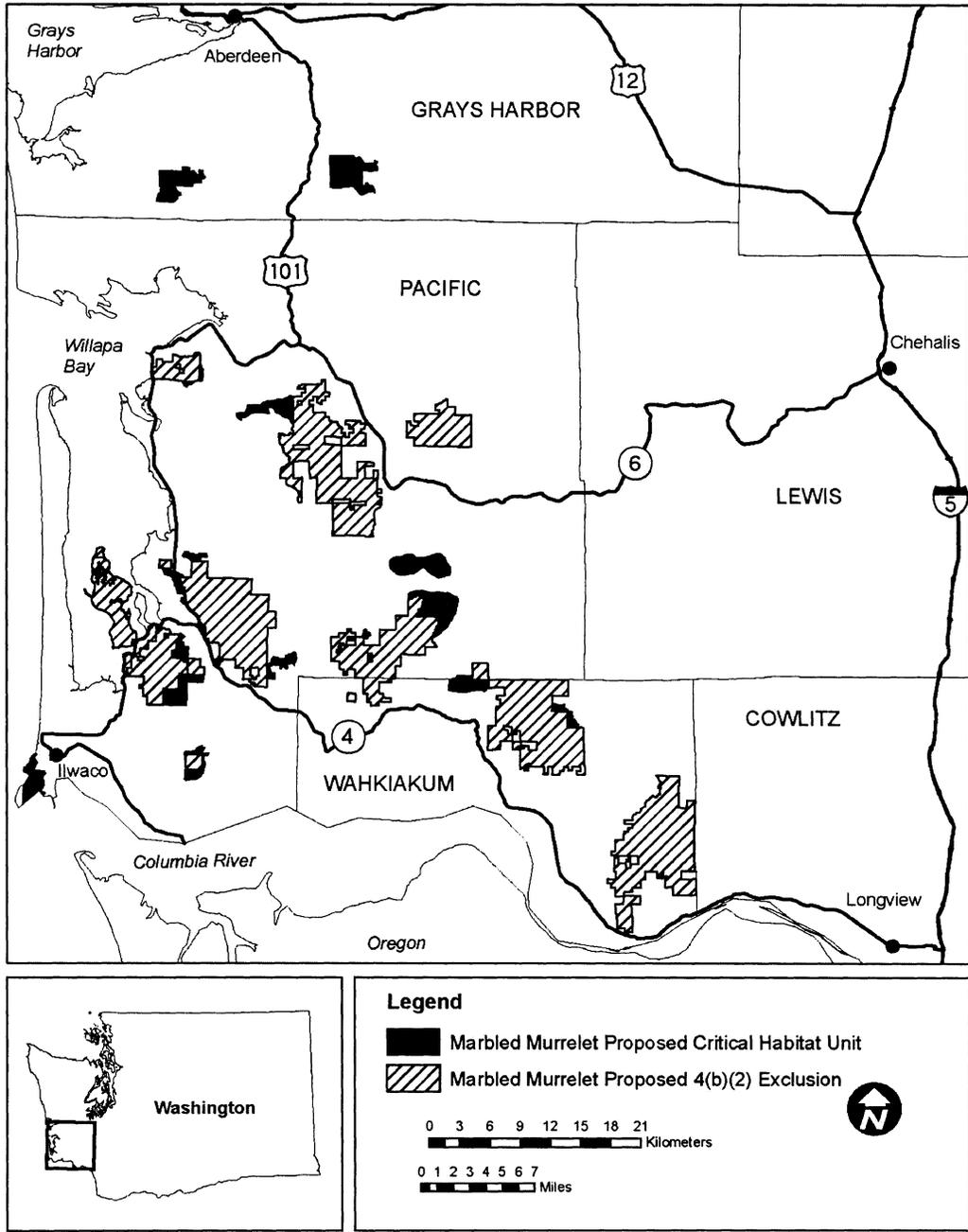
5187263; 447160, 5188856; 448769,

5188895; 449562, 5188906; 449559,
5188845; 449685, 5188774;

(xix) Note: Map of Southwest
Washington Unit (Map 3) follows:

BILLING CODE 4310-55-P

Map 3. Southwest Washington Proposed Critical Habitat Unit, Washington



(8) Northwest Oregon Unit, Oregon. Clatsop, Tillamook, Washington, and Yamhill counties, Oregon. From USGS 1:24,000 scale quadrangles: Arch Cape, Beaver, Blaine, Cedar Butte, Cook Creek, Elsie, Foley Peak, Garibaldi, Green Mountain, Hamlet, Kilchis River, Sager Creek, Soapstone Lake, The Peninsula, Tillamook, Turner Creek, Vinemapple, and Wickiup Mountain.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 440276, 5026351; 441187, 5026346; 441193, 5026347; 441866, 5026373; 443462, 5026429; 443459, 5026235; 443448, 5025664; 443445, 5025470; 443787, 5025409; 444342, 5025309; 444431, 5024837; 444475, 5024837; 444648, 5024145; 444651, 5024143; 445383, 5024144; 445381, 5023790; 446048, 5023801; 445903, 5023156; 445559, 5023145; 445233, 5023135; 445217, 5023139; 445214, 5023134; 445050, 5022832; 444656, 5022915; 444263, 5022999; 443870, 5023084; 443362, 5023194; 441791, 5023277; 441807, 5024019; 441171, 5024012; 440243, 5024001; 440244, 5024139; 440234, 5023374; 439158, 5023394; 439179, 5024174; 439637, 5024157; 439642, 5024547; 439830, 5024539; 439845, 5024878; 439849, 5024977; 439863, 5025292; 439487, 5025329; 439483, 5025330; 439500, 5025746; 440009, 5025721; 440247, 5025709; 440249, 5025789; 440269, 5026207; 440043, 5026213; 439032, 5026241; 439037, 5026617; 439458, 5026606; 440289, 5026584; 440289, 5026580; 440276, 5026351;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 445896, 5029992; 445128, 5029989; 445141, 5030879; 445903, 5030900; 445896, 5029992;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 446636, 5034292; 447024, 5034325; 447032, 5034325; 447413, 5034357; 447411, 5033935; 447800, 5033980; 448189, 5034026; 448183, 5033632; 448183, 5033629; 447799, 5033582; 447796, 5033205; 447401, 5033174; 447406, 5033554; 447019, 5033516; 446631, 5033477; 446633, 5033844; 446636, 5034292;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 446636, 5034292; 445861, 5034294; 445864, 5034743; 445479, 5034745; 445477, 5034372; 445477, 5034325; 445093, 5034356; 444902, 5034346; 444708, 5034337; 444708, 5033948; 444324, 5033931; 443939, 5033916; 443486, 5033893; 443484, 5033702; 443482, 5033514; 443478, 5033135; 443471, 5032931; 443494, 5032356; 443495, 5032217; 443495, 5032153; 443497, 5031779; 442792,

5031816; 442789, 5032173; 442412, 5032184; 442405, 5032954; 441998, 5032962; 441997, 5032990; 442042, 5033726; 442045, 5033772; 442089, 5034490; 442093, 5034557; 441679, 5034578; 441270, 5034600; 441265, 5034600; 440850, 5034636; 440854, 5034727; 440866, 5035041; 441274, 5035038; 441274, 5035040; 441653, 5035025; 442075, 5035009; 443081, 5034934; 443093, 5035258; 443479, 5035242; 443481, 5035031; 443936, 5035060; 443936, 5034993; 443938, 5034684; 444323, 5034704; 444709, 5034725; 444709, 5035111; 445096, 5035136; 445482, 5035149; 445868, 5035162; 446255, 5035175; 446641, 5035187; 446638, 5034741; 446636, 5034292;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 443957, 5036594; 443970, 5036597; 444763, 5036672; 444751, 5036270; 444730, 5035883; 444338, 5035852; 444355, 5036236; 443958, 5036203; 443957, 5036594;

(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 445984, 5036691; 445984, 5036349; 447380, 5036346; 447417, 5035619; 447031, 5035627; 446645, 5035634; 446653, 5035994; 446267, 5035974; 445882, 5035954; 445502, 5035934; 445122, 5035915; 445145, 5036299; 445495, 5036356; 445493, 5036532; 445503, 5036526; 445524, 5036518; 445563, 5036508; 445581, 5036508; 445618, 5036576; 445652, 5036604; 445707, 5036631; 445743, 5036659; 445780, 5036685; 445787, 5036692; 445984, 5036691;

(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 445224, 5037845; 445230, 5037079; 445194, 5037080; 444791, 5037040; 444389, 5037000; 444389, 5037030; 444389, 5037085; 444391, 5037382; 444393, 5037763; 444788, 5037809; 445224, 5037845;

(viii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 443957, 5036594; 443504, 5036551; 443504, 5036539; 443497, 5036379; 443187, 5036416; 442814, 5036462; 442792, 5036072; 442412, 5036106; 442032, 5036140; 442030, 5036205; 441645, 5036208; 441653, 5035832; 441651, 5035460; 441278, 5035460; 441278, 5035462; 440464, 5035474; 440477, 5035830; 440491, 5036217; 440876, 5036214; 440891, 5036618; 441285, 5036633; 441289, 5036633; 441685, 5036648; 441894, 5036656; 442085, 5036664; 442121, 5036962; 442128, 5037018; 442140, 5037122; 442152, 5037373; 442507, 5037306; 442479, 5036907; 442837, 5036851; 443204, 5036795; 443219, 5037172; 442860, 5037239; 442883,

5037626; 442880, 5037671; 442553, 5037743; 442218, 5037816; 442208, 5037867; 442151, 5038236; 442397, 5038182; 442512, 5038161; 442531, 5038180; 442504, 5038517; 442511, 5038561; 442812, 5038563; 442828, 5038563; 442828, 5038664; 443225, 5038652; 443226, 5038563; 443577, 5038558; 443576, 5038508; 443571, 5038397; 443554, 5037996; 443540, 5037665; 443534, 5037485; 443522, 5037116; 443516, 5036914; 443957, 5036958; 443957, 5036717; 443957, 5036594;

(ix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 437709, 5038788; 437711, 5038698; 437712, 5038312; 437713, 5037926; 438113, 5037900; 438113, 5038283; 438112, 5038666; 438515, 5038633; 438514, 5038253; 438512, 5037874; 438912, 5037847; 438909, 5037449; 438104, 5037512; 438092, 5037240; 438086, 5037098; 437675, 5037125; 437282, 5037152; 437265, 5036722; 436445, 5036720; 436450, 5037159; 435645, 5037166; 434468, 5037186; 434481, 5038012; 434482, 5038012; 434495, 5038413; 435293, 5038392; 435302, 5038699; 435304, 5038779; 435665, 5038775; 435655, 5037972; 436455, 5037955; 436881, 5037954; 436891, 5038741; 437258, 5038731; 437309, 5038730; 437308, 5038792; 437709, 5038788;

(x) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 443446, 5042776; 443412, 5041953; 443393, 5041148; 443418, 5041148; 443838, 5041147; 443838, 5041149; 445023, 5041152; 445114, 5040026; 443524, 5040043; 443557, 5039457; 443193, 5039400; 443164, 5039841; 443135, 5040283; 443107, 5040724; 443080, 5041136; 442709, 5041122; 442644, 5041120; 442339, 5041108; 441968, 5041094; 441896, 5041092; 441885, 5041428; 441873, 5041764; 441862, 5042100; 441851, 5042436; 442240, 5042515; 442629, 5042594; 442629, 5042604; 442637, 5042602; 443446, 5042776;

(xi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 438946, 5048570; 439036, 5046996; 439039, 5045708; 438983, 5044223; 440446, 5044232; 441959, 5043918; 441884, 5043534; 441508, 5043591; 441502, 5043222; 441350, 5043243; 441130, 5043276; 441128, 5042914; 441128, 5042904; 440761, 5042955; 440763, 5042579; 440767, 5042203; 440403, 5042237; 440024, 5042243; 440022, 5041853; 440019, 5041465; 440016, 5041077; 440060, 5041076; 440409, 5041067; 440407, 5041457; 440405, 5041847; 440771, 5041826; 441136, 5041806; 441142, 5041435; 441147, 5041064; 441212,

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 5039241; 441965, 5039208; 442018,
 5038868; 441631, 5038894; 441310,
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 5039275; 440830, 5039308; 440451,
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 5041671; 437244, 5041670; 437195,
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 5041593; 435313, 5041957; 434902,
 5041995; 434903, 5042395; 434107,

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 5042045; 433342, 5042834; 433338,
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 5042069; 432508, 5041882; 432103,
 5041894; 432108, 5042076; 432101,
 5042076; 432109, 5042477; 431718,
 5042483; 431733, 5042876; 431596,
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 5042890; 430935, 5042470; 430098,
 5042488; 430099, 5042903; 430109,
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 5043162; 429974, 5043179; 429971,
 5043188; 429959, 5043207; 429954,
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 5043280; 429935, 5043307; 429704,
 5043307; 429699, 5043330; 429690,
 5043361; 429681, 5043393; 429671,
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 5043496; 429635, 5043533; 429619,
 5043572; 429608, 5043600; 429583,
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 5043767; 429669, 5043796; 429655,
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 5043896; 429612, 5043928; 429592,
 5043957; 429563, 5043991; 429536,
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 5044115; 429440, 5044142; 429438,
 5044177; 429441, 5044199; 429452,
 5044216; 429469, 5044233; 429490,
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 5044314; 429577, 5044354; 429635,
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 5044474; 429695, 5044505; 429700,
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 5044860; 429838, 5044874; 429848,
 5044937; 429831, 5044957; 429837,
 5044969; 429862, 5044957; 429914,
 5045041; 429902, 5045050; 429937,
 5045114; 429904, 5045136; 429927,
 5045177; 429938, 5045197; 429951,
 5045219; 429954, 5045222; 429971,
 5045245; 429991, 5045266; 430105,
 5045259; 430135, 5045259; 430135,
 5045260; 430924, 5045253; 431612,
 5045247; 431750, 5045246; 431759,
 5045383; 431717, 5045370; 431637,
 5045390; 431613, 5045399; 431540,
 5045427; 431389, 5045490; 431405,
 5045713; 431620, 5046008; 431620,
 5046029; 431635, 5046028; 431815,
 5046276; 431930, 5046319; 432550,
 5046325; 432988, 5046328; 432974,
 5046691; 432591, 5046709; 432536,
 5046707; 432166, 5046694; 432156,
 5047503; 432145, 5047504; 432158,
 5047900; 432515, 5047891; 432507,
 5047487; 433275, 5047460; 433280,
 5047066; 434093, 5047044; 434094,

5046882; 434097, 5046078; 434099,
 5045346; 434930, 5045292; 434930,
 5044429; 435332, 5044409; 435332,
 5045267; 435678, 5045245; 435674,
 5046011; 436462, 5045981; 436871,
 5045966; 436871, 5045421; 437255,
 5045421; 437251, 5045951; 437247,
 5046759; 437247, 5046765; 437244,
 5047578; 437244, 5048537; 437465,
 5048527; 438946, 5048570;

(xii) Land bounded by the following
 UTM Zone 10, NAD83 coordinates
 (E,N): 435927, 5058860; 435954,
 5058402; 435957, 5056779; 435927,
 5056599; 435929, 5056358; 435909,
 5055179; 437652, 5055018; 437643,
 5053456; 437669, 5051865; 437580,
 5050248; 435933, 5050187; 434081,
 5050422; 433325, 5050422; 433313,
 5050785; 432568, 5050672; 432566,
 5051029; 433042, 5051047; 433022,
 5051435; 433704, 5051449; 433658,
 5052213; 433296, 5052214; 433295,
 5052291; 433349, 5052294; 433433,
 5052239; 433505, 5052273; 433817,
 5052604; 433802, 5052702; 433834,
 5052757; 433871, 5052802; 433925,
 5052875; 433931, 5052977; 434128,
 5052993; 434129, 5053374; 433785,
 5053371; 433784, 5053573; 433783,
 5054505; 433572, 5054619; 433415,
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 5054668; 433787, 5054665; 433794,
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 5055508; 433880, 5055550; 433895,
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 5055787; 434076, 5055916; 434092,
 5056006; 434127, 5056147; 434168,
 5056241; 434267, 5056340; 434688,
 5056319; 434728, 5057169; 435128,
 5057074; 435139, 5057852; 434732,
 5057934; 434769, 5058806; 434805,
 5058819; 434832, 5058818; 434879,
 5058800; 434968, 5058804; 435010,
 5058780; 435069, 5058772; 435121,
 5058780; 435148, 5058785; 435178,
 5058802; 435221, 5058843; 435251,
 5058863; 435289, 5058877; 435338,
 5058843; 435359, 5058837; 435387,
 5058838; 435428, 5058837; 435457,
 5058831; 435480, 5058809; 435500,
 5058795; 435521, 5058793; 435539,
 5058795; 435545, 5058953; 435546,
 5058960; 435927, 5058860;

(xiii) Land bounded by the following
 UTM Zone 10, NAD83 coordinates
 (E,N): 432119, 5070306; 432779,
 5070274; 432926, 5070278; 433616,
 5070306; 433577, 5068693; 434001,
 5068702; 434002, 5067627; 433807,
 5067626; 433807, 5067457; 433807,
 5067265; 434007, 5067272; 433971,
 5067117; 433965, 5067078; 433957,
 5067034; 433960, 5066980; 433973,
 5066947; 433979, 5066932; 433955,
 5066880; 433908, 5066823; 433876,
 5066789; 433830, 5066774; 433763,
 5066765; 433723, 5066756; 433682,
 5066727; 433647, 5066679; 433629,

5066649; 433607, 5066624; 433608, 5066658; 433622, 5067030; 433546, 5067029; 433181, 5067025; 433187, 5067843; 432725, 5067848; 432752, 5068676; 432300, 5068677; 432310, 5067821; 431900, 5067805; 431898, 5068677; 431868, 5068677; 431110, 5068670; 431110, 5069478; 431877, 5069486; 431978, 5069486; 431986, 5070313; 432119, 5070306;

(xiv) Land bounded by the following UTM Zone 10, NAD83 coordinates

(E,N): 449934, 5074692; 449932, 5074289; 450741, 5074305; 451434, 5074318; 451431, 5073908; 451060, 5073906; 451061, 5073111; 450244, 5073111; 450246, 5073470; 449900, 5073477; 449529, 5073484; 449522, 5073918; 449133, 5073930; 449125, 5073118; 449895, 5073092; 449889, 5072312; 449904, 5071886; 449889, 5071883; 449860, 5071879; 449846, 5071864; 449825, 5071830; 449797, 5071780; 449772, 5071724; 449750, 5071660; 449749, 5071609; 449740, 5071577; 449742, 5071522; 449748, 5071473; 449761, 5071389; 449789, 5071334; 449802, 5071295; 449845, 5071248; 449875, 5071213; 449890, 5071186; 449901, 5071165; 449916, 5071151; 449919, 5071148; 449930, 5070752; 449932, 5070455; 449908, 5070454; 449890, 5070455; 449872, 5070454; 449855, 5070452; 449841, 5070451; 449824, 5070437; 449800, 5070417; 449789, 5070400; 449779, 5070381; 449770, 5070361; 449769, 5070345; 449765, 5070325; 449759, 5070308; 449758, 5070291; 449756, 5070268; 449754, 5070248; 449754, 5070234; 449754, 5070227; 449757, 5070209; 449759, 5070187; 449761, 5070165; 449764, 5070140; 449763, 5070120; 449760, 5070099; 449756, 5070077; 449752, 5070054; 449748, 5070036; 449747, 5070030; 449739, 5070003; 449730, 5069974; 449727, 5069965; 449719, 5069907; 449698, 5069844; 449680, 5069812; 449656, 5069754; 449640, 5069720; 449616, 5069665; 449612, 5069611; 449605, 5069577; 449587, 5069503; 449591, 5069446; 449604, 5069393; 449625, 5069368; 449643, 5069323; 449681, 5069290; 449730, 5069281; 449803, 5069297; 449816, 5069320; 449867, 5069330; 449908, 5069365; 449911, 5069368; 449930, 5069389; 449950, 5069403; 449955, 5069201; 449904, 5069201; 449182, 5069260; 448380, 5069216; 446907, 5069128; 445308, 5069149; 445311, 5069081; 445379, 5067589; 445391, 5066492; 445394, 5065995; 445395, 5065995; 443996, 5065986; 443996, 5065628; 443622, 5065617; 443626, 5065401; 443662, 5065415; 443838, 5065442; 443906, 5065437; 443991, 5065430; 443996,

5065429; 443996, 5065171; 440936, 5065189; 439252, 5065184; 439242, 5063597; 439221, 5062141; 439561, 5061758; 439578, 5060987; 438366, 5060978; 438367, 5060675; 438251, 5060682; 438172, 5060671; 438073, 5060661; 438001, 5060657; 437951, 5060657; 437943, 5060659; 437945, 5060968; 437575, 5060962; 437562, 5060533; 435907, 5060570; 435909, 5060605; 435906, 5060619; 435854, 5060715; 435822, 5060785; 435799, 5060858; 435794, 5060920; 435762, 5060972; 435699, 5061046; 435670, 5061104; 435628, 5061182; 435585, 5061261; 435533, 5061301; 435558, 5062111; 436013, 5062080; 436032, 5063649; 436848, 5063669; 436850, 5063278; 437252, 5063279; 437257, 5063680; 437625, 5063690; 437633, 5064466; 438420, 5064402; 438429, 5064788; 438035, 5064826; 438043, 5065228; 437641, 5065212; 437626, 5066554; 437612, 5066561; 437613, 5067013; 436029, 5067023; 436025, 5067463; 436203, 5067462; 436189, 5068278; 436016, 5068280; 436012, 5068668; 436036, 5069510; 436396, 5069510; 436407, 5070315; 436450, 5070323; 436473, 5071331; 436633, 5071546; 436855, 5071541; 436865, 5071766; 436925, 5071808; 436968, 5071905; 437013, 5071993; 437045, 5072069; 437093, 5072126; 437138, 5072147; 437196, 5072168; 437327, 5072228; 437398, 5072235; 437553, 5072252; 437665, 5072277; 437737, 5072304; 437803, 5072299; 437889, 5072290; 438069, 5072292; 438044, 5070710; 439259, 5070684; 439258, 5071090; 439639, 5071086; 439631, 5070680; 440030, 5070674; 440040, 5071081; 440866, 5071064; 440866, 5070666; 441224, 5070659; 441222, 5070254; 440026, 5070272; 440037, 5069717; 439639, 5069724; 439668, 5068479; 440098, 5068455; 440488, 5068434; 440901, 5068411; 441333, 5068417; 441324, 5068843; 441715, 5068848; 441703, 5069258; 442450, 5069262; 442895, 5069265; 442888, 5070228; 444044, 5070214; 444035, 5069509; 444529, 5069528; 444519, 5069938; 444920, 5069942; 444910, 5070350; 444516, 5070335; 444513, 5070711; 445312, 5070712; 445340, 5071075; 445344, 5071875; 445340, 5072312; 444070, 5072311; 444053, 5072311; 444053, 5072350; 444054, 5072437; 444055, 5073022; 444056, 5073402; 444057, 5073920; 444057, 5073992; 444078, 5073993; 445340, 5073973; 445344, 5074289; 445560, 5074288; 445727, 5074287; 445720, 5074697; 445329, 5074695; 445336, 5075496; 445345, 5075880; 445365, 5076750; 446136, 5076709; 446129, 5076272; 446539, 5076272; 446542,

5075892; 446917, 5075895; 446899, 5075456; 446840, 5073911; 446845, 5073533; 447603, 5073553; 447600, 5073925; 448385, 5073939; 448385, 5073945; 448402, 5074706; 449198, 5074691; 449215, 5075511; 448420, 5075528; 448489, 5077031; 449243, 5077068; 449250, 5076278; 449938, 5076268; 449922, 5075530; 450275, 5075515; 450268, 5075127; 450712, 5075124; 450713, 5075120; 450729, 5074703; 449934, 5074692; and excluding land bound by 445299, 5069149; 444021, 5069088; 445306, 5069149; 445299, 5069149; and excluding land bound by 438037, 5069027; 438049, 5070297; 437664, 5070301; 437627, 5069056; 438037, 5069027;

(xv) Land bounded by the following

UTM Zone 10, NAD83 coordinates

(E,N): 426001, 5077589; 425987, 5077173; 426633, 5077150; 426610, 5076775; 426570, 5075988; 426231, 5075989; 426237, 5075536; 425737, 5075550; 425729, 5075178; 425398, 5075181; 425648, 5075584; 425621, 5075857; 425608, 5076040; 425606, 5076122; 425611, 5076411; 425765, 5076385; 425781, 5076792; 425784, 5077186; 425571, 5077193; 425584, 5077391; 425784, 5077388; 425795, 5077590; 426001, 5077589;

(xvi) Land bounded by the following

UTM Zone 10, NAD83 coordinates

(E,N): 460930, 5095937; 460930, 5093473; 460935, 5092706; 460935, 5092688; 461054, 5092690; 461055, 5092312; 461176, 5092310; 461174, 5091914; 461183, 5091915; 461220, 5091915; 461218, 5091520; 461318, 5091515; 461312, 5090897; 461555, 5090893; 461549, 5090840; 461529, 5090771; 461485, 5090725; 461434, 5090678; 461423, 5090677; 461414, 5090668; 461409, 5090665; 461387, 5090656; 461360, 5090651; 461310, 5090638; 461310, 5090641; 461275, 5090607; 461237, 5090573; 461216, 5090554; 461209, 5090548; 461187, 5090528; 461176, 5090516; 461173, 5090513; 461165, 5090504; 461154, 5090494; 461147, 5090478; 461140, 5090460; 461131, 5090414; 461125, 5090308; 461127, 5090297; 461141, 5090260; 461147, 5090238; 461149, 5090227; 461150, 5090215; 461149, 5090199; 461144, 5090175; 461139, 5090163; 461128, 5090144; 461100, 5090109; 461075, 5090080; 461046, 5090040; 460940, 5089924; 460935, 5089924; 460545, 5089926; 460541, 5089529; 460541, 5089529; 460527, 5089482; 460097, 5089482; 460092, 5090320; 459339, 5090323; 459333, 5089474; 458558, 5089496; 458567, 5090342; 457788, 5090358; 457773, 5089116; 458553, 5089124; 458561, 5088769; 458131, 5088774; 458123,

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(xvii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 444220, 5097962; 444202, 5097132; 444981, 5097102; 444983, 5097102; 446203, 5097086; 446178, 5096666; 446592, 5096650; 446584, 5096228; 445754, 5096242; 445721, 5095828; 444965, 5095848; 444971, 5096346; 444559, 5096352; 444519, 5095536; 444121, 5095546; 444142, 5095944; 443733, 5095963; 443754, 5096370; 443787, 5097148; 443097, 5097174; 443099, 5097591; 443799, 5097570; 443808, 5097968; 444220, 5097962;

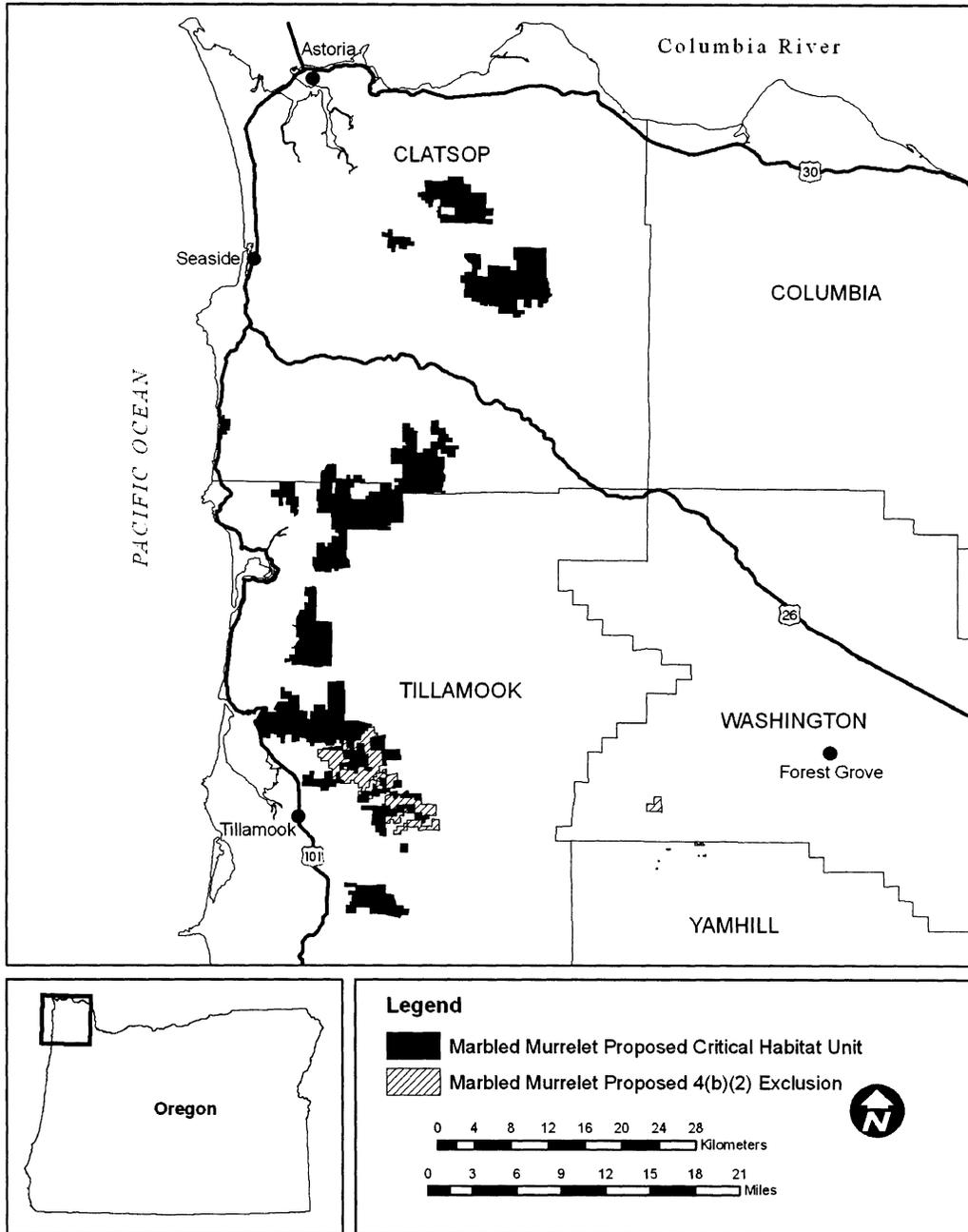
(xviii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 449446, 5100456; 449444, 5099936; 449444, 5099882; 449443, 5099629; 449443, 5099594; 451079, 5099529; 451083, 5099612; 451062, 5100427; 450277, 5100441; 449446, 5100456; 449452, 5100840; 449453, 5100903; 449456, 5101083; 449459, 5101285; 448663, 5101270; 448649, 5100462; 448233, 5100379; 448221, 5100810; 447839, 5100802; 447839, 5101180; 447424, 5101154; 447421, 5101545; 447037, 5101510; 447032, 5101948; 447838, 5102025; 447806, 5103284; 449459, 5103218; 449463, 5103218; 450321, 5103289; 450314, 5103705; 450371, 5103705; 451160, 5103700; 451160, 5103701; 451583, 5103682; 451583, 5103681; 451930,

5103666; 451942, 5102927; 452763, 5102875; 452736, 5102085; 452733, 5101983; 454410, 5101944; 454414, 5101944; 454414, 5101938; 454390, 5101119; 454367, 5100299; 455159, 5100265; 455119, 5099472; 454314, 5099476; 454288, 5099075; 455138, 5099064; 455127, 5098611; 454673, 5098604; 454669, 5098604; 454666, 5098604; 454652, 5098605; 454260, 5098634; 453908, 5098660; 453045, 5098702; 452719, 5098697; 452610, 5098698; 451544, 5098711; 451419, 5098712; 451415, 5098712; 451410, 5098712; 451045, 5098719; 451045, 5098716; 450084, 5098735; 449842, 5098739; 449439, 5098746; 449441, 5099134; 449399, 5099203; 449390, 5099218; 449381, 5099232; 449370, 5099247; 449360, 5099258; 449352, 5099266; 449347, 5099270; 449329, 5099278; 449317, 5099281; 449299, 5099283; 449280, 5099289; 449264, 5099293; 449249, 5099296; 449237, 5099300; 449226, 5099306; 449215, 5099313; 449208, 5099317; 449197, 5099326; 449185, 5099335; 449178, 5099345; 449172, 5099354; 449167, 5099365; 449164, 5099375; 449163, 5099387; 449163, 5099403; 449164, 5099420; 449164, 5099436; 449165, 5099450; 449165, 5099470; 449166, 5099487; 449166, 5099505; 449167, 5099523; 449168, 5099540; 449168, 5099547; 449169, 5099556; 449175, 5099582; 449180, 5099610; 449187, 5099637; 449197, 5099674; 449201, 5099690; 449212, 5099706; 449222, 5099719; 449231, 5099730; 449233, 5099732; 449239, 5099743; 449243, 5099756; 449243, 5099770; 449242, 5099784; 449236, 5099802; 449227, 5099820; 449218, 5099840; 449207, 5099860; 449195, 5099875; 449184, 5099885; 449170, 5099887; 449156, 5099883; 449139, 5099877; 449126, 5099878; 449111, 5099883; 449097, 5099889; 449086, 5099901; 449079, 5099920; 449075, 5099946; 449072, 5099969; 449066, 5099991; 449063, 5099998; 449245, 5100003; 449246, 5100457; 449446, 5100456;

(xix) Note: Map of Northwest Oregon Unit (Map 4) follows:

BILLING CODE 4310-55-P

Map 4. Northwest Oregon Proposed Critical Habitat Unit, Oregon



(9) Hebo Unit, Oregon. Lincoln, Polk, Tillamook, and Yamhill counties, Oregon. From USGS 1:24,000 scale quadrangles: Beaver, Blaine, Devils Lake, Dolph, Dovre Peak, Euchre Mountain, Fairdale, Falls City, Fanno Ridge, Gobblers Knob, Grand Ronde, Hebo, Laurel Mountain, Midway, Mowrey Landing, Muddy Valley, Neskowin, Neskowin OE W, Nestucca Bay, Niagara Creek, Sand Lake, Sheridan, Socialist Valley, Springer Mountain, Stony Mountain, Stott Mountain, Trask Mountain, Turner Creek, Valsetz, and Warnicke Creek.

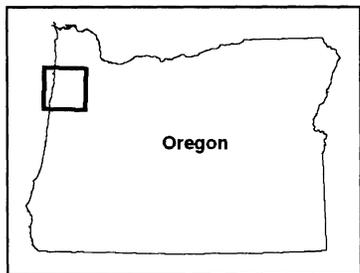
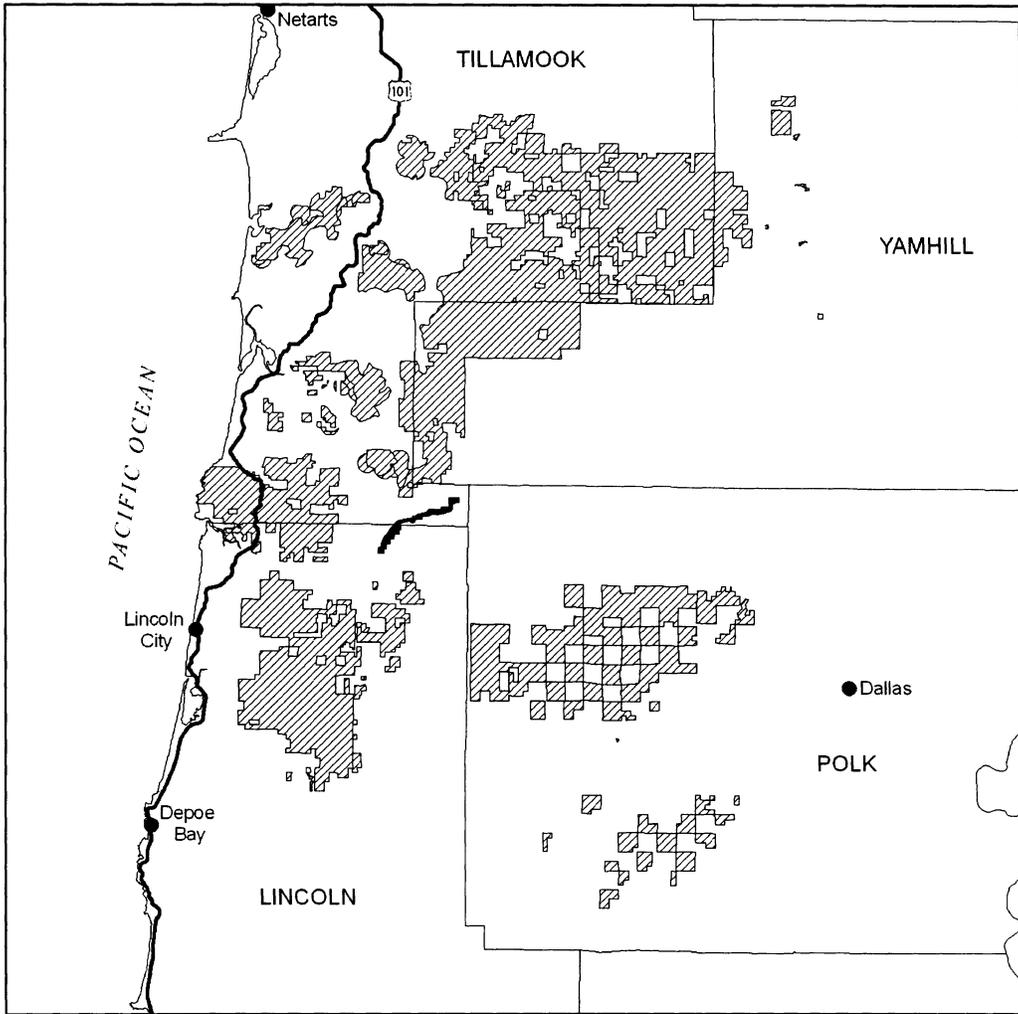
(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 441449, 4990540; 441449, 4990541; 441805, 4990535; 441805, 4990580; 442186, 4990580; 442186, 4990135; 441803, 4990137; 441803, 4990125; 441803, 4990071; 441604, 4990032; 441604, 4989767; 441606,

4989767; 441601, 4989569; 441432, 4989373; 441432, 4989379; 440967, 4989263; 440848, 4989265; 440848, 4989210; 440632, 4989210; 440329, 4989108; 439846, 4989113; 439784, 4989083; 439438, 4988940; 439042, 4988947; 439032, 4988753; 438603, 4988746; 438398, 4988598; 438396, 4988480; 438226, 4988400; 438226, 4988459; 438184, 4988452; 438072, 4988470; 438028, 4988516; 437975, 4988534; 437944, 4988572; 437918, 4988554; 437900, 4988567; 437857, 4988557; 437757, 4988511; 437630, 4988478; 437505, 4988434; 437369, 4988386; 437178, 4988332; 437142, 4988231; 437274, 4988227; 437266, 4987801; 437118, 4987803; 437079, 4987804; 437069, 4987393; 436656, 4987406; 436655, 4987368; 436643, 4987046; 436324, 4987046; 436325, 4986685; 436326, 4986594; 435985, 4986596; 435985, 4986226; 435797,

4986226; 435795, 4985801; 435285, 4985817; 435287, 4986115; 435287, 4986234; 435288, 4986288; 435514, 4986373; 435554, 4986602; 435553, 4986602; 435578, 4986733; 435718, 4987098; 435926, 4987348; 436006, 4987436; 436131, 4987616; 436251, 4987796; 436359, 4987944; 436436, 4988066; 436514, 4988159; 436536, 4988184; 436602, 4988246; 436680, 4988244; 436678, 4988329; 436678, 4988331; 436958, 4988623; 438228, 4988875; 438228, 4988877; 438227, 4989005; 438434, 4989011; 438740, 4989190; 438855, 4989187; 439371, 4989292; 439576, 4989577; 439601, 4989611; 439774, 4989610; 440607, 4989599; 440610, 4989789; 440853, 4989782; 441290, 4989771; 441287, 4990538; 441449, 4990540;

(ii) Note: Map of Hebo Unit (Map 5) follows:

Map 5. Hebo Proposed Critical Habitat Unit, Oregon



Legend

- Marbled Murrelet Proposed Critical Habitat Unit
- Marbled Murrelet Proposed 4(b)(2) Exclusion

0 4 8 12 16 20 24 28 Kilometers

0 3 6 9 12 15 18 21 Miles

(10) Yaquina Unit, Oregon. Benton, Lincoln, and Polk counties, Oregon. From USGS 1:24,000 scale quadrangles: Eddyville, Elk City, Falls City, Fanno Ridge, Harlan, Kings Valley, Nortons, Summit, Toledo North, and Valsetz.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 441849, 4939751; 441834, 4939310; 441343, 4939316; 441339, 4939029; 441337, 4938937; 442051, 4938937; 442051, 4938100; 439751, 4938123; 439770, 4938941; 440383, 4938941; 440616, 4938942; 440625, 4939741; 441351, 4939753; 441849, 4939751;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 460296, 4946741; 461896, 4946702; 461897, 4946738; 462420, 4946736; 462417, 4945942; 461905, 4945946; 461880, 4945949; 461878, 4945879; 461878, 4945875; 461883, 4945085; 461068, 4945107; 460285, 4945128; 460291, 4945955; 460296, 4946741;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 444158, 4949258; 444156, 4947985; 444162, 4947695; 443748, 4947700; 442950, 4947713; 442532, 4947724; 442538, 4948545; 442110, 4948553; 442107, 4948006; 442142, 4947997; 442168, 4947946; 442151, 4947847; 442104, 4947714; 441866, 4947708; 441712, 4947704; 441713, 4947775; 441715, 4948170; 441717, 4948698; 441718, 4948927; 442540, 4948926; 442543, 4949354; 442913, 4949339; 443188, 4949328; 443233, 4949325; 443482, 4949308; 443697, 4949293; 443752, 4949289; 444158, 4949258;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 436206, 4951012; 436951,

4951008; 436965, 4951009; 437358, 4951020; 437372, 4950120; 436216, 4950108; 436211, 4950550; 434979, 4950547; 434985, 4951041; 435011, 4951040; 436147, 4951015; 436206, 4951012;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 439273, 4955077; 439273, 4954659; 438873, 4954665; 438858, 4954253; 438801, 4954254; 438754, 4954254; 438371, 4954260; 438233, 4954262; 438241, 4955085; 438765, 4955081; 439273, 4955077;

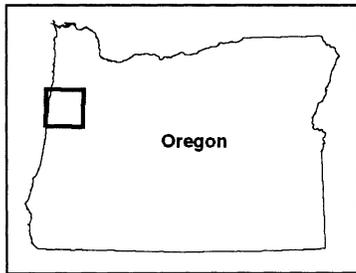
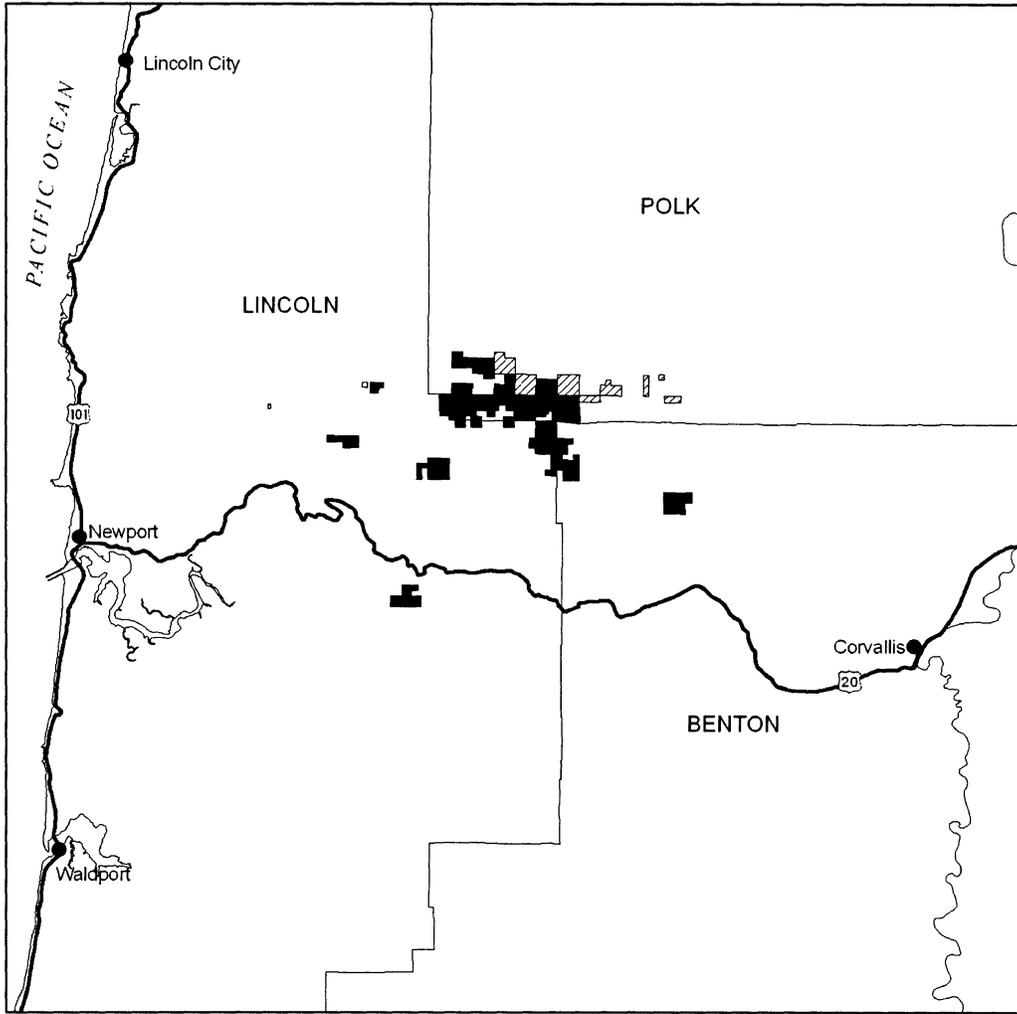
(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 450657, 4952154; 451885, 4952140; 451883, 4952463; 451879, 4952884; 451656, 4952893; 451648, 4952893; 451643, 4952697; 451463, 4952699; 451459, 4952464; 450659, 4952465; 450657, 4952154; 450405, 4952152; 450401, 4952152; 449048, 4952170; 449052, 4951687; 448222, 4951682; 448222, 4952485; 449045, 4952480; 449039, 4952931; 448463, 4952939; 448458, 4953344; 447888, 4953347; 447879, 4953089; 447875, 4952944; 447642, 4952945; 447633, 4952489; 447426, 4952490; 447000, 4952496; 447009, 4952943; 446212, 4952949; 446223, 4952506; 446638, 4952501; 446628, 4951660; 445807, 4951667; 445798, 4951667; 445803, 4952511; 445412, 4952512; 445411, 4952506; 445385, 4951690; 445385, 4951675; 445066, 4951680; 444623, 4951687; 444642, 4952205; 444197, 4952202; 444198, 4952514; 443451, 4952549; 443434, 4953374; 443416, 4954198; 443543, 4954197; 444211, 4954187; 444339, 4954185; 444358, 4954995; 445165, 4955001; 445940, 4954974; 445917, 4954178; 446640, 4954178; 446720, 4954177; 447043,

4954177; 447523, 4954177; 447562, 4954955; 448335, 4954941; 448347, 4955736; 449136, 4955724; 449119, 4954147; 450701, 4954129; 450716, 4955350; 452295, 4955339; 452293, 4954908; 452287, 4954113; 453120, 4954103; 453911, 4954093; 453938, 4953579; 454008, 4952262; 453996, 4951939; 452277, 4952137; 452267, 4950850; 453470, 4950784; 453467, 4950379; 453046, 4950393; 453048, 4950261; 453050, 4950215; 453059, 4950021; 453066, 4949878; 453068, 4949616; 452900, 4949618; 452650, 4949615; 452655, 4949460; 452665, 4949222; 453499, 4949199; 453487, 4949603; 453926, 4949596; 453916, 4949188; 453912, 4947588; 452699, 4947609; 452698, 4948416; 452243, 4948422; 452240, 4947980; 451376, 4948005; 451390, 4948418; 451794, 4948399; 451810, 4949240; 451817, 4949624; 451570, 4949632; 451003, 4949651; 450642, 4949663; 450644, 4950107; 450390, 4950109; 450193, 4950111; 450206, 4950865; 450396, 4950863; 450647, 4950860; 450657, 4952154;

(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447572, 4956543; 447565, 4956146; 447559, 4955748; 447559, 4955376; 447561, 4955352; 446749, 4955357; 446749, 4955383; 446759, 4955750; 445964, 4955770; 445974, 4956180; 445920, 4956175; 445565, 4956174; 445173, 4956185; 444388, 4956206; 444399, 4956607; 444401, 4957029; 444403, 4957409; 445208, 4957384; 445205, 4956996; 445989, 4956973; 445996, 4956973; 446396, 4956968; 446800, 4956961; 447575, 4956956; 447572, 4956543;

(viii) Note: Map of Yaquina Unit (Map 6) follows:

Map 6. Yaquina Proposed Critical Habitat Unit, Oregon



Legend

- Marbled Murrelet Proposed Critical Habitat Unit
- Marbled Murrelet Proposed 4(b)(2) Exclusion

0 3 6 9 12 15 18 21 Kilometers

0 2 4 6 8 10 12 14 Miles

(11) Central Oregon Unit, Oregon. Benton, Douglas, Lane, and Lincoln counties, Oregon. From USGS 1: 24,000 scale quadrangles: Alsea, Baldy Mountain, Beaver Creek, Callahan, Cannibal Mountain, Cedar Creek, Cheshire, Clay Creek, Crow, Cummins Peak, Deer Head Point, Devils Graveyard, Digger Mountain, Drain, Elk City, Elkton, Five Rivers, Fivemile Creek, Flat Mountain, Florence, Garden Valley, Glenbrook, Goodwin Peak, Grass Mountain, Greenleaf, Gunter, Harlan, Heceta Head, Hellion Rapids, Herman Creek, High Point, Horton, Kellogg, Kelly Butte, Letz Creek, Loon Lake, Mapleton, Marys Peak, Mercer Lake, Newport South, North Fork, Noti, Old Blue, Prairie Peak, Putnam Valley, Reedsport, Roman Nose Mountain, Scottsburg, Smith River Falls,

Tidewater, Tiernan, Toledo South, Triangle Lake, Twin Sisters, Tyee, Tyee Mountain, Veneta, Waldport, Walton, Windy Peak, Wren, Yachats, Yellow Butte, and Yoncalla.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434148, 4827969; 434556, 4827969; 434538, 4827167; 434134, 4827171; 434148, 4827969;

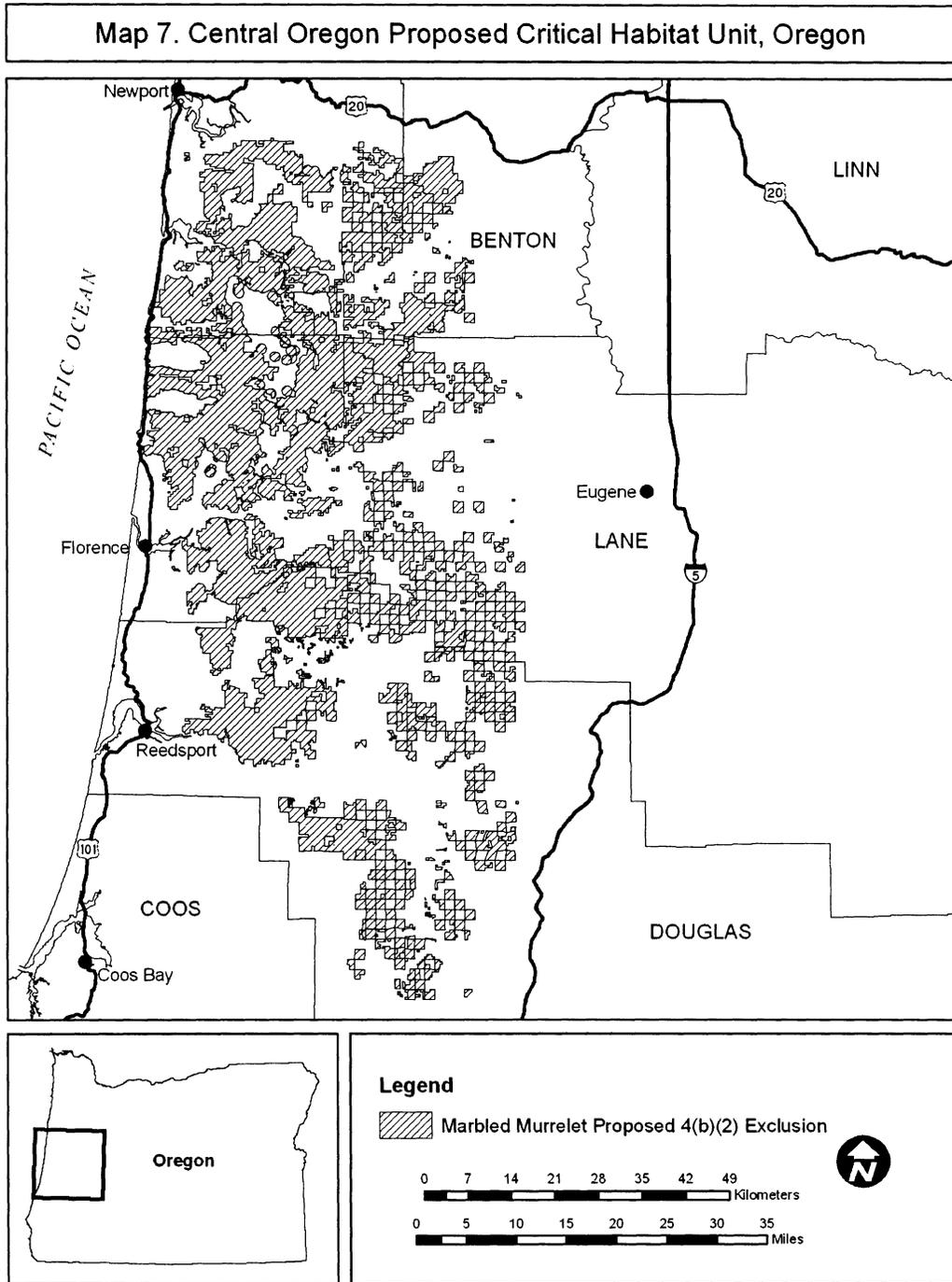
(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 470888, 4827715; 470467, 4827703; 470479, 4828165; 470904, 4828160; 470888, 4827715;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434148, 4827969; 433937, 4827969; 433921, 4828753; 434163, 4828754; 434148, 4827969;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 459236, 4841001; 459230, 4839535; 457706, 4839536; 457715, 4840299; 457724, 4841036; 459236, 4841001;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 432769, 4916226; 432863, 4916219; 433094, 4916257; 433316, 4916337; 433304, 4915858; 433155, 4915907; 432790, 4915982; 432674, 4915999; 432589, 4915983; 432534, 4915937; 432505, 4915865; 432492, 4915754; 432515, 4915592; 432559, 4915479; 432631, 4915375; 431667, 4915399; 431682, 4916151; 432103, 4916143; 432109, 4916525; 432769, 4916226;

(vi) Note: Map of Central Oregon Unit (Map 7) follows:



(12) Elliott Unit, Oregon, Coos and Douglas counties, Oregon. From USGS 1: 24,000 scale quadrangles: Allegany, Deer Head Point, Elk Peak, Golden Falls, Loon Lake, North Bend, Reedsport, Scottsburg, and Trail Butte.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434000, 4822437; 434004, 4822048; 434010, 4821659; 433589, 4821662; 433207, 4821664; 433204, 4822278; 433235, 4822266; 433282, 4822251; 433319, 4822250; 433346, 4822255; 433396, 4822275; 433439, 4822296; 433474, 4822318; 433500, 4822342; 433521, 4822370; 433540, 4822401; 433552, 4822432; 434000, 4822437;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 420124, 4838110; 420135, 4837818; 420601, 4837820; 421023, 4837822; 421441, 4837823; 421445, 4837490; 421859, 4837491; 422691, 4837502; 422690, 4837232; 422945, 4837227; 422957, 4837245; 423092, 4837244; 423374, 4837242; 423441, 4837204; 423497, 4837181; 423496, 4837092; 423492, 4836835; 423490, 4836686; 424040, 4836670; 424023, 4836274; 424450, 4836256; 424805, 4836241; 424813, 4836451; 424651, 4836651; 424820, 4836642; 424896, 4836639; 424945, 4836562; 425055, 4836430; 425123, 4836390; 425161, 4836360; 425161, 4836226; 425162, 4836020; 425301, 4835829; 425348, 4835766; 425421, 4835647; 425503, 4835559; 425532, 4835466; 425543, 4835432; 425669, 4835033; 425718, 4834652; 425722, 4834618; 425749, 4834588; 425770, 4834451; 425833, 4834363; 425969, 4834267; 426086, 4834185; 426175, 4834173; 426372, 4834039; 426431, 4834000; 426594, 4833868; 426763, 4833731; 426762, 4833481; 427175, 4833468; 427468, 4833419; 427596, 4833419; 427704, 4833419; 427805, 4833423; 428012, 4833441; 428219, 4833459; 428280, 4833464; 428315, 4833467; 428430, 4833476; 428526, 4833458; 428853, 4833449; 429217, 4833440; 429339, 4833435; 429374, 4833843; 429626, 4833929; 429627, 4833818; 430024, 4833813; 430473, 4833817; 430892, 4833821; 430883, 4833418; 430911, 4833022; 431301, 4833038; 431317, 4832630; 431695, 4832634; 431706, 4832293; 431708, 4832213; 431717, 4831920; 431737, 4831530; 431753, 4831139; 431771, 4830748; 431781, 4830555; 431794, 4830352; 431394, 4830352; 430995, 4830352; 430583, 4830347; 430172, 4830342; 430172, 4829945; 430171, 4829549; 430171, 4829152; 430171, 4828756; 430564, 4828758; 430569, 4829154; 430574, 4829550; 430976, 4829552; 430967,

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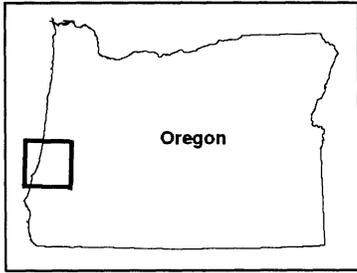
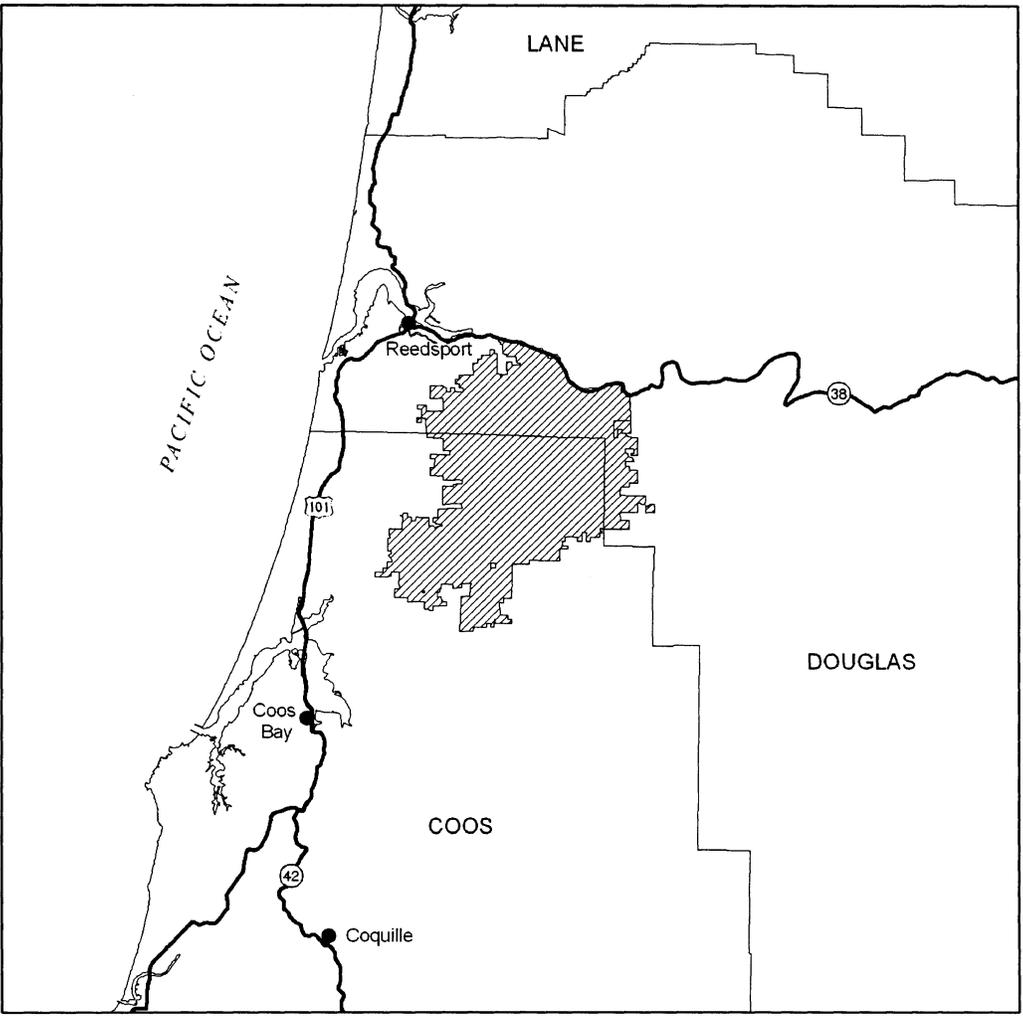
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418645, 4816815; 418645, 4816772; and excluding land bound by 412216, 4814034; 412417, 4814032; 412420, 4814233; 412218, 4814235; 412216, 4814034;

(iii) Note: Map of Elliott Unit (Map 8) follows:

BILLING CODE 4310-55-P

Map 8. Elliott Proposed Critical Habitat Unit, Oregon



Legend

 Marbled Murrelet Proposed 4(b)(2) Exclusion

0 4 8 12 16 20 24 28 Kilometers

0 3 6 9 12 15 18 21 Miles



(13) Coquille Unit, Oregon. Coos and Douglas counties, Oregon. From USGS 1:24,000 scale quadrangles: Bridge, Camas Valley, Cedar Creek, Chipmunk Ridge, Coos Bay, Coos Mountain, Daniels Creek, Dora, Kenyon Mountain, McKinley, Mount Gurney, Rasler Creek, Remote, Reston, Sitkum, Tenmile, and Tioga.

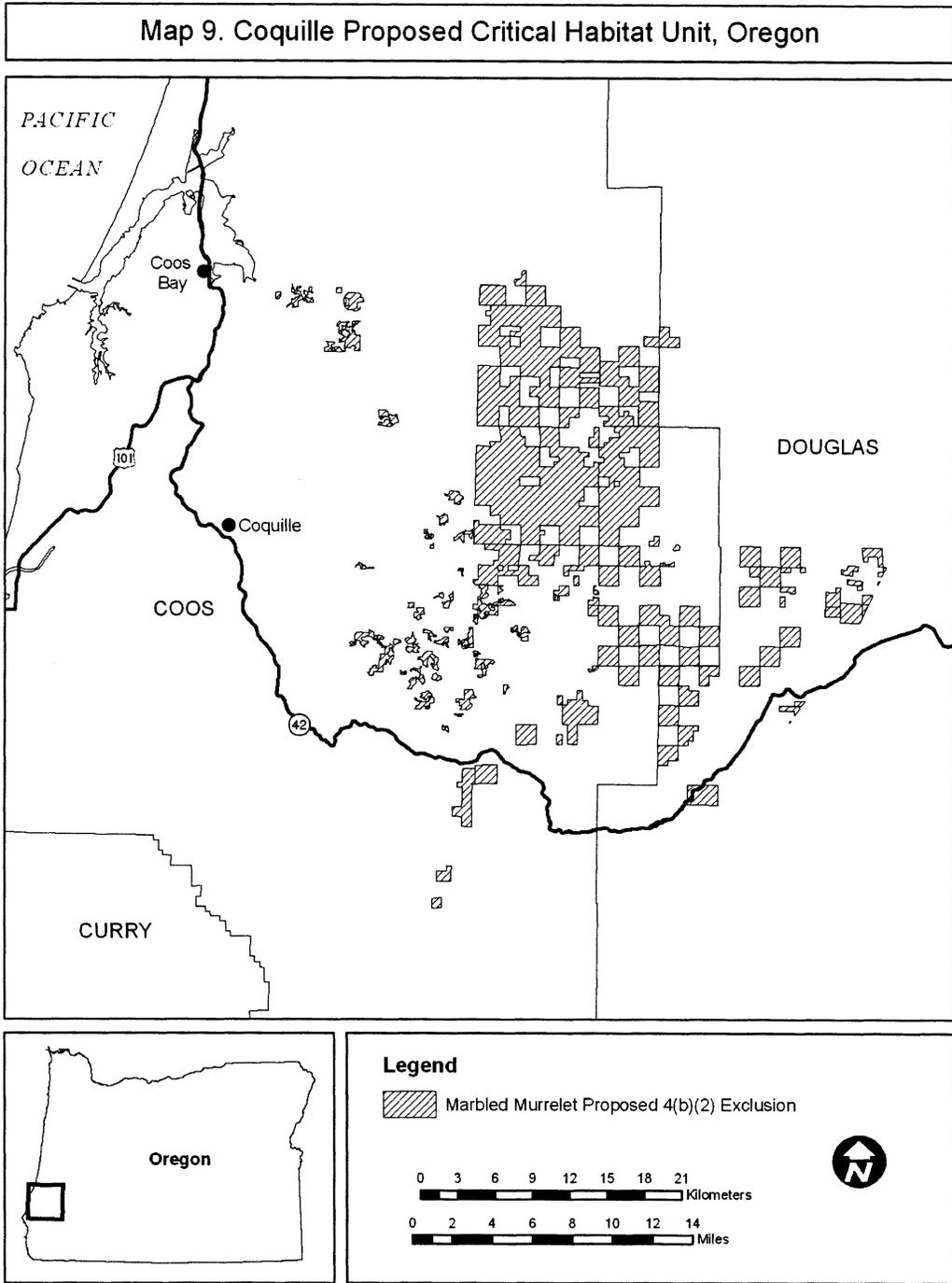
(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 442759, 4760653; 442747, 4759040; 441137, 4759059; 440333,

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(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 427301, 4801913; 427297, 4801510; 427292, 4801106; 426893, 4801110; 426495, 4801115; 426467, 4801115; 426461, 4801166; 426439, 4801237; 426343, 4801446; 426340, 4801472; 426354, 4801512; 426361, 4801518; 426385, 4801540; 426463, 4801583; 426504, 4801597; 426528, 4801605; 426571, 4801615; 426685,

4801628; 426699, 4801636; 426813, 4801630; 426854, 4801642; 426903, 4801713; 426917, 4801733; 426944, 4801743; 426977, 4801778; 426983, 4801819; 426976, 4801865; 426985, 4801896; 426983, 4801915; 426977, 4801964; 426959, 4802055; 426982, 4802153; 427026, 4802233; 427058, 4802260; 427168, 4802317; 427210, 4802317; 427306, 4802316; 427301, 4801913;

(iii) Note: Map of Coquille Unit (Map 9) follows:

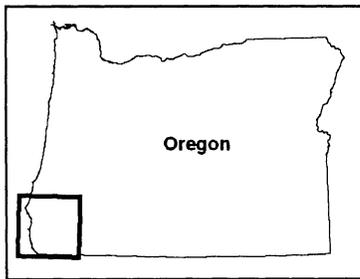
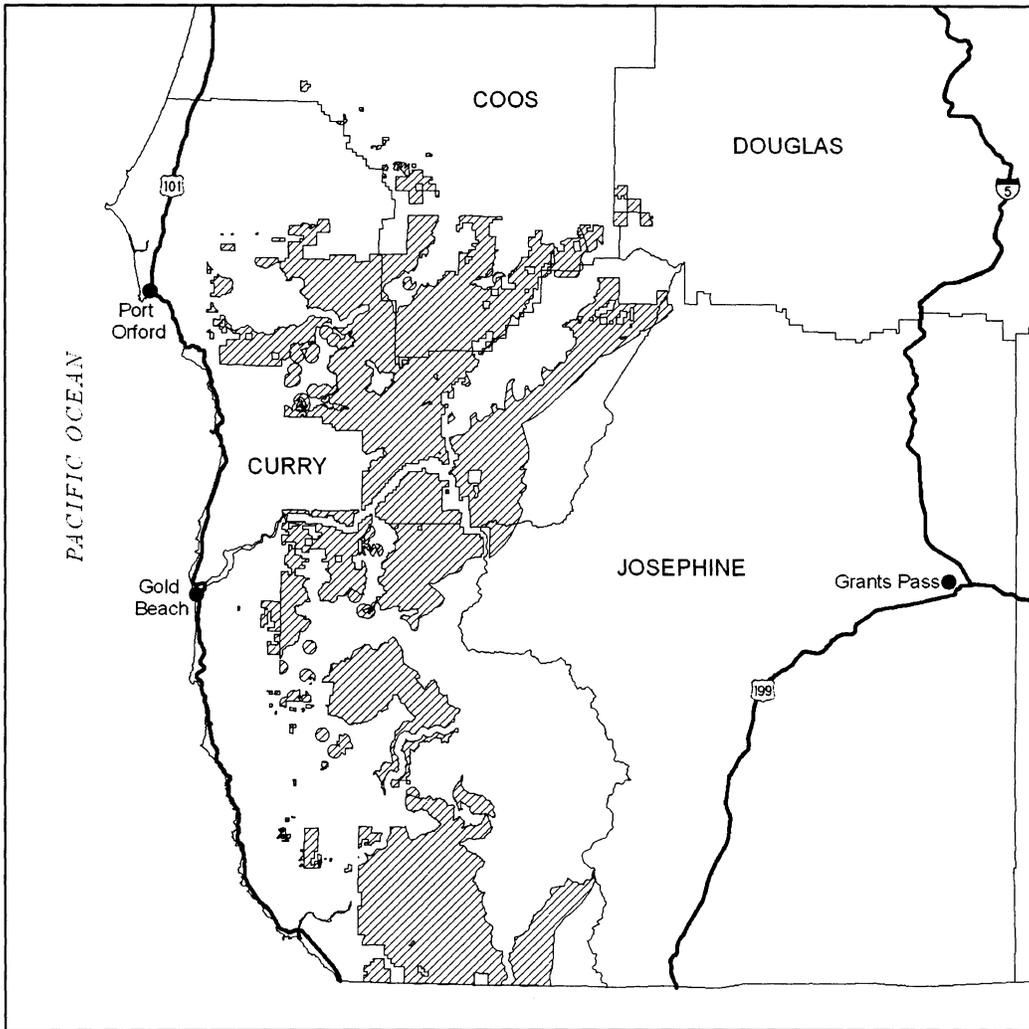


(14) Southwest Oregon Unit, Oregon. Coos, Curry, Douglas, and Josephine counties, Oregon. From USGS 1:24,000 scale quadrangles: Agness, Barklow Mountain, Big Craggies, Biscuit Hill, Bosley Butte, Brandy Peak, Brookings, Brushy Bald Mountain, Buckskin Peak, Bunker Creek, Calf Ranch Mountain,

Carpenterville, Chetco Peak, China Flat, Collier Butte, Dement Creek, Dutchman Butte, Eden Valley, Father Mountain, Fourth of July Creek, High Divide, High Plateau Mountain, Horse Sign Butte, Illahe, Kelsey Peak, Marial, Mount Bolivar, Mount Butler, Mount Emily, Ophir Mountain, Port Orford, Powers,

Quail Prairie Mountain, Quosatana Butte, Signal Buttes, Silver Peak, Sixes, Smith River, Soldier Camp Mountain, Sundown Mountain. Note: Map of Southwest Oregon Unit (Map 10) follows:

Map 10. Southwest Oregon Proposed Critical Habitat Unit, Oregon



Legend

 Marbled Murrelet Proposed 4(b)(2) Exclusion

0 5 10 15 20 25 30 35 Kilometers

0 4 8 12 16 20 24 28 Miles



(15) Del Norte/Northern Humboldt County Unit, California. Del Norte, Siskiyou, and Humboldt counties, California. From USGS 1:24,000 scale quadrangles: Bark Shanty Gulch, Blue Creek Mountain, Board Camp Mountain, Broken Rib Mountain, Cant Hook Mountain, Childs Hill, Chimney Rock, Devils Punchbowl, Dillon Mountain, Fish Lake, Gasquet, Grouse Mountain, Hennessy Peak, High Divide, High Plateau Mountain, Hiouchi, Hupa Mountain, Hurdygurdy Butte, Iaquia Buttes, Johnsons, Klamath Glen, Lonesome Ridge, Lord-Ellis Summit, Mad River Buttes, Orleans, Requa, Shelly Creek Ridge, Ship Mountain, Sims Mountain, Summit Valley, Weitchpec, and Willow Creek.

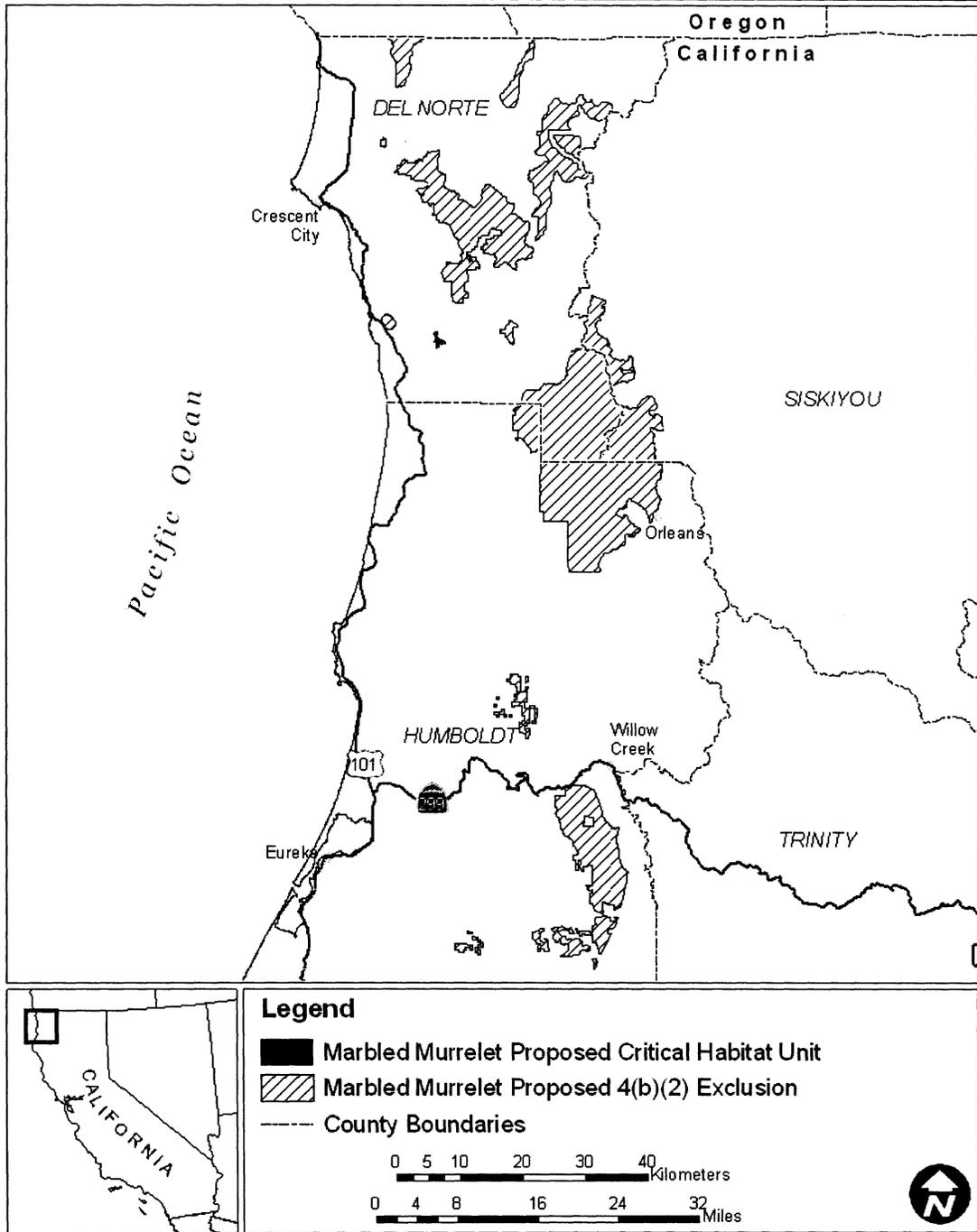
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(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 411443, 4602664; 411303, 4602652; 411163, 4602664; 411046, 4602706; 410944, 4602743; 410888, 4602830; 410726, 4602901; 410570, 4602954; 410547, 4603069; 410402, 4603110; 410463, 4603225; 410511, 4603317; 410383, 4603395; 410345, 4603528; 410307, 4603652; 410207, 4603741; 410229, 4603919; 410159, 4604016; 410171, 4604156; 410207, 4604292; 410267, 4604419; 410217, 4604532; 410277, 4604659; 410357, 4604774; 410456, 4604873; 410571, 4604953; 410698, 4605012; 410834, 4605049; 410973, 4605061; 411113, 4605049; 411249, 4605012; 411376, 4604953; 411491, 4604873; 411590, 4604773; 411670, 4604658; 411811, 4604603; 411910, 4604503; 411990, 4604388; 412050, 4604261; 412137, 4604207; 412270, 4604058; 412330, 4603931; 412366, 4603796; 412378, 4603656; 412366, 4603516; 412329, 4603381; 412270, 4603254; 412190, 4603139; 412000, 4603054; 411920, 4602939; 411800, 4602895; 411706, 4602759; 411578, 4602700; 411443, 4602664;

(iii) Note: Map of Del Norte/Northern Humboldt County Unit (Map 11) follows:

Map 11. Del Norte/Northern Humboldt County Proposed Critical Habitat Unit, California



(16) Southern Humboldt County Unit, California. Humboldt County, California. From USGS 1:24,000 scale quadrangles: Bull Creek, Ettersburg, Garberville, Hydesville, Iaqua Buttes, McWhinney Creek, Miranda, Myers Flat, Owl Creek, Redcrest, Scotia, and Weott.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 418955, 4481893; 418976, 4481781; 418880, 4481785; 418855, 4481617; 418845, 4481422; 418725, 4481292; 418672, 4481226; 418614, 4481167; 418551, 4481121; 418492, 4481081; 418452, 4481043; 418425, 4480971; 418337, 4480967; 417888, 4481482; 417959, 4481512; 418018, 4481543; 418076, 4481570; 418121, 4481613; 418150, 4481660; 418289, 4481888; 418314, 4481944; 418344, 4481998; 418414, 4482053; 418491, 4482077; 418570, 4482080; 418650, 4482063; 418719, 4482053; 418781, 4482044; 418847, 4482015; 418919, 4481955; 418955, 4481893;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 422100, 4482717; 422171, 4482238; 422304, 4482268; 422422, 4482295; 423021, 4482425; 423381, 4482507; 423592, 4482475; 423749, 4482382; 423844, 4482338; 423882, 4482231; 424500, 4481760; 424493, 4481416; 424175, 4481586; 423922, 4481777; 423916, 4481520; 423901, 4480854; 422986, 4480884; 422734, 4480908; 422683, 4480920; 422626, 4480915; 422566, 4480896; 422474, 4480915; 422371, 4480953; 422291, 4480971; 422185, 4480932; 422114, 4480920; 422010, 4480903; 421929, 4480892; 421829, 4480866; 421732, 4480863; 421665, 4480814; 421588, 4480845; 421537, 4480913; 421505, 4480951; 421433, 4481191; 421336, 4481219; 421261, 4481216; 421203, 4481173; 421143, 4481164; 421054, 4481062; 420868, 4480936; 420783, 4480933; 420664, 4480942; 420595, 4480922; 420503, 4480899; 420420, 4480901; 420386, 4481036; 420380, 4481095; 420396, 4481187; 420389, 4481269; 420370, 4481334; 420333, 4481412; 420335, 4481535; 420337, 4481597; 420379, 4481675; 420435, 4481753; 419585, 4481905; 419660, 4482319; 420022, 4482609; 420443, 4482626; 420562, 4482619; 421384, 4482608; 421426, 4483393; 421502, 4483395; 421549, 4483403; 421597, 4483403; 421626, 4483330; 421690, 4483283; 421742, 4483226; 421834, 4483192; 421873, 4483157; 421916, 4483093; 421986, 4483038; 421974, 4482944; 422016, 4482884; 422037, 4482818; 422072, 4482771; 422100, 4482717;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 421212, 4491071; 421389, 4490882; 421557, 4491066; 422042, 4491037; 422086, 4490732; 422120, 4490500; 422638, 4490499; 422618, 4490138; 422116, 4490120; 422101, 4489625; 422085, 4488901; 421546, 4488919; 420468, 4488479; 420142, 4488865; 420106, 4489051; 420592, 4489744; 420644, 4490007; 420771, 4490064; 420696, 4490358; 420848, 4490940; 421069, 4491085; 421212, 4491071;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 416595, 4492164; 416620, 4491340; 413541, 4490437; 412936, 4490263; 412834, 4490331; 412798, 4490388; 412700, 4490450; 412599, 4490478; 412510, 4490450; 412427, 4490440; 412361, 4490455; 412250, 4490481; 412198, 4490394; 411786, 4490933; 411540, 4491466; 411538, 4491955; 411534, 4493086; 412112, 4493135; 412290, 4493100; 412942, 4492823; 413190, 4492461; 413441, 4492384; 413531, 4492356; 413599, 4492427; 413691, 4492409; 413722, 4492504; 413808, 4492534; 413917, 4492509; 413948, 4492461; 413942, 4492308; 413956, 4492215; 413887, 4492130; 413927, 4492036; 413965, 4491912; 413967, 4491768; 413917, 4491627; 413924, 4491567; 414194, 4491845; 414240, 4491947; 414310, 4491954; 414488, 4491927; 414408, 4492150; 414413, 4492223; 414465, 4492317; 414526, 4492330; 414617, 4492305; 414669, 4492265; 414727, 4492168; 414808, 4492068; 414879, 4492033; 414966, 4492084; 415089, 4492171; 415199, 4492199; 415269, 4492243; 415359, 4492282; 415910, 4492564; 415960, 4492624; 416007, 4492815; 416117, 4492924; 416264, 4493015; 416360, 4493056; 416433, 4493149; 416529, 4493023; 416472, 4492943; 416455, 4492898; 416467, 4492847; 416502, 4492816; 416555, 4492795; 416676, 4492743; 416721, 4492664; 416795, 4492444; 416595, 4492164;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 419536, 4497885; 419627, 4497885; 419870, 4497885; 420278, 4497866; 420266, 4497651; 420258, 4497500; 420252, 4497399; 420233, 4497068; 420545, 4497069; 420644, 4497069; 420642, 4496998; 420612, 4496861; 420543, 4496798; 420468, 4496762; 420412, 4496747; 420366, 4496732; 420330, 4496678; 420224, 4496663; 420187, 4496601; 420111, 4496564; 420049, 4496554; 420037, 4496497; 420028, 4496441; 420013, 4496393; 420017, 4496335; 419982, 4496256; 419901, 4496199; 419828,

4496210; 419774, 4496266; 419698, 4496330; 419592, 4496328; 419525, 4496357; 419492, 4496428; 419492, 4496502; 419405, 4496575; 419372, 4496642; 419365, 4496688; 419361, 4496733; 419334, 4496766; 419293, 4496795; 419225, 4496829; 419160, 4496857; 419095, 4496881; 419012, 4496916; 418953, 4496894; 418908, 4496879; 418864, 4496875; 418799, 4496871; 418727, 4496885; 418669, 4496856; 418602, 4496818; 418549, 4496813; 418490, 4496815; 418448, 4496785; 418426, 4496739; 418419, 4496674; 418416, 4496623; 418392, 4496552; 418382, 4496475; 418404, 4496410; 418403, 4496360; 418390, 4496312; 417528, 4496343; 416526, 4495967; 414911, 4496782; 414884, 4496995; 415118, 4497334; 416149, 4497231; 416526, 4496747; 417063, 4496755; 417434, 4497020; 417408, 4497400; 417580, 4497577; 417914, 4497565; 418376, 4497388; 418739, 4497394; 418897, 4497663; 419135, 4497836; 419139, 4497899; 419161, 4497942; 419203, 4497969; 419290, 4497976; 419365, 4497975; 419461, 4497973; 419538, 4497965; 419536, 4497885;

(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 420485, 4503921; 420464, 4503516; 420259, 4503513; 420097, 4503511; 420177, 4502917; 420192, 4502811; 420261, 4502297; 420383, 4502293; 420393, 4502133; 420498, 4501991; 420599, 4501903; 420685, 4501875; 420753, 4501829; 420771, 4501774; 420774, 4501707; 420778, 4501609; 420785, 4501434; 420799, 4501043; 420782, 4500999; 420731, 4500964; 420651, 4500960; 420417, 4500965; 420400, 4500679; 420395, 4500601; 419871, 4500619; 419778, 4501126; 418859, 4501160; 418832, 4501225; 418772, 4501249; 418725, 4501274; 418665, 4501326; 418601, 4501350; 418548, 4501374; 418484, 4501437; 418410, 4501449; 418356, 4501481; 418314, 4501539; 418248, 4501603; 418180, 4501676; 418133, 4501740; 418085, 4501773; 418014, 4501844; 418101, 4501988; 418090, 4502265; 418216, 4502354; 418252, 4502688; 418410, 4502721; 418587, 4502533; 418806, 4502813; 418019, 4503653; 418037, 4503908; 418123, 4503886; 418176, 4503888; 418278, 4503871; 418487, 4503674; 418493, 4503616; 418512, 4503554; 418687, 4503553; 418738, 4503126; 418947, 4503128; 418897, 4503551; 419318, 4503542; 419695, 4503935; 420336, 4503923; 420485, 4503921;

(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 412789, 4504410; 412670, 4504207; 412552, 4503913; 412505,

4503696; 412340, 4503502; 412288, 4503466; 412221, 4503380; 412151, 4503250; 412063, 4503184; 412009, 4503164; 411955, 4503126; 411909, 4503086; 411848, 4503089; 411802, 4503105; 411771, 4503135; 411729, 4503167; 411660, 4503208; 411590, 4503256; 411518, 4503296; 411473, 4503348; 411441, 4503422; 411393, 4503474; 411356, 4503497; 411306, 4503528; 411254, 4503562; 411197, 4503598; 411136, 4503627; 411088, 4503647; 411016, 4503686; 410942, 4503671; 410871, 4503688; 410821, 4503724; 410752, 4503785; 410706, 4503825; 410656, 4503842; 410615, 4503880; 410575, 4503964; 410553, 4504024; 410518, 4504075; 410471, 4504108; 410428, 4504134; 410372, 4504143; 410307, 4504183; 410279, 4504240; 410279, 4504290; 410311, 4504347; 410374, 4504378; 410446, 4504380; 410501, 4504385; 410567, 4504394; 410627, 4504437; 410669, 4504450; 410732, 4504477; 410845, 4504483; 410905, 4504435; 410953, 4504407; 411016, 4504434; 411076, 4504419; 411121, 4504352; 411195, 4504319; 411253, 4504329; 411299, 4504356; 411351, 4504352; 411425, 4504357; 411513, 4504316; 411659, 4504411; 412411, 4504370; 412520, 4504553; 412660, 4504610; 412789, 4504410;

(viii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 403246, 4505264; 403317, 4505245; 403356, 4505263; 403428, 4505286; 403500, 4505307; 403522, 4505250; 403626, 4505229; 403785, 4505191; 404762, 4504850; 405216, 4504101; 405573, 4503970; 406133, 4503689; 406298, 4503671; 406361, 4503481; 407232, 4503199; 407294, 4503109; 407624, 4503310; 408033, 4503452; 408383, 4503257; 409062, 4503106; 409430, 4502905; 409682, 4502464; 410064, 4502168; 410319, 4501930; 410451, 4501686; 410939, 4501227; 410976, 4500862; 411246, 4500718; 411396, 4500526; 411778, 4500328; 411945, 4500219; 412059, 4500227; 412946, 4500468; 412992, 4500490; 413091, 4500478; 413195, 4500423; 413288, 4500396; 413360, 4500304; 413447, 4500298; 413486, 4500273; 413525, 4500224; 413545, 4500177; 413558, 4500060; 413615, 4500033; 413677, 4499991; 413733, 4499940; 413762, 4499890; 413777, 4499831; 413788, 4499782; 413804, 4499707; 413805, 4499625; 413789, 4499564; 413761, 4499505; 413709, 4499435; 413631, 4499341; 413571, 4499297; 413504, 4499277; 413426, 4499268; 413373, 4499247; 413369, 4499195; 413365, 4499122; 413371, 4499034; 413376, 4498965; 413364,

4498908; 413324, 4498849; 413362, 4498787; 413412, 4498766; 413459, 4498746; 413508, 4498698; 413540, 4498632; 413571, 4498597; 413607, 4498530; 413679, 4498471; 413711, 4498435; 413745, 4498394; 413806, 4498370; 413843, 4498339; 413867, 4498290; 413868, 4498245; 413838, 4498180; 413763, 4498103; 413725, 4498065; 413687, 4498002; 413639, 4497914; 413595, 4497873; 413532, 4497873; 413436, 4497808; 413293, 4497669; 413196, 4497589; 413037, 4497521; 412868, 4497493; 412658, 4497464; 412683, 4497231; 412491, 4497225; 412428, 4497231; 412373, 4497204; 412302, 4497128; 412232, 4496917; 412209, 4496875; 412047, 4496758; 411856, 4496230; 411827, 4496193; 411632, 4496045; 411609, 4495925; 411587, 4495854; 411371, 4495676; 411301, 4495657; 411283, 4495551; 411309, 4495500; 411381, 4495469; 411414, 4495374; 411347, 4495336; 411277, 4495310; 411239, 4495249; 411210, 4495145; 411281, 4495046; 411335, 4494995; 411372, 4494923; 411425, 4494896; 411480, 4494842; 411533, 4494727; 411506, 4494687; 411481, 4494648; 411423, 4494613; 411192, 4494556; 411016, 4494597; 410915, 4494670; 410754, 4494559; 410657, 4494553; 410664, 4494450; 410612, 4493971; 410564, 4493797; 410116, 4493363; 409963, 4493411; 409905, 4493500; 409842, 4494398; 409815, 4494450; 409805, 4494552; 409871, 4494643; 409888, 4494685; 409903, 4494792; 409904, 4494896; 409890, 4494962; 409865, 4495074; 409797, 4495172; 409795, 4495277; 409825, 4495350; 409749, 4495382; 409702, 4495458; 409706, 4495522; 409502, 4495658; 409473, 4495841; 409441, 4496167; 409340, 4496278; 409285, 4496506; 409096, 4496589; 409056, 4496718; 408831, 4496879; 408287, 4496799; 408243, 4496813; 407931, 4497063; 407744, 4497113; 407700, 4497152; 407691, 4497221; 407516, 4497380; 407381, 4497664; 407137, 4497685; 406911, 4497662; 406401, 4497797; 405980, 4497674; 405988, 4498015; 406003, 4498793; 406013, 4499604; 406859, 4499542; 406875, 4500352; 406847, 4501217; 406845, 4502033; 406776, 4502816; 406782, 4502877; 406631, 4502879; 406628, 4503111; 406144, 4503336; 406080, 4503486; 405265, 4503864; 405037, 4503889; 404683, 4504354; 404292, 4504696; 403187, 4505177; 403224, 4505334; 403246, 4505264; and excluding land bound by 410376, 4499670; 411337, 4499381; 411585, 4499164; 411590, 4500200; 411521, 4500221; 411413, 4500254; 411265, 4500458; 411202, 4500545;

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(ix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 403634, 4505355; 403622, 4505305; 403589, 4505338; 403634, 4505355;

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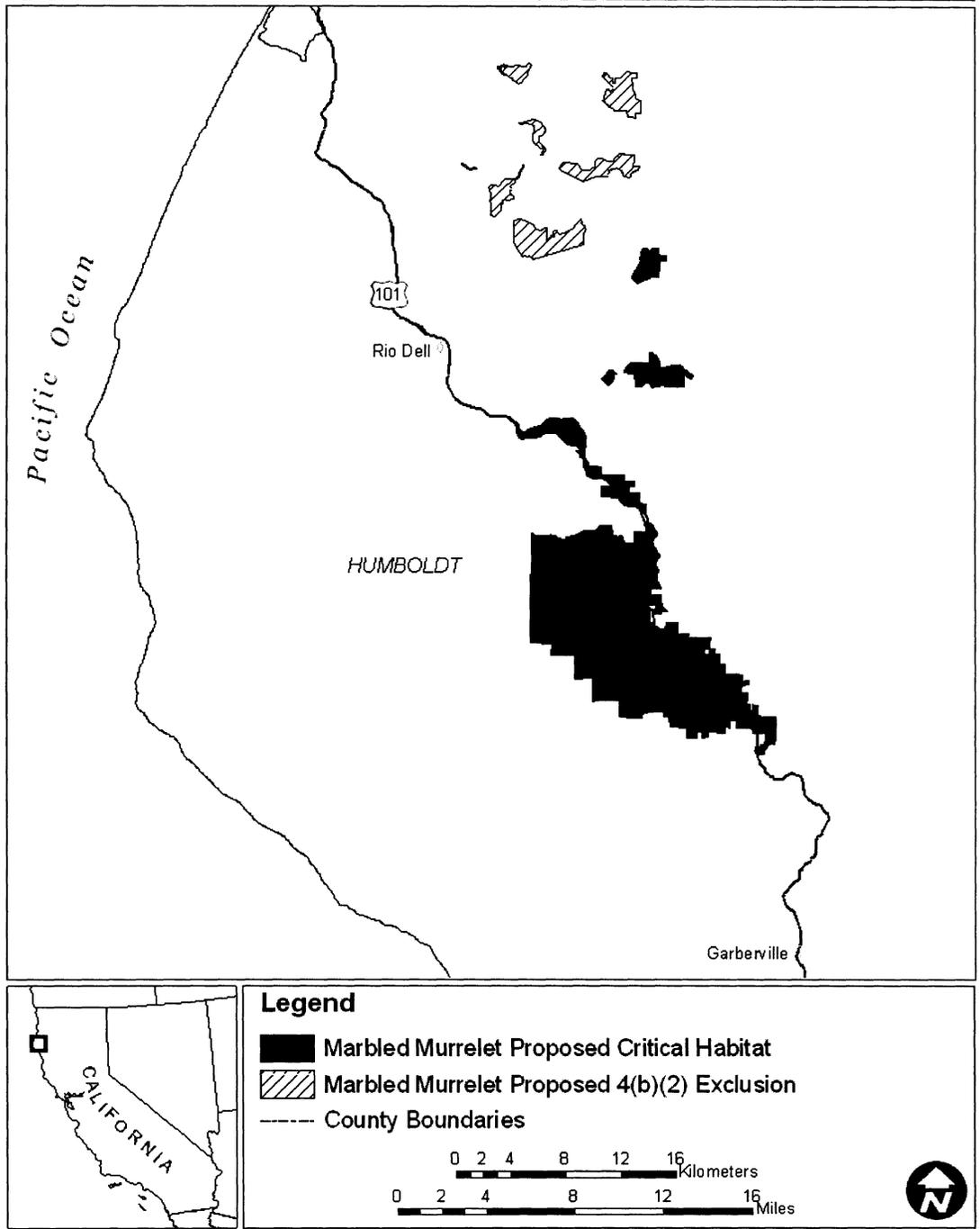
4477208; 414951, 4477309; 414890, 4477399; 414798, 4477478; 414668, 4477536; 414548, 4477573; 414426, 4477566; 414296, 4477559; 414181, 4477557; 414026, 4477568; 413901, 4477561; 413770, 4477529; 413667, 4477475; 413582, 4477424; 413463, 4477358; 413355, 4477294; 413244, 4477251; 413147, 4477210; 413029, 4477165; 412893, 4477150; 412763, 4477131; 412569, 4477120; 412465, 4477146; 412374, 4477158; 412267, 4477168; 412164, 4477199; 412091, 4477249; 412014, 4477299; 411987, 4477371; 411972, 4477481; 411941, 4477574; 411966, 4477720; 412079, 4477703; 412146, 4477612; 412185, 4477545; 412266, 4477527; 412360, 4477528; 412430, 4477574; 412469, 4477629; 412522, 4477697; 412561, 4477747; 412621, 4477784; 412729, 4477822; 412837, 4477862; 412911, 4477891; 413027, 4477939; 413124, 4477972; 413206, 4477973; 413305, 4477994; 413382, 4478002; 413471, 4478028; 413582, 4478132; 413659, 4478209; 413701, 4478259; 413743, 4478311; 413782, 4478354; 413855, 4478408; 413940, 4478451; 414040, 4478498; 414090, 4478532; 414146, 4478549; 414202, 4478565; 414267, 4478586; 414333, 4478597; 414425, 4478593; 414511, 4478591; 414605, 4478565; 414713, 4478561; 414808, 4478548; 414868, 4478521; 414938, 4478505; 415031, 4478499; 415109, 4478544; 415201, 4478565; 415273, 4478580; 415357, 4478591; 415457, 4478593; 415573, 4478613; 415644, 4478597; 415778, 4478564; 415839, 4478556; 415943, 4478491; 416026, 4478417; 416086, 4478362; 416137, 4478298; 416202, 4478223; 416259, 4478101; 416318, 4478001; 416315, 4477940; 416447, 4477846; 416541, 4477721; 416592, 4477627; 416640, 4477540; 416687, 4477465; 416717, 4477402; 416770, 4477311; 416819, 4477189; 416818, 4477074; 416802, 4476976; 416786, 4476884; 416780, 4476787; 416760, 4476687; 416750, 4476579; 416746, 4476509; 416736, 4476421; 416717, 4476319; 416723, 4476195; 416733, 4476096; 416731, 4476002; 416720, 4475887; 416693, 4475774; 416753, 4475650; 416801, 4475567; 416872, 4475476; 416911, 4475375; 416933, 4475319; 416973, 4475215; 417029, 4475100; 417101, 4475067; 417182, 4475078; 417246,

4475064; 417307, 4475061; 417431, 4475051; 417558, 4475051; 417675, 4475019; 417740, 4474997; 417816, 4474972; 417913, 4474942; 417903, 4474447; 419536, 4474426; 419530, 4473978; 420333, 4473972; 420333, 4473564; 419907, 4473558; 419907, 4473187; 420687, 4473187; 420687, 4472365; 421116, 4472352; 421106, 4471636; 421105, 4471561; 421183, 4471454; 421219, 4471386; 421274, 4471276; 421328, 4471174; 421345, 4471089; 421438, 4470960; 421488, 4470903; 421551, 4470830; 421604, 4470761; 421657, 4470700; 421694, 4470654; 421737, 4470568; 421781, 4470472; 421849, 4470380; 421912, 4470313; 421944, 4470251; 421951, 4470156; 421940, 4470039; 421870, 4469895; 421797, 4469852; 421751, 4469806; 421721, 4469736; 421695, 4469668; 421642, 4469607; 421633, 4469547; 421642, 4469432; 421679, 4469339; 421724, 4469274; 421776, 4469193; 421829, 4469081; 421909, 4468999; 421998, 4468880; 422067, 4468751; 422107, 4468656; 422120, 4468568; 422126, 4468507; 422135, 4468440; 422065, 4468375; 422020, 4468322; 421991, 4468254; 421924, 4468124; 421875, 4468047; 421846, 4467972; 421831, 4467901; 421884, 4467728; 421919, 4467676; 421957, 4467591; 421961, 4467497; 422024, 4467489; 422072, 4467438; 422032, 4467301; 421966, 4467158; 421921, 4467016; 421950, 4466913; 421992, 4466757; 422217, 4466132; 421498, 4466153; 421474, 4465668; 422280, 4465692; 422223, 4465270; 422320, 4464868; 422672, 4464467; 422269, 4464481; 422254, 4464376; 422229, 4464306; 422193, 4464254; 422055, 4464274; 421933, 4464304; 421877, 4464278; 421816, 4464297; 421807, 4464412; 421843, 4464901; 421147, 4464906; 421397, 4464511; 421378, 4463623; 421469, 4463625; 421523, 4463667; 421731, 4463665; 421786, 4463512; 421813, 4463458; 421848, 4463392; 421883, 4463321; 422012, 4463240; 422141, 4463208; 422557, 4463210; 422563, 4463605; 423432, 4463595; 423400, 4462806; 424256, 4462814; 424190, 4462480; 425804, 4462518; 425781, 4462081; 425763, 4461725;

(xi) Note: Map of Southern Humboldt County Unit (Map 12) follows:

BILLING CODE 4310-55-P

Map 12. Southern Humboldt County Proposed Critical Habitat Unit, California



(17) Mendocino County Unit, California. Humboldt, Trinity, and Mendocino counties, California. From USGS 1:24,000 scale quadrangles: Bailey Ridge, Bell Springs, Burbeck, Cahto Peak, Cold Springs, Comptche, Dutchmans Knoll, Eureka Hill, Fort Bragg, Garberville, Greenough Ridge, Hales Grove, Harris, Iron Peak, Jewett Rock, Laytonville, Leggett, Lincoln Ridge, Mallo Pass Creek, Mathison Peak, Mendocino, Noble Butte, Northspur, Noyo Hill, Ornbaun Valley, Orrs Springs, Philo, Piercy, Point Arena, Sherwood Peak, and Tan Oak Park.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 445341, 4377851; 445485, 4377643; 445667, 4377448; 445896, 4377271; 446192, 4377152; 446289, 4377165; 446378, 4377161; 446454, 4377131; 446518, 4377118; 446569, 4377080; 446628, 4377042; 446700, 4377025; 446770, 4377057; 446899, 4377135; 446966, 4377194; 447038, 4377211; 447127, 4377185; 447246, 4377118; 447272, 4377013; 447280, 4376919; 447224, 4376847; 447144, 4376797; 447051, 4376790; 446941, 4376792; 446868, 4376734; 446793, 4376665; 446687, 4376665; 446560, 4376665; 446450, 4376775; 446387, 4376822; 446251, 4376805; 445985, 4376869; 445811, 4376979; 445743, 4376995; 445663, 4376991; 445574, 4377089; 445392, 4377313; 445130, 4377453; 445045, 4377512; 444960, 4377525; 444740, 4377461; 444723, 4377364; 444626, 4377245; 444452, 4377233; 444330, 4377288; 444219, 4377355; 444192, 4377487; 444224, 4377584; 444249, 4377647; 444346, 4377783; 444430, 4377808; 444520, 4377812; 444622, 4377728; 444741, 4377765; 444909, 4377817; 445026, 4377862; 445117, 4377897; 445235, 4377910; 445341, 4377851;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 447288, 4388698; 447278, 4388627; 447203, 4388647; 447149, 4388622; 447132, 4388567; 447114, 4388514; 447040, 4388541; 446981, 4388558; 446927, 4388573; 446866, 4388610; 446827, 4388645; 446780, 4388662; 446721, 4388655; 446628, 4388656; 446541, 4388730; 446507, 4388799; 446547, 4388843; 446607, 4388844; 447392, 4388808; 447319, 4388760; 447288, 4388698;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 444965, 4317817; 445053, 4317788; 445160, 4317802; 445245, 4317799; 445327, 4317773; 445386, 4317740; 445458, 4317710; 445526, 4317673; 445583, 4317651; 445625, 4317634; 445667, 4317657; 445699, 4317705; 445736, 4317753; 445803,

4317787; 445859, 4317777; 445910, 4317741; 445964, 4317658; 445994, 4317579; 446032, 4317494; 446073, 4317429; 446144, 4317334; 446230, 4317262; 446299, 4317228; 446359, 4317213; 446441, 4317198; 446524, 4317202; 446586, 4317203; 446690, 4317215; 446789, 4317220; 446883, 4317173; 446918, 4317095; 446892, 4317028; 446855, 4316984; 446784, 4316935; 446732, 4316886; 446639, 4316852; 446506, 4316833; 446408, 4316842; 446311, 4316845; 446236, 4316872; 446118, 4316931; 446042, 4316971; 445954, 4317038; 445870, 4317101; 445755, 4317207; 445655, 4317287; 445562, 4317390; 445423, 4317519; 445298, 4317592; 445218, 4317608; 445157, 4317621; 445067, 4317587; 445011, 4317541; 444977, 4317448; 444958, 4317390; 444922, 4317345; 444876, 4317306; 444779, 4317251; 444697, 4317189; 444661, 4317108; 444687, 4317014; 444719, 4316952; 444734, 4316879; 444761, 4316803; 444764, 4316714; 444749, 4316636; 444717, 4316588; 444659, 4316531; 444588, 4316507; 444506, 4316523; 444430, 4316540; 444387, 4316465; 444380, 4316387; 444385, 4316260; 444408, 4316129; 444455, 4316022; 444510, 4315970; 444590, 4315961; 444676, 4315965; 444784, 4315955; 444890, 4315940; 444950, 4315917; 445000, 4315875; 445055, 4315809; 445045, 4315690; 445041, 4315630; 445002, 4315566; 444985, 4315495; 444977, 4315420; 444933, 4315361; 444873, 4315324; 444797, 4315306; 444723, 4315305; 444646, 4315295; 444506, 4315309; 444370, 4315347; 444269, 4315416; 444251, 4315472; 444254, 4315558; 444286, 4315664; 444323, 4315831; 444288, 4315897; 444226, 4316003; 444169, 4316085; 444138, 4316169; 444109, 4316245; 444074, 4316297; 444026, 4316337; 443933, 4316400; 443874, 4316443; 443843, 4316500; 443792, 4316427; 443711, 4316369; 443608, 4316338; 443511, 4316326; 443435, 4316335; 443361, 4316356; 443294, 4316364; 443257, 4316283; 443215, 4316210; 443145, 4316171; 443042, 4316191; 442959, 4316221; 442898, 4316243; 442824, 4316295; 442768, 4316333; 442681, 4316373; 442586, 4316347; 442539, 4316315; 442438, 4316297; 442344, 4316250; 442224, 4316154; 442154, 4316236; 442163, 4316301; 442149, 4316400; 442162, 4316492; 442216, 4316555; 442277, 4316591; 442367, 4316602; 442461, 4316553; 442530, 4316571; 442586, 4316607; 442670, 4316672; 442715, 4316695; 442795, 4316665; 442877, 4316600; 442935, 4316499; 443031, 4316459; 443105, 4316508; 443130,

4316580; 443179, 4316642; 443249, 4316652; 443314, 4316643; 443390, 4316609; 443450, 4316587; 443538, 4316593; 443641, 4316642; 443702, 4316706; 443787, 4316734; 443796, 4316780; 443798, 4316847; 443810, 4316937; 443843, 4317019; 443818, 4317076; 443774, 4317127; 443729, 4317169; 443708, 4317224; 443744, 4317317; 443864, 4317414; 443965, 4317472; 444041, 4317505; 444091, 4317530; 444145, 4317563; 444214, 4317550; 444282, 4317539; 444242, 4317643; 444367, 4317705; 444489, 4317739; 444560, 4317740; 444615, 4317798; 444711, 4317805; 444817, 4317793; 444916, 4317821; 444965, 4317817;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 466182, 4344237; 466174, 4343546; 466572, 4343546; 467349, 4343536; 467776, 4343584; 467828, 4343082; 467357, 4343083; 467366, 4342680; 467354, 4342274; 467784, 4342269; 467793, 4341460; 468193, 4341456; 468190, 4341064; 468396, 4341050; 468404, 4340286; 468186, 4340275; 468187, 4340652; 467795, 4340654; 467319, 4340662; 467322, 4341047; 467325, 4341465; 465421, 4341491; 465402, 4341892; 465389, 4342765; 465260, 4342773; 465070, 4342847; 464992, 4342913; 464884, 4343017; 464826, 4343091; 465398, 4343091; 465684, 4343089; 466183, 4343099; 466187, 4343331; 465677, 4343339; 465650, 4344221; 465839, 4344227; 466182, 4344237;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 430432, 4353114; 430354, 4353081; 430334, 4353131; 430432, 4353114;

(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 430432, 4353114; 430507, 4353125; 430565, 4353163; 430635, 4353123; 430690, 4353187; 430771, 4353060; 430819, 4352975; 430882, 4352884; 430917, 4352756; 430868, 4352685; 430755, 4352746; 430706, 4352762; 430631, 4352855; 430568, 4352926; 430521, 4352985; 430458, 4352999; 430456, 4353066; 430432, 4353114;

(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434539, 4353054; 434563, 4353487; 435260, 4353471; 435875, 4353457; 435708, 4353661; 435696, 4353836; 435263, 4353842; 435158, 4353843; 435157, 4354249; 434746, 4354253; 434752, 4354685; 433978, 4354716; 433970, 4355131; 433180, 4355137; 433187, 4355558; 432375, 4355554; 432369, 4355952; 431980, 4355966; 431982, 4356764; 432168, 4356757; 432173, 4356922; 431977,

4356959; 431972, 4357173; 433156, 4357151; 433145, 4357514; 432742, 4357542; 432738, 4357928; 431957, 4358182; 431963, 4358493; 432547, 4358484; 433625, 4357590; 433980, 4357467; 434346, 4357450; 438552, 4357094; 438542, 4352945; 435161, 4353027; 435160, 4353214; 434771, 4353209; 434785, 4353017; 434539, 4353054;

(viii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 434746, 4354253; 435157, 4354249; 435158, 4353843; 435263, 4353842; 435696, 4353836; 435708, 4353661; 435875, 4353457; 435260, 4353471; 434563, 4353487; 434539, 4353054; 434364, 4353056; 433569, 4353076; 433468, 4353079; 432774, 4353081; 432771, 4353486; 431176, 4353519; 430663, 4353533; 430636, 4353589; 430639, 4353635; 430631, 4353695; 430616, 4353775; 430605, 4353830; 430594, 4353945; 430600, 4354039; 430607, 4354099; 430913,

4354131; 430925, 4354435; 431166, 4354548; 431975, 4354521; 431972, 4354316; 434746, 4354253;

(ix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 430720, 4353224; 430779, 4353146; 430809, 4353078; 430927, 4352765; 430873, 4352729; 430845, 4352776; 430729, 4352869; 430664, 4352843; 430625, 4352867; 430581, 4352868; 430576, 4352910; 430547, 4352959; 430474, 4352977; 430462, 4353049; 430414, 4353081; 430342, 4353077; 430310, 4353120; 430371, 4353140; 430420, 4353152; 430475, 4353146; 430543, 4353158; 430586, 4353189; 430641, 4353145; 430703, 4353173; 430720, 4353224;

(x) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 430720, 4353224; 430685, 4353254; 430669, 4353309; 430617, 4353358; 430541, 4353389; 430493, 4353406; 430448, 4353446; 430468, 4353484; 430533, 4353526; 430606,

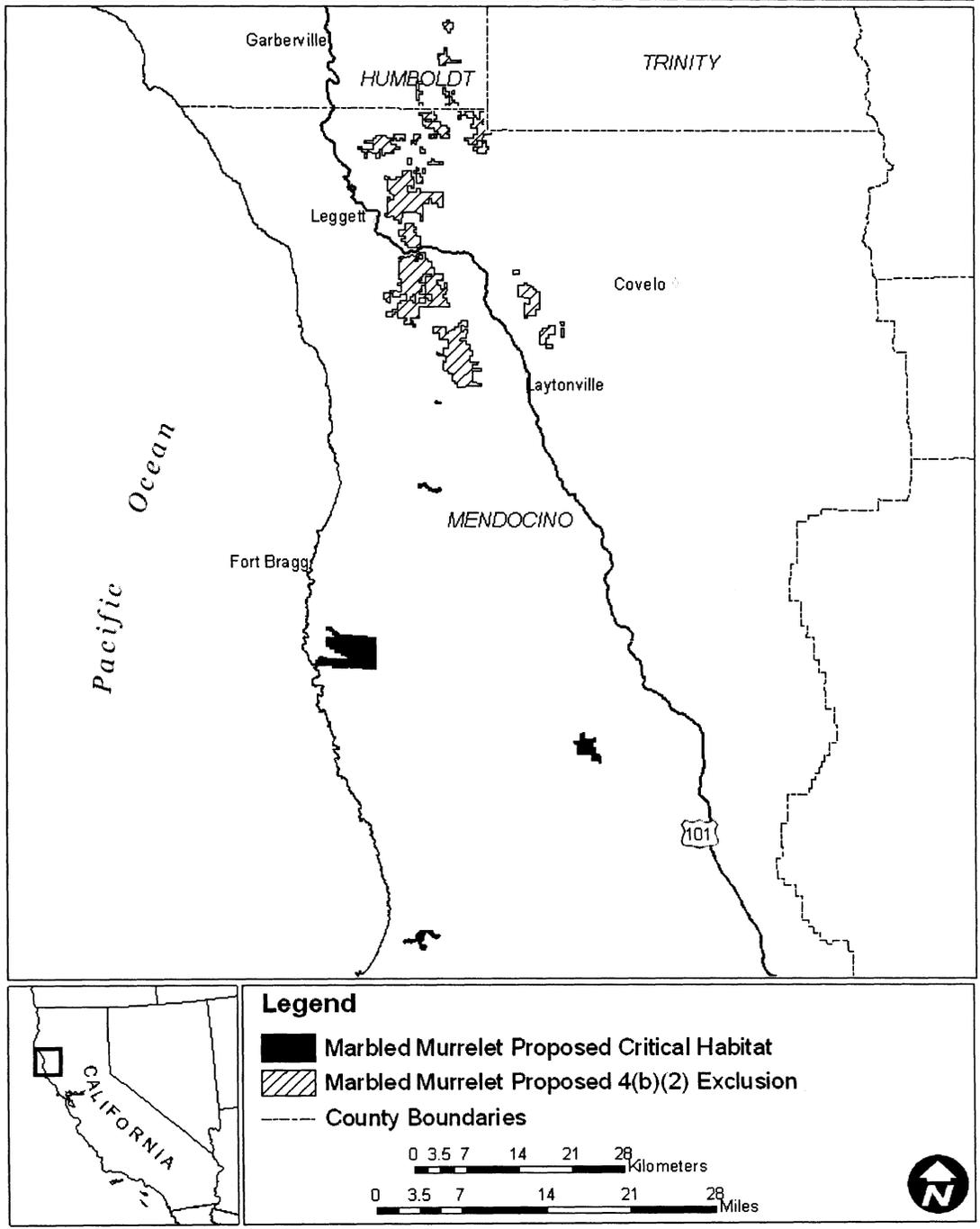
4353551; 430636, 4353589; 430663, 4353533; 430678, 4353392; 430720, 4353224;

(xi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 430616, 4353775; 430631, 4353695; 430639, 4353635; 430540, 4353650; 430439, 4353640; 430319, 4353564; 430248, 4353545; 430218, 4353485; 430165, 4353419; 430086, 4353442; 430078, 4353513; 430039, 4353564; 429966, 4353624; 429947, 4353702; 430005, 4353740; 430055, 4353767; 429994, 4353813; 430017, 4353846; 430179, 4353909; 430179, 4353709; 430332, 4353709; 430337, 4353998; 430439, 4354016; 430528, 4354035; 430533, 4353947; 430594, 4353945; 430605, 4353830; 430616, 4353775;

(xii) Note: Map of Mendocino County Unit (Map 13) follows:

BILLING CODE 4310-55-P

Map 13. Mendocino County Proposed Critical Habitat Unit, California



(18) Santa Cruz Mountains Unit, California. San Mateo and Santa Cruz counties, California. From USGS 1:24,000 scale quadrangles: Ano Nuevo, Big Basin, Davenport, Felton, Franklin Point, La Honda, Mindego Hill, Montara Mtn, and Woodside.

(i) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 579268, 4098531; 579407, 4098464; 579497, 4098504; 579604, 4098552; 579643, 4098660; 579699, 4098686; 579823, 4098622; 579972, 4098463; 580097, 4098296; 580237, 4098172; 580845, 4098254; 580965, 4098242; 581491, 4097603; 581778, 4097265; 581753, 4097412; 581385, 4097802; 582283, 4097868; 582493, 4098177; 582797, 4098054; 583646, 4099108; 583862, 4099066; 583999, 4098888; 584127, 4098741; 584193, 4098710; 584330, 4098711; 584407, 4098766; 584492, 4098889; 584532, 4099021; 584561, 4099099; 584653, 4099149; 584958, 4099143; 585055, 4099144; 585165, 4099154; 585244, 4099052; 585260, 4098884; 585319, 4098734; 585646, 4097883; 585904, 4096965; 585229, 4096828; 584564, 4096511; 584296, 4096390; 583666, 4096381; 584003, 4096145; 584184, 4095611; 582831, 4094864; 582817, 4094745; 582795, 4094653; 582739, 4094531; 582792, 4094351; 582808, 4094161; 582834, 4093969; 582765, 4093736; 582642, 4093324; 582593, 4093001; 582510, 4093061; 582133, 4093665; 581594, 4093686; 581489, 4093438; 581612, 4093078; 581616, 4092933; 581524, 4092580; 581616, 4092384; 581562, 4092166; 581658, 4091917; 581420, 4091909; 581401, 4092174; 581443, 4092388; 581371, 4092499; 581321, 4092798; 581190, 4093040; 581037, 4093327; 580922, 4093481; 580776, 4093588; 580615, 4093760; 580428, 4093879; 580240, 4093944; 580029, 4093944; 579879, 4093967; 579722, 4093987; 579488, 4093952; 579373, 4093883; 579178, 4093783; 578944, 4093676; 578829, 4093828; 578944, 4093868; 579079, 4093967; 579305, 4094065; 579338, 4094127; 579440, 4094182; 579722, 4094167; 580328, 4094021; 581068, 4093929; 581225, 4094132; 581202, 4094792; 581079, 4095297; 581027, 4095462; 580354, 4095743; 580609, 4096827; 579427, 4096712; 579219, 4098038; 578226, 4097905; 578422, 4099474; 578836, 4099494; 578906, 4098691; 579198, 4098689; 579243, 4098643; 579268, 4098531; and excluding land bound by 581789, 4096557; 581792, 4095827; 582203, 4095827; 582228, 4095747; 582685, 4095782; 582784, 4096432; 582685, 4096581; 581789, 4096557;

(ii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 577402, 4105312; 577416, 4104868; 578648, 4104912; 578654, 4104526; 579075, 4104536; 579089, 4104148; 579489, 4104159; 579514, 4103279; 579929, 4103309; 579952, 4102912; 580773, 4102941; 580773, 4102508; 581154, 4102511; 581165, 4102152; 581613, 4101404; 581784, 4101392; 581787, 4101043; 581720, 4101016; 581788, 4100939; 581601, 4100820; 580795, 4100771; 580798, 4101152; 579539, 4101121; 579546, 4100723; 578766, 4100699; 578735, 4101106; 579162, 4101114; 579153, 4101555; 578320, 4101523; 578293, 4102369; 578702, 4102389; 578691, 4102822; 577893, 4102818; 577881, 4103138; 577720, 4103132; 577707, 4103307; 577465, 4103300; 577461, 4103438; 577287, 4103437; 577245, 4103480; 577365, 4103553; 577366, 4103659; 577158, 4103660; 577157, 4103743; 576983, 4103860; 576974, 4105307; 577402, 4105312;

(iii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 567487, 4110615; 567497, 4110384; 567275, 4110398; 567270, 4110630; 567487, 4110615;

(iv) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 571899, 4112993; 571920, 4112850; 572009, 4112838; 572185, 4112839; 572161, 4113167; 572279, 4113193; 572327, 4112964; 572455, 4112839; 572526, 4111866; 572092, 4111860; 572146, 4111230; 571354, 4111217; 571347, 4112672; 571300, 4112923; 571543, 4112894; 571735, 4112872; 571734, 4113149; 571850, 4113230; 572012, 4113251; 572012, 4113146; 572011, 4112998; 571899, 4112993;

(v) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 563342, 4125352; 561676, 4125345; 561641, 4126126; 563133, 4126120; 563154, 4125779; 563210, 4125768; 563274, 4125659; 563322, 4125573; 563336, 4125489; 563348, 4125420; 563342, 4125352;

(vi) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 565654, 4127384; 565827, 4127390; 565895, 4127298; 565989, 4127296; 566063, 4127354; 566067, 4127430; 566068, 4127557; 566434, 4127553; 566452, 4127723; 566820, 4127708; 566808, 4126121; 568376, 4126163; 568369, 4126557; 569167, 4126582; 569197, 4125392; 569196, 4124988; 569602, 4124967; 569599, 4124586; 569958, 4124574; 569971, 4123809; 571150, 4123789; 571152, 4125393; 570378, 4125390; 570775, 4126127; 570776, 4126572; 571340, 4126565; 571472, 4126152; 571553,

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(vii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 565654, 4127384; 564866, 4127346; 564840, 4127718; 564475, 4127748; 564423, 4128565; 564058, 4128567; 563283, 4129036; 563306, 4129845; 563374, 4129839; 563473, 4129812; 563521, 4129750; 563558, 4129666; 563585, 4129569; 563661, 4129545; 563792, 4129516; 563873, 4129456; 564057, 4129415; 564308, 4129321; 564376, 4129269; 564521, 4129211; 564634, 4129149; 564780, 4129005; 564843, 4128946; 564904, 4128787; 564942, 4128726; 564965, 4128562; 565074, 4128562; 565136, 4128380; 565246, 4128277; 565324, 4128212; 565442, 4128102; 565541, 4128103; 565648, 4128056; 565654, 4127384;

(viii) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 558364, 4144497; 558453, 4144378; 558384, 4144283; 558185, 4144276; 558364, 4144497;

(ix) Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 558178, 4145107; 558255, 4144970; 558422, 4145077; 558477, 4145077; 558515, 4145012; 558556, 4144947; 558472, 4144894; 558405, 4144849; 558481, 4144771; 558481, 4144624; 558503, 4144564; 558583, 4144567; 558644, 4144534; 558688, 4144510; 558798, 4144508; 558889, 4144495; 558968, 4144422; 559044, 4144398; 559063, 4144230; 558962, 4144230; 558984, 4143766; 559289, 4143768; 559287, 4143427; 559685, 4143408; 559682, 4143110; 559655, 4143080; 560449, 4143074; 560412, 4143275; 561026, 4143393; 561340, 4143684; 561322, 4143786; 561335, 4143880; 561402, 4144004; 561441, 4144124; 561469, 4144239; 561520, 4144300; 561603, 4144385; 561668, 4144514; 561687, 4144584; 561756, 4144632; 561850, 4144618; 561906, 4144638; 562026, 4144687; 562143, 4144704; 562237, 4144698; 562343, 4144676; 562407, 4144652; 562470, 4144636; 562556, 4144640; 562626, 4144680; 562678, 4144580; 562720, 4144526; 562775, 4144434; 562871, 4144361; 562941, 4144277; 562998, 4144189; 563043, 4144105; 563077, 4143962; 563144, 4143860; 563192, 4143778; 563267, 4143711; 563350, 4143628; 563413, 4143540; 563475, 4143469; 561713, 4142207; 561325, 4142700; 561200, 4142621; 561120, 4142756; 560910, 4142697; 560475, 4142400; 560388, 4142339; 560303, 4142285; 560256, 4142246; 560199, 4142199; 560136, 4142169; 560111, 4142104; 560122, 4142012; 560165, 4141844; 560141, 4141747; 560078,

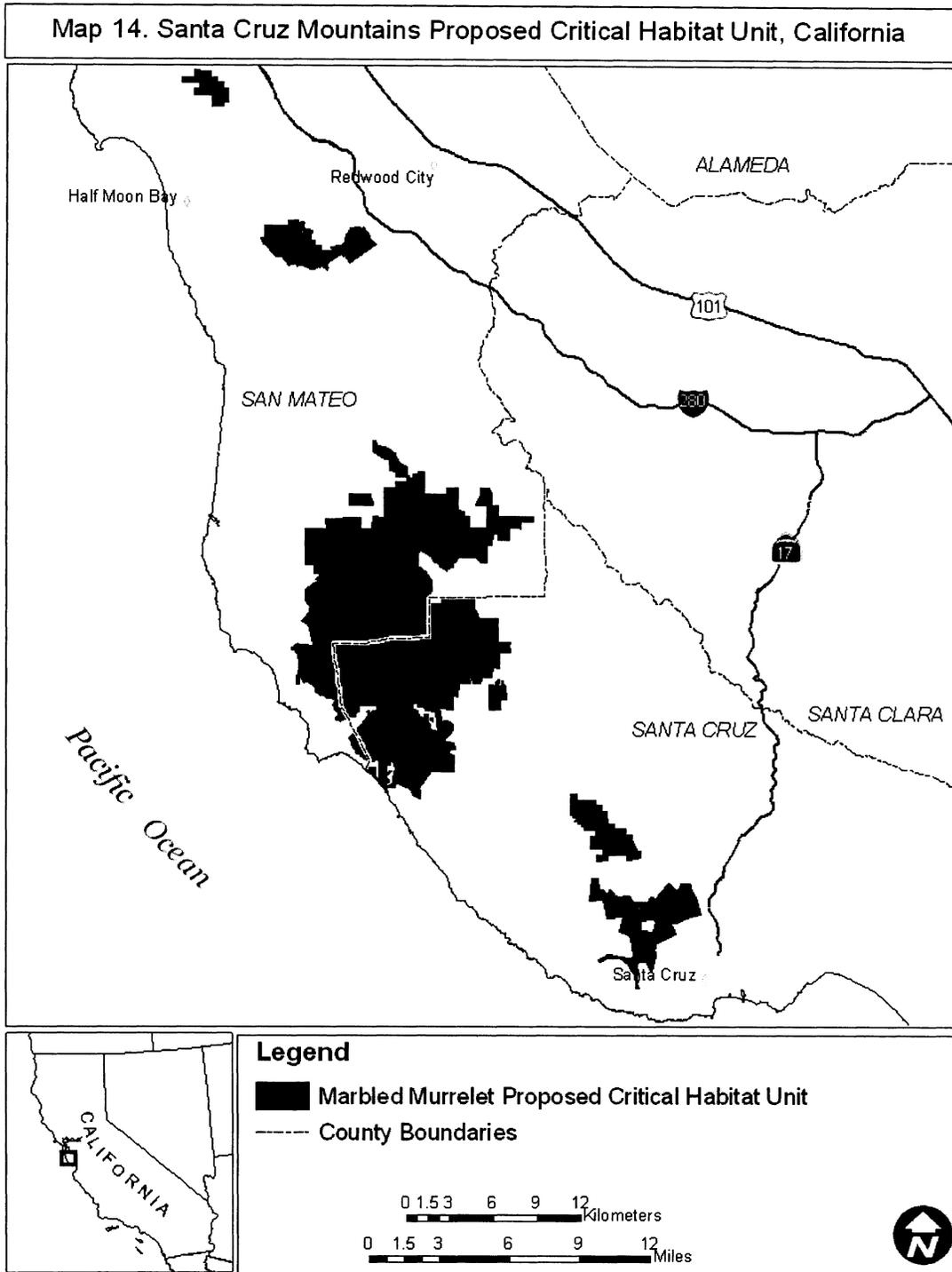
4141712; 560034, 4141779; 560016,
4141831; 559969, 4141859; 559893,
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4142050; 559681, 4141958; 559669,
4141892; 559615, 4141876; 559563,
4141901; 559502, 4141944; 559438,
4141990; 559391, 4141984; 559413,
4141915; 559432, 4141874; 559383,
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4143941; 555813, 4143948; 555812,
4144736; 557412, 4144753; 557412,
4145098; 558178, 4145107; and
excluding land bound by 558364,
4144497; 558185, 4144276; 558384,
4144283; 558453, 4144378; 558364,
4144497;

(x) Land bounded by the following
UTM Zone 10, NAD83 coordinates
(E,N): 552129, 4155086; 552527,
4155069; 552529, 4154673; 552930,
4154673; 552928, 4154265; 553333,
4154264; 553337, 4153875; 553338,
4153353; 552993, 4153353; 552993,
4153029; 552167, 4153030; 552148,
4153872; 550972, 4153866; 550958,
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4155080; 550944, 4155073; 550930,
4155530; 551731, 4155498; 552125,
4155497; 552129, 4155086;

(xi) Note: Map of Santa Cruz
Mountains Unit (Map 14) follows:

BILLING CODE 4310-55-P



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Dated: August 30, 2006.
David M. Verhey,
*Acting Assistant Secretary for Fish and
Wildlife and Parks.*
[FR Doc. 06-7437 Filed 9-11-06; 8:45 am]
BILLING CODE 4310-55-P



Federal Register

**Tuesday,
September 12, 2006**

Part IV

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 121

**Use of Additional Portable Oxygen
Concentrator Devices Onboard Aircraft;
Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. FAA-2004-18596; SFAR 106]

RIN 2120-A181

Use of Additional Portable Oxygen Concentrator Devices Onboard Aircraft**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This action amends Special Federal Aviation Regulation 106 (SFAR 106), Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft, to allow for the use of the *AirSep Corporation's FreeStyle, SeQual Technologies' Eclipse*, and *Respironics Inc.'s EverGo* portable oxygen concentrator (POC) devices onboard aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow all POC devices deemed acceptable by the FAA to be available to the traveling public in need of oxygen therapy for use in air commerce. When this rule becomes effective, there will be a total of five different POC devices the FAA finds acceptable for use onboard aircraft during travel, and passengers will be able to carry these devices onboard the aircraft and use them with the approval of the aircraft operator.

DATES: This final rule amending SFAR 106 will become effective on September 12, 2006.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3732.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search/>);
- (2) Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by

calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Authority for This Rulemaking

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

The FAA is authorized to issue this final rule pursuant to 49 U.S.C. 44701. Under that section, the FAA is authorized to establish regulations and minimum standards for "other practices methods and procedure the Administrator finds necessary for air commerce and national security."

Background

On July 12, 2005, the FAA published Special Federal Aviation Regulation 106 (SFAR 106) entitled, "Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft" (70 FR 40156). SFAR 106 is the result of a notice the FAA published in July 2004 (69 FR 42324) to address the needs of passengers who must travel with medical oxygen. Prior to publication of SFAR 106, passengers in need of medical oxygen during air transportation faced many obstacles when requesting service. Many carriers did not provide medical oxygen service aboard flights, and those that did often provided service at a price that travelers could not afford. Coordinating service between air carriers and suppliers at airports was also difficult, and passengers frequently chose not to fly because of these difficulties.

Recently, new medical oxygen technologies approved by the Food and Drug Administration (FDA) reduce the risks typically associated with compressed oxygen. Several manufacturers have developed small portable oxygen concentrators (POC)

that work by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user with an oxygen concentration of about 90%. The POCs operate using either rechargeable batteries or, if the aircraft operator obtains approval from the FAA, aircraft electrical power.

In addition, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has determined that the POCs covered by this amendment are not hazardous materials. Thus, they do not require the same level of special handling as compressed oxygen, and are safe for use onboard aircraft, provided certain conditions for their use are met.

SFAR 106 permits passengers to carry on and use certain POCs onboard aircraft if the aircraft operator ensures that the conditions specified in the SFAR for their use are met. The devices initially determined acceptable for use in SFAR 106 are the *AirSep LifeStyle* and the *Inogen One* POCs. Aircraft operators can now offer medical oxygen service as they did before SFAR 106 was enacted, or they can arrange for passengers to carry on and use one of the devices covered in SFAR 106. SFAR 106 is an enabling rule, which means that no aircraft operator is required to allow passengers to operate these devices onboard, but they may allow them to be operated onboard. If one of these devices is allowed by the aircraft operator to be carried on board, the conditions in the SFAR must be met.

When SFAR 106 was published, the FAA committed to establishing a single standard for all POCs so that regulations wouldn't apply to specific manufacturers and models of device. Whenever possible, the FAA tries to regulate by creating standards rather than approving by manufacturer. In the case of SFAR 106, the quickest and easiest way to serve both the customer and the air carrier was to allow the use of the devices determined to be acceptable by the FAA in SFAR 106 in a special, temporary regulation. As we stated in the preamble discussion in SFAR 106 "while we are committed to developing a performance-based standard for all future POC devices, we do not want to prematurely develop standards that have the effect of stifling new technology of which we are unaware." We developed SFAR 106 and published it so that passengers who otherwise could not fly could do so with an affordable alternative to what existed before SFAR 106 was published.

We continue to pursue the performance-based standard for all POCs. This process is time-consuming

and we intend to publish a notice in the **Federal Register** and offer the public a chance to comment on the proposal when it is complete. In the meantime, manufacturers continue to create new and better POCs, and several have requested that their product also be included as an acceptable device in SFAR 106. These new manufacturers include SeQual Technologies, Inc., and Respironics, Inc. AirSep Corporation, which manufactures the *LifeStyle* POC authorized for use under SFAR 106, has asked the FAA to authorize the use of its *FreeStyle* POC under SFAR 106 also. Each of these companies has formally petitioned the FAA for inclusion in SFAR 106 by submitting documentation of the devices to the Department of Transportation's Docket Management System. That documentation is available at <http://dmes.dot.gov> under the following docket numbers:

1. SeQual Technologies—FAA-2005-22574.
2. Respironics Inc., formerly OxyTec Medical Corporation—FAA-2006-23678.
3. AirSep Corporation—FAA-2006-24912.

As stated in Section 2 of SFAR 106, each covered device must not contain hazardous materials as determined by PHMSA (written documentation necessary), and must also be regulated by the FDA. Each petitioner included technical specifications for the devices in their request for approval, along with the required documentation from PHMSA and the FDA. The petitioners provided the FAA with the required documentation for the following POC devices:

1. SeQual Technologies' *Eclipse* Oxygen System;
2. Respironics *EverGo* System; and
3. AirSep Corporation's *FreeStyle* Portable Oxygen Concentrator.

The Rule

This amendment to SFAR 106 will include the *SeQual Eclipse*, *Respironics EverGo*, and *AirSep FreeStyle* devices in the list of POCs authorized for use in air commerce. The FAA has reviewed each individual device and accepted the documentation provided by the three manufacturers. That documentation includes letters provided to the manufacturer by PHMSA and the FDA affirming the status of each device as it pertains to the requisites stated in SFAR 106.

After reviewing the applicable FDA safety standards and the PHMSA findings, these three devices were determined by the FAA to be acceptable for use in air commerce.

Along with the inclusion of these three new devices in Section 2 of the SFAR, we amend the rule by removing the requirement that a POC provide oxygen therapy solely through the use of pulse technology. It was only after publication of SFAR 106 that we learned about a continuous flow feature of the *SeQual Technologies Eclipse* POC. The *Eclipse* POC features pulse delivery in addition to its continuous flow feature. Therefore, we find there is no safety reason for limiting POC acceptance to those POCs having only the pulse delivery feature. That requirement was formerly included in Section 2 of the SFAR and has been removed.

Good Cause for Adoption of This Final Rule Without Notice and Comment

As stated above, SFAR 106 was published on July 12, 2005. We stated in the preamble of that final rule that the *AirSep LifeStyle* and *Inogen One* POC devices were the only known acceptable devices when the rule was published. We also stated in that final rule that "we cannot predict how future products may be developed and work." We initiated a notice and comment period for the use of POC devices onboard aircraft on July 14, 2004 (69 FR 42324) and responded to the comments received in response to that NPRM in the final rule published in 2005. Therefore, it is not in the public interest to publish a notice to request comments on this amendment because all issues related to the use of POC devices onboard an aircraft have already been discussed. Further notice and comment would unnecessarily delay the acceptance of the *AirSep FreeStyle*, *SeQual Eclipse*, and *Respironics EverGo* POC devices as authorized for use onboard aircraft and included in SFAR 106.

Therefore, I find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations. I find that this action is fully consistent with my obligations under 49 U.S.C. 40105(b)(1)(A) to

ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this final rule to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120-0702.

This final rule requires that if a passenger carries a POC on board the aircraft with the intent to use it during the flight, he or she must inform the pilot in command of that flight. Additionally, the passenger who plans to use the device must provide a written statement signed by a licensed physician that verifies the passenger's ability to operate the device, respond to any alarms, the extent to which the passenger must use the POC (all or a portion of the flight), and prescribes the maximum oxygen flow rate.

Please note that 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 Paperwork Reduction Act paragraph in the final rule that established SFAR 106 still applies to this amendment. The availability of three new POC devices will likely increase the availability and options for a passenger in need of oxygen therapy, but the paperwork burden discussed in the original final rule is unchanged. Therefore, the OMB Control Number associated with this collection remains 2120-0702.

Regulatory Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT

Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal. This final rule amending SFAR 106 has no new costs associated with it because there is no requirement for use of these devices. The regulatory evaluation presented when SFAR 106 was first published is still valid and applicable, and the inclusion of these three devices as options for passengers and operators does not change the cost or benefits assigned in that final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a “significant economic impact on a substantial number of small entities” as they are defined in the Act. If we find that the action will have a significant impact, we must do a “regulatory flexibility analysis.”

This final rule adds three new devices to the list of authorized POCs in SFAR 106. Its economic impact is minimal. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration’s belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation, Air taxis.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends SFAR No. 106 to Chapter II of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Revise Section 2 of SFAR 106 to read as follows:

* * * * *

Section 2. *Definitions*—For the purposes of this SFAR the following definitions apply: Portable Oxygen Concentrator: means the *AirSep LifeStyle*, *AirSep FreeStyle*, *Inogen One*, *SeQual Eclipse*, or *Respironics EverGo* Portable Oxygen Concentrator medical device units as long as those medical device units: (1) Do not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration; (2) are also regulated by the Food and Drug Administration; and (3) assist a user of medical oxygen under a doctor’s care. These units perform by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user.

* * * * *

■ 3. Revise Section 3(a) introductory text of SFAR 106 to read as follows:

Section 3. Operating Requirements—
(a) No person may use and no aircraft operator may allow the use of any portable oxygen concentrator device, except the *AirSep LifeStyle*, *AirSep FreeStyle*, *Inogen One*, *SeQual Eclipse*, or *Respironics EverGo* Portable Oxygen Concentrator units. These units may be carried on and used by a passenger on board an aircraft provided the aircraft operator ensures that the following conditions are satisfied:

* * * * *

Issued in Washington, DC, on August 18, 2006.

Marion C. Blakey,
Administrator.

[FR Doc. 06–7597 Filed 9–11–06; 8:45 am]

BILLING CODE 4910–13–P



Federal Register

**Tuesday,
September 12, 2006**

Part V

The President

Proclamation 8047—Patriot Day, 2006

Presidential Documents

Title 3—

Proclamation 8047 of September 7, 2006**The President****Patriot Day, 2006****By the President of the United States of America****A Proclamation**

On the fifth anniversary of the attacks of September 11, 2001, we recall the fire and horror at the twin towers of the World Trade Center, the Pentagon, and a Pennsylvania field. America will always remember the thousands of innocent lives taken by the enemies of freedom that morning.

In the face of these unspeakable attacks, we were reminded that the great strength of America is found in the hearts and souls of our citizens. We witnessed firefighters, police officers, other public safety officials, and ordinary Americans demonstrate extraordinary courage, risking their lives to save innocent victims. We saw our country united in compassion as Americans came together to provide relief and bring hope to others.

Today, America is fighting a war that is testing our Nation's resolve. We are once again answering history's call with confidence, and we know that freedom will prevail. Our brave men and women in uniform have stepped forward to fight our enemies abroad so that we do not have to face them here at home, and we are grateful for the courageous individuals bringing terrorists to justice around the world.

We are also confronting the extremists in the great ideological struggle of the 21st century. September the 11th made clear that, in the long run, the only way to secure our Nation is to advance liberty and democracy as the great alternatives to repression and radicalism. By working together with our friends and allies, we are helping spread the blessings of freedom and laying the foundations of peace for generations to come.

The events of September 11, 2001, will always be a defining moment in our history. We hold the victims and their families in our hearts, and we lift them up in our prayers.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as “Patriot Day.”

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 11, 2006, as Patriot Day. I call upon the Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half staff on Patriot Day. I also call upon the people of the United States to observe Patriot Day with appropriate ceremonies, activities, and remembrance services, to display the flag at half staff from their homes on that day, and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent Americans and people from around the world who lost their lives as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, prominent initial "G".

[FR Doc. 06-7642
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TREASURY DEPARTMENT**Thrift Supervision Office**

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 4646/P.L. 109-273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109-274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109-275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109-276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109-277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109-278

To designate the facility of the United States Postal Service located at 1310 Highway 64

NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109-279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109-280

Pension Protection Act of 2006 (Aug. 17, 2006; 120 Stat. 780)

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